

## SOCIAL SERVICES

CHILD ABUSE—PERSONAL INFORMATION CONCERNING INDIVIDUALS INVOLVED IN A CHILD ABUSE CASE IS CONFIDENTIAL, BUT INFORMATION ABOUT THE HANDLING OF THE CASE BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES MAY BE DISCLOSED UNDER CERTAIN CONDITIONS.

July 25, 1986

Mr. Frank Farrow  
Executive Director  
Social Services Administration

You have requested our opinion on whether any information relating to a case of alleged child abuse may be disclosed to the public.

As we discuss in detail below, information about a case of alleged child abuse generally may not be disclosed, because Article 88A, §6(b) of the Maryland Code mandates that "all records and reports concerning child abuse or neglect" be kept "confidential." This law, which conforms to federal requirements, prohibits disclosure in order to assure the privacy of those involved in an alleged incident.

Yet the public has a vital interest in seeing to it that those responsible for child protective services are doing their job properly and are provided with adequate resources. The agencies involved have no privacy interest to be protected; on the contrary, the public interest requires that they be held accountable for their performance, like any other part of government. And true accountability depends, in turn, on some degree of public scrutiny of their performance. Thus, we believe that the pertinent statutes and regulations can and should be construed to permit the fullest possible disclosure regarding agency performance, consistent with the legally mandated preservation of personal privacy.

For these reasons, as elaborated below, we conclude as follows regarding the scope of permissible disclosure: If abuse has resulted in the death of a child and if the parent or other caretaker has been arrested on charges related to that abuse, the custodian of pertinent records may disclose the following information: (i) whether the child had ever been the subject of a report of suspected abuse, (ii) the date on which any such report was received, (iii) the dates

on which the local department of social services initiated and completed its investigation into the validity of the report, and (iv) the general nature of the department's investigation.<sup>1</sup>

## I

## Reports and Records of Child Abuse

Anyone who has reason to believe that a child has been abused must report that belief to the local department of social services or to the police. §§5-903 and 5-904 of the Family Law Article ("FL" Article).<sup>2</sup> Health practitioners, police officers, educators, and social workers are required by FL 5-903(b) to make both oral and written reports, which are to include, to the extent possible, the following information:

<sup>1</sup>However, if disclosure would be contrary to the public interest for some specific reason, the information may be withheld. See note 11 below.

We also point out that, although we refer below to disclosure by the Social Services Administration, the restrictions on disclosure discussed in this opinion are broadly phrased and apply not only to social services agencies but also to any agency that has received records or reports of child abuse. Thus, for example, a local State's Attorney who has received a copy of a report is subject to the restrictions in Article 88A, §6(b) of the Maryland Code when responding to press inquiries. However, disclosure to a defendant in a subsequent criminal action would be governed by applicable constitutional principles and procedural rules regarding criminal discovery. See Rule 4-263.

<sup>2</sup>Child abuse is defined as follows:

" 'Abuse' means:

- (1) the sustaining of injury by a child as a result of cruel or inhumane treatment or as a result of a malicious act by any parent or other person who has permanent or temporary care or custody or responsibility for supervision for a child under circumstances that indicate that the child's health or welfare is harmed or threatened thereby; or

- (2) sexual abuse of a child, whether physical injuries are sustained or not." FL §5-901(b).

Sexual abuse is further defined as any act that involves "sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child." FL §5-901(g)(1). Thus, an assault against a child by a person who is not a custodian or caretaker of the child, while it is certainly a criminal act, is not "child abuse." Put another way, every report of suspected child abuse necessarily implicates a parent, guardian, custodian, or other caretaker of the child.

- "(1) the name, age, and home address of the child;
- (2) the name and home address of the child's parent or other person who is responsible for the child's care;
- (3) the whereabouts of the child;
- (4) the nature and extent of the abuse of the child, including any evidence or information available to the reporter concerning previous injury possibly resulting from abuse; and
- (5) any other information that would help to determine:
- (i) the cause of the suspected abuse; and
- (ii) the identity of any individual responsible for the abuse." FL §5-903(c).

All other persons who have reason to believe that a child has been abused are likewise required to "report the belief," either orally or in writing. FL §5-904.3

Regardless of the form or source of the report, the local department of social services or the appropriate law enforcement agency must initiate an investigation. The immediate duty—"within 24 hours after receiving the report of suspected abuse"—is to see the child, attempt to interview the child's caretaker, and decide on the safety of the child and other children in the home. FL §5-905(a)(2). Thereafter, the investigation is to include:

- "(1) a determination of the nature, extent, and cause of the abuse, if any; and
- (2) if the suspected abuse is verified:
- (i) a determination of the identity of the person or persons responsible for the abuse;
- (ii) a determination of the name, age, and condition of any other child in the same household;
- (iii) an evaluation of the parents and the home environment; and

<sup>3</sup>The reports required by FL §§5-903 and 5-904 are to be made either to the local department of social services or to the State or local police. The agency that receives the report is required to notify the other agency. FL §§5-903(b)(2) and 5-904(b). See also FL §5-904(1)(iii) (copy of report to local State's Attorney).

- (iv) a determination of any other pertinent facts or matters." FL §5-905(b).

Those findings must be embodied in a written report to the local State's Attorney and to the Social Services Administration ("SSA"). FL §5-905(f)(2)(ii) and (g); COMAR 07.02.07.071.

Thus, social services agencies have information of a highly personal nature about the individuals involved in a child abuse case. Both federal and State laws and regulations pertaining to child abuse contain provisions designed to protect the privacy of those individuals.

## II

### Statutory and Regulatory Confidentiality Provisions

#### A. *Federal Statute and Regulations*

The federal Child Abuse Prevention and Treatment Act authorizes the Secretary of Health and Human Services to make grants to the states to assist "in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs." 42 U.S.C. §5103(b)(1). To qualify for such a grant, a state must, among other things, "provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, and the child's parents or guardians." 42 U.S.C. §5103(b)(2)(E).

Regulations adopted by the Department of Health and Human Services ("HHS") under that provision of the federal Act require states to "provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense." 45 C.F.R. §1340.14(i)(1). However, the regulations also provide that state statutes may permit release of such reports to various persons and entities who may need the information to investigate the report of suspected abuse or to provide services to the child or the child's family; to the child named in the report or a person responsible for the child's welfare; or to a state or local official responsible for administration or oversight of child protective services. 45 C.F.R.

§1340.14(i)(2)(i) through (xi).<sup>4</sup>

*B. State Statutes and Regulations*

Maryland is a grant recipient and has, accordingly, taken the necessary steps to comply with federal confidentiality requirements. Article 88A, 6(b) of the Maryland Code provides that, with limited exceptions, "all records and reports concerning child abuse or neglect are confidential." The exemptions to that prohibition against disclosure parallel the types of disclosure permitted under the HHS regulations. *Compare, e.g.*, 45 C.F.R. §1340.14(i)(2)(i) and (iv) with Article 88A, §6(b)(2) (disclosure permitted to those investigating a report of a child abuse or providing services to the child or family).<sup>5</sup>

This concern for the protection of personal privacy is also reflected in the more general provisions of the Maryland Public Informa-

<sup>4</sup>The authorization for disclosure to a person responsible for the child's welfare requires protection of the identity of the person who reported the alleged abuse and of others who would be endangered by disclosure. 45 C.F.R. §1340.14(i)(2)(vii). HHS also permits disclosure to researchers, "but without information identifying individuals named in a report or record." 45 C.F.R. §1340.14(i)(2)(xi).

<sup>5</sup>As amended by Chapter 234, Laws of Maryland 1986 (House Bill 882), Article 88A, §6(b) authorizes the following disclosures:

"(1) Under a court order;

(2) To personnel of local or State departments of social services, law enforcement personnel, and members of multidisciplinary case consultation teams, who are investigating a report of known or suspected child abuse or neglect or who are providing services to a child or family that is the subject of the report;

(3) To local or State officials responsible for the administration of the child protective service as necessary to carry out their official functions;

(4) To a person who is the alleged child abuser or the person who is suspected of child neglect if that person is responsible for the child's welfare and provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information;

(5) To a licensed practitioner who, or an agency, institution or program which is providing treatment or care to a child who is the subject of a report of child abuse or neglect; or

(6) To a parent or other person who has permanent or temporary care and custody of a child, if provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information."

tion Act ("PIA"). See §10-612(b) of the State Government Article ("SG" Article). Under SG §10-616(b), "[a] custodian shall deny inspection of public records that relate to welfare for an individual." Further, SG §§10-626 and 10-627 subject to civil and criminal liability anyone who willfully and knowingly permits inspection of a public record that names or otherwise identifies an individual and that is prohibited by the PIA.

Regulations adopted by the Department of Human Resources ("DHR") likewise require SSA to protect the confidentiality of "[a]ny information relating to individuals, whether recorded or not, which is acquired in the course of performance of official duties." COMAR 07.01.02.01. The focus of those confidentiality regulations generally is on protecting the privacy of individuals who receive services from SSA. See COMAR 07.01.02.04 (restricting disclosure of information for purposes other than its use by SSA or Income Maintenance Administration).

In particular, the regulations that apply to SSA focus on ensuring that reports of suspected child abuse are made to the local departments in complete confidentiality and on protecting the privacy of the subjects of such a report. For example, the Central Registry of child abuse cases, maintained by SSA, generally includes data nates identifying information about the child or the child's caretakers if investigation of a particular case has ruled out the possibility of child abuse. COMAR 07.02.07.08B(1). Information from the Central Registry may be made available (other than to protective services staff and law enforcement personnel) only in the form of demographic and statistical data that "do not identify particular persons or cases." COMAR 07.02.07.08C(2).

### III

#### Scope of Permissible Disclosure

##### A. Background

Tragic events sometimes bring particular cases of child abuse to the public's attention. Of late, several children have died from maltreatment for which adults have been arrested on child abuse

or related charges.<sup>6</sup> In such cases, there is strong and understandable public demand for information regarding the case and its handling by the local department of social services.

Certainly, SSA may—and, we understand, routinely does—explain the procedure by which any report of suspected child abuse is investigated. The press and public, however, seek more particularized and detailed information—for example, whether the child or the alleged abuser was the subject of any report; if so, the precise nature of the local department's investigation; and the determinations made or actions taken by the department.

### B. *Disclosure Prohibited Under All Circumstances*

The various confidentiality statutes and regulations discussed in Part II above make it very clear that SSA is prohibited from publicly disclosing the identity of the person who made a report of suspected abuse, the nature and extent of the child's injuries that prompted the report; the identity of the alleged abuser; information obtained in the local department's investigation or the sources of that information; or the evaluations of the child's family and home made in the course of the investigation.

Nor, under most circumstances, may SSA disclose even the bare fact that a report had been received concerning the child or the alleged abuser. In most cases, disclosure of that fact in itself would necessarily invade the privacy of the child and of those who would be suspected, rightly or wrongly, of having abused the child. The broadly worded confidentiality provisions clearly are designed to prevent that result. *Cf.* 65 *Opinions of the Attorney General* 365, 367 (1980) (obvious purpose of PIA's exemption of personnel files from disclosure "is to preserve the privacy of personal information").

### C. *Disclosure Permitted Under Limited Circumstances*

Nonetheless, the statutory confidentiality provisions are *not* intended to shield from public scrutiny the functioning of child pro-

TECTIVE SERVICES. Whether a local department carried out its responsibilities properly in a particularly tragic case of child abuse is a matter of vital public concern, and we believe that the statutory restrictions should be construed to permit disclosure of facts about local department performance—if, but only if, disclosure does not compromise the privacy interests that the restrictions require be protected.

A rigid insistence on complete confidentiality with regard to every aspect of the agency's handling of the case would accomplish nothing more than to deny public access to information concerning the quality of agency performance. In our view, a reading of Article 88A, §6(b) that would apply the provision to matters beyond the privacy interests underlying the restrictions would derogate both the public interest and the "cardinal rule in the construction of statutes [which] is to effectuate the real and actual intention of the Legislature." *State v. Fabritz*, 276 Md. 416, 421 (1975). "[S]tatutes are to be construed reasonably with reference to the purpose to be accomplished, ... and in light of the evils or mischief sought to be remedied." *Id.* (citations omitted). The "purpose to be accomplished" by Article 88A, §6(b) is the protection of the privacy of persons involved in a report of child abuse, as required by federal law. Our construction of §6(b) follows from this purpose. *See Holy Cross Hospital v. Health Services Cost Review Comm'n*, 283 Md. 677, 686 (1978).

The law permits limited disclosure of particular information only if two events have already taken place: the abused child has died of his or her injuries; and a parent, guardian, or other caretaker of the child has been arrested on charges of inflicting the abuse. In such a case, complete confidentiality is obviously no longer justified by the need to protect the privacy of that child. *Cf.* Restatement (Second) of Torts §652I (1977). Nor would a complete refusal to disclose any information protect the pertinent privacy interest of the arrested person, whose arrest is itself a matter of public record subject to disclosure in the absence of a court order to the contrary. 63 *Opinions of the Attorney General* 543, 548 (1978).

Accordingly, if these two events have occurred, SSA may disclose whether that child had ever been the subject of a report of a suspected abuse, the date on which any such report was received, and the dates on which the local department of social services initi-

<sup>6</sup>Recent child abuse deaths spur state to seek better protection," Baltimore Sun, June 30, 1986 at D1, col. 2. Under Article 27, §85A, child abuse is a felony separate from and in addition to any other criminal charge that may stem from a child's injury or death. *Anderson v. State*, 61 Md. App. 436, 448-49, 459 (1985). Child abuse is punishable '... to 15 years' imprisonment.

ated and completed the investigation required by FL 85-905.7. Public disclosure of the general nature of the department's investigation—for example, that a representative of the department visited the child's home—would be permissible. However, the specific details of that investigation, the information obtained, and the sources of the information may not be disclosed.

In our view, disclosure of this kind, under this set of circumstances, would not constitute disclosure of a record or report "concerning child abuse" within the meaning of Article 88A, §6(b). Rather, such limited disclosure would essentially concern only the functioning of the local department of social services.<sup>8</sup>

Neither Article 88A, §6(b) nor DHR's regulations anywhere define the records that "concern[] child abuse." Notably, however, the regulations governing child abuse cases consistently use the term "report" to mean a statement that the person making the report has reason to believe that a particular child has been abused. See COMAR 07.02.07.04 to .07.<sup>9</sup> Those regulations use the term "record" to mean the written documentation of the report and of the information obtained and determinations made in the course of the investigation into that report. See COMAR 07.02.07.10-1 and .11. That is, SSA's own regulations appear to regard a "record" or "report" as the detailed, personal information about the child and the child's family in which those individuals clearly have a privacy interest. Those terms do not logically extend to information concerning social services agencies' performance that does not implicate such privacy interests.

For like reasons, we believe that public disclosure of limited information concerning agency performance in cases of this type would not contravene federal law and regulations. The federal Child Abuse Prevention and Treatment Act requires states to maintain confidentiality "in order to protect the rights of the child, and

<sup>8</sup>In a particular case, the alleged abuser may have previously been the subject of a report of abuse of a different child. Disclosure of that fact would be permissible only if the identity of the other child could be concealed. As noted above, we think it is clear that each child has a right to privacy concerning whether he or she has ever been the subject of such a report.

<sup>9</sup>We caution, however, that this conclusion cannot be extended by analogy to any other situations. In every case except one of the type we have described, at a minimum one or the other of the allegedly abused child or the suspected abuser has a right to privacy that must be respected.

<sup>10</sup>The one exception to this consistent usage is COMAR 07.02.07.07I, which uses "report" to describe the local department's duty to provide certain information.

the child's parents or guardians." 42 U.S.C. §5103(b)(2)(E). Where those rights are not at stake, the purpose of the confidentiality provision does not require refusal to disclose information.

Similarly, the federal regulations relating to state child abuse programs require protection of both "records concerning reports and reports of child abuse." 45 C.F.R. §1340.14(i)(1). These records are to be kept confidential because they concern the persons involved in an incident of alleged child abuse. See also C.F.R. §1340.20 (programs other than those of state agencies must hold in confidence information "related to personal facts or circumstances about individuals").

Indeed, the HHS regulations expressly do not prevent "summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse." 45 C.F.R. §1340.14(3). That is, the agency charged with administering the federal statute has interpreted its confidentiality provision as permitting limited disclosure of information that would impair, to some degree, the privacy interests of those involved in the alleged abuse. In light of this construction, we think that the federal regulations can properly be read as permitting disclosure, in the public interest, of information that would *not* impair personal privacy.

Further, we think the disclosure of such information would comport with the general purpose of the federal Act and regulations—to promote the establishment and conduct of effective state programs to prevent and treat child abuse. See H.R. Rep. No. 5, 93d Cong., 1st Sess., *reprinted in* 1973 U.S. Code Cong. & Ad. News 2763, 2765-66 (explaining need for enactment of legislation). Public disclosure of information concerning the quality of performance by social services agencies in handling child abuse cases would certainly promote the effectiveness of those agencies. Such disclosure would enable the public to clearly identify any improvements in the organization, administration, staffing, or funding of those agencies that may be needed to improve their ability to serve children who are in need of protection.<sup>10</sup>

HHS itself takes the view that its regulations should be construed to permit disclosure in the interest of preventing child

<sup>10</sup>The Governor's Task Force on Child Abuse and Neglect has stated that efforts to prevent child abuse are presently adversely affected by insufficient staff to handle the agencies' large caseloads and inadequate funding for programs to prevent, detect, and treat child abuse. Governor's Task Force on Child Abuse and Neglect, Final Report at 108-11 (December, 1985).

abuse. In 1985, HHS proposed regulatory amendments specifically authorizing disclosure of full information to directors of child day care centers, agencies that license or regulate such centers, and foster care or adoption agencies. 50 Fed. Reg. 16,105 (1985). Those amendments were proposed "to prevent known abusers from being placed in settings where they would have first hand contact with children or from being approved as a foster parent or an adoptive parent." 50 Fed. Reg. at 16,107. At the same time, HHS announced that it would interpret its already adopted regulations to permit such disclosure, "in view of our efforts to assist States to protect children. We believe that such a limited expansion of access to child abuse reports and records could serve to prevent some significant number of child abuse incidents in the future." 50 Fed. Reg. at 16,108.

In our opinion, the very limited public disclosure we have described, by assisting in identifying needed improvements in this State's child protective services, also "could serve to prevent some significant number of child abuse incidents in the future." Therefore, we believe that HHS would not construe its regulations to prohibit such disclosure.

Finally, we think this disclosure would not violate SG §10-616(c). That provision prohibits disclosure of "public records that relate to welfare for an individual"—that is, personal information concerning applicants for or recipients of the various forms of assistance and services provided by social services agencies. However, SG §10-612, in furtherance of the public's right to "information about the affairs of government and the official acts of public officials and employees," requires that the provisions of the PIA be construed in favor of disclosure "unless an unwarranted invasion of the privacy of a person in interest would result." We reiterate that disclosure of information concerning the response of a local department of social services to a report of suspected child abuse would not, in the circumstances we have outlined, invade the privacy of a person in interest with regard to that report. Hence, in accordance with SG §10-612(b), we think that SG §10-616(c) should not be construed to prohibit disclosure of that information.<sup>11</sup>

<sup>11</sup>At the same time, we wish to make it clear that disclosure is not, in our opinion, necessarily always required. In a particular case, disclosure of any information regarding whether the child or the alleged abuser had previously been the subject of a report might be prejudicial to a civil or criminal investigation or otherwise adversely affect the public interest in a specific way:

"In determining whether, in an individual case, disclosure would result

Thus, in our view, the relevant provisions of both State and federal law can and should be read to permit limited disclosure of information concerning the performance of social services agencies, in cases in which a child has died as a result of abuse and an adult responsible for the care of that child has been arrested on charges stemming from the abuse. Disclosure of that information would serve the public interest in access to information concerning the functioning of governmental agencies without infringing the legally protected privacy rights of the individuals involved in a child abuse case.

#### IV

##### Conclusion

In summary, it is our opinion that, although public disclosure of information related to alleged child abuse is prohibited by law if personal privacy interests would be impaired, information related to agency performance may be disclosed to the public under some circumstances. Specifically, limited disclosure is permissible in a case in which a child has died as a result of abuse and a parent or other person who had permanent or temporary care or custody of that child has been arrested on charges related to that abuse. In such a case, SSA may disclose (i) whether the child had ever been the subject of a report of suspected abuse, (ii) the date on which any such report was received, (iii) the dates on which the local department of social services initiated and completed its investigation into the validity of the report, and (iv) the general nature of the department's investigation. All other disclosure of information contained in reports of suspected child abuse or in the local departments' records relating to such reports—including whether any re-

in one of the consequences listed in [SG §10-618(f)(2)]—or some other consequence that would make a disclosure contrary to the public interest—the custodian cannot simply state that this is so. Rather, he must carefully consider whether that consequence is likely or possible and, then, objectively balance that possibility (and the conclusion that the disclosure would be contrary to the public interest) against the asserted public interest in favor of disclosure." 64 *Opinions of the Attorney General* 236, 242 (1979).

In such a case, SSA has authority to refuse to disclose the information. See SG §10-618(f) (investigatory records and files not otherwise confidential may be held if disclosure would be contrary to public interest).



port was ever received with respect to a particular person—must be kept confidential in accordance with Article 88A, §6(b).

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*Editor's Note:* The reporting and investigation requirements set out in Part I of this opinion have been recodified and substantively amended. They appear at FL §§5-704, 5-705, and 5-706.

## UTILITIES

FRANCHISES—MUNICIPAL CORPORATIONS—SCOPE OF MUNICIPAL  
AUTHORITY OVER UTILITY WITH STATEWIDE FRANCHISE.

August 8, 1986

*Robert E. Watson, Esquire*  
*Counsel for Mountain Lake Park*

You have requested our opinion on whether the Town of Mountain Lake Park may require the Potomac Edison Company to have a town franchise; may regulate the company's operations within the town; and may levy on the company a franchise, pole rental, or right-of-way agreement fee.

For the reasons stated below, we conclude that the Potomac Edison Company has a State franchise conferred by Article 23, §340. The State retains the power to impose reasonable regulations and may delegate this power to the exercise of this franchise of such a delegation to the subdivisions. In the absence of such a delegation to the State's municipal corporations, the Town of Mountain Lake Park may not regulate and seek compensation for the exercise of this franchise. However, the Town may require the utility to move company equipment located on public property at company expense to further a governmental purpose.

## I

## Background

In your letter requesting this opinion, you indicated that the town desires to widen some of its 16-foot streets within the established 50-foot right-of-way. This work would require moving some of the utility poles of the Potomac Edison Company and the company has demanded that it be paid \$1,000 for each pole that it relocates. You also mentioned that, in the course of operating and maintaining its power plant in the town, the company has damaged some of the town's streets but the company has declined to pay for the necessary repairs.

Moreover, the company has taken the position that it would be subject to any franchise ordinance the town might enact, on ...