



PURPOSE

To provide guidance to Early Learning Coalitions (ELCs, coalitions), the Office of Early Learning (OEL, the Office) employees, other OEL subrecipients and other early education program partners regarding what information is confidential by law and how to process records requests and subpoenas.

AUDIENCE

This guidance is highly recommended to be shared with staff and supervisors responsible for processing routine public records queries as well as any requests for confidential information.

CROSS REFERENCE

Policy No. 5.05 – Information Technology Security Policies and Procedures.

FEDERAL AND STATE GUIDANCE

DEFINITIONS AND ABBREVIATIONS

Confidential: As used in this guidance, the term “confidential” refers to entire record systems, specific records or individually identifiable data that by law are not subject to public disclosure under Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes (F.S.) When applicable, confidentiality covers all documents, papers, computer files, letters and all other notations of records or data that are designed by law as confidential. Further, the term confidential also covers the verbal conveyance of data or information that is confidential.

These confidential records may include but not be limited to, social security numbers, parent and child information, payments, childcare providers, household demographics and resource and referrals, which are private and confidential and may not be disclosed to others.

Information Technology Security: The protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information and technology resources [Section 282.0041(14), F.S.]

Mobile Computing Device (aka portable media storage or peripheral devices): A laptop, personal digital assistant (PDA) or other portable device that can store, playback or process data via ports or wireless networking technology. Other covered media devices include hard drives, thumb drives, flash drives, tablets, cell phones, smart phones, wearable computing devices diskettes, CDs, etc. Such devices shall not be used to store any confidential data as described in this guidance.

Personally Identifiable Information (PII): PII means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, Web sites, and university listings. This type of information is

considered Public PII and includes for example, first and last name, address, work telephone number, and general educational credentials.

The definition of PII is not anchored to any single category of information of technology. Rather, **it requires a case-by-case assessment** of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual. [2 CFR Part 200.79]

Protected Personally Identifiable Information (Protected PII or PPII): Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal medical and financial record and education transcripts. This definition does not include PII that is required by law to be disclosed.

School Readiness (SR): The School Readiness Program as established in Part VI of Chapter 1002, F.S., and authorized pursuant to the Child Care and Development Block Grant Trust Fund, 45 Code of Federal Regulations, parts 98 and 99.

Voluntary Prekindergarten (VPK): The Voluntary Prekindergarten program, as established in Part V of Chapter 1002. F.S.

POLICY AND GENERAL PROCEDURES

The collection, retention and production of public records are governed by the federal regulations and statutory authorities cited on the last page of this document.

ACCESS

All records classified as public records must be open and available for inspection by any person unless otherwise specified by law. It is the responsibility of OEL, the ELCs, and other OEL subrecipients to maintain records in a location that is accessible to the public and in a manner (i.e., cost) that does not exceed the costs provided in Chapter 119, F.S., or as otherwise provided by law.

The rights of access as described in this guidance is not limited to the required retention period but is in effect for as long as the described records are retained.

APPLICABILITY

This guidance applies to OEL, the ELCs and other OEL subrecipients. ELCs are responsible for requiring any subrecipients and subcontractors follow these guidance instructions and applicable grant award or contract terms and conditions.

DISCLOSURE FORMS

Subrecipients and subcontractors are required to enter into and use appropriate nondisclosures agreements as necessary to maintain data confidentiality and security. Individuals who have access to such data are also required to complete an individual nondisclosure form that each ELC, other OEL subrecipient or subcontractor shall maintain on file.

INTERNAL CONTROLS

Each non-federal entity that administers or manages federally or state-funded grant programs must establish internal controls that provide reasonable assurance of compliance with federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls must specifically

“Take reasonable measure to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.” [2 CFR Part 200.303(e), *Internal controls*]

PORTABLE DEVICES – USE WITH CONFIDENTIAL DATA IS PROHIBITED

OEL, the ELCs, other OEL subrecipients (including any employees, subcontractors, agents or any other individuals exposed to confidential information) **shall not store, or allow to be stored**, any confidential information on any portable storage media or peripheral device.

PROCESSING RECORDS REQUESTS

Upon receipt of a public records request, the records custodian must determine the type of record requested, the location of the record and the legal requirements for disclosure of each record. Coordination and notification to the OEL General Counsel and Public Information Office is also required upon receipt of the request.

Confidential information that OEL receives from another agency retains its confidentiality unless otherwise provided by law. The requirements of the program that provides the information must apply.

OEL may release confidential and exempt records to specified parties when authorized by law. The receiving party must protect the records in a manner that does not allow identification of an enrolled child, the child’s parent or the child’s legal guardian to persons not authorized to receive the records.

A. VPK RECORDS

Individual records of a child enrolled in the VPK program are confidential and exempt from disclosure under Section 1002.72, F.S. Records made confidential and exempt include the assessment data, health data, records of teacher observations and personal identifying information of an enrolled child and his or her parent or guardian. The exemption applies to records held by a coalition, OEL, or a VPK Education Program provider before, on or after the effective date of the exemption. A parent or guardian has the right to inspect, review and obtain a copy of the individual VPK Education Program record of his or her child. Pursuant to Section 1002.72(3), F.S., confidential and exempt VPK records may be released in limited circumstances.

B. SR RECORDS

Individual records of children enrolled in SR programs, when held in the possession of SR providers, coalitions and OEL, are confidential and exempt from public disclosure. The child’s parent or guardian and other entities as set forth in the exemption are authorized to have access to the records, (Section 1002.97, F.S.).

Additional types of information that OEL and coalitions have access to, but are required to be confidential, include the following.

(1) Section 402.308(3)(a), F.S. – OEL may only disclose social security numbers submitted by an applicant for a childcare facility license issued by the Department of Children and Families for child support enforcement purposes.

(2) Section 409.175(16), F.S. – Specified personal information about foster care parents and their families that is contained in the licensing file of the Department of Children and Families is exempt from disclosure unless otherwise provided by Florida Statutes.

(3) Section 409.821, F.S. – Information in an application for the determination of eligibility for the Florida Kidcare program that identifies applicants, including medical information and family financial information, is confidential and exempt from disclosure. In addition, any information obtained through quality assurance activities and patient satisfaction surveys that identify program participants, obtained by the Florida Kidcare program under cited statutes, is also confidential and exempt from disclosure.

C. DEMOGRAPHIC DATA IN SR AND VPK PROGRAMS

OEL must store demographic data (race/ethnicity, sex, age and, where known, disability status) for applicants, clients on the Wait List, participating families and childcare providers and terminees in a manner that ensures confidentiality. OEL shall use the data only for the purposes of record keeping and reporting, determining eligibility in a nondiscriminatory manner or other use authorized by law. The data shall be used for statistical purposes only and not in any manner, that reveals the identity of the individual.

D. MEDICAL RECORDS & DISABILITY – RELATED INFORMATION

OEL must store medical records and disability-related information on custodian and child records in a manner that ensures confidentiality, and only use the records for the purposes of record keeping and reporting and determining eligibility, or other use authorized by law.

Medical records and disability-related information must be maintained in the custodian’s or child’s file, stored in a secure area, and treated as confidential medical records. OEL must limit access to disability-related or medical information to the following:

- (1) OEL may inform supervisors and managers regarding restrictions on the work or duties of an employee or participant and regarding necessary accommodations;
- (2) OEL may inform first aid and safety personnel, when appropriate, if the disability might require emergency treatment or evacuation; and
- (3) OEL must provide information, on request, to government officials investigating compliance with Federal law.

E. SOCIAL SECURITY NUMBERS

Social security numbers are confidential pursuant to Section 119.071(5)(a), F.S., (5 USCA 552a). Redact (eliminate) social security numbers from all documents prior to delivery, except as specifically provided by law, including documents to be filed with the courts and personnel records. The Privacy Act of 1974 (Public Law 93-579) requires that individuals required to disclose their social security number be informed whether disclosure is mandatory or voluntary and provided with a statement of the purpose

for the collection. Additionally, Florida law allows commercial entities access to social security numbers if there is a legitimate business purpose and entities submit a request in writing. OEL shall maintain these requests for reporting purposes to the Florida Legislature. For commercial entity requests, please contact OEL's General Counsel.

F. SUBPOENAS

The Office of General Counsel is responsible for the acceptance of service of subpoenas that are directed to OEL.

G. CONTACT INFORMATION

Direct questions regarding subpoenas or records requests for SR or VPK Records to OEL's General Counsel at –

The Office of Early Learning
Office of the General Counsel
250 Marriott Drive
Tallahassee, FL 32399
Telephone (850) 717-8519

OTHER REQUESTS

Serve and forward **subpoenas and public records requests** to –

The Office of Early Learning
Office of General Counsel
250 Marriott Drive
Tallahassee, FL 32399
Telephone (850) 717-8519

Direct requests for **verification of employment** of the Office of Early Learning employees to –

Florida Department of Education
Human Resource Management
325 West Gaines Street
Tallahassee, Florida 32399
Phone: (850) 245-0505
Fax: (850) 245-9667

SUPPORT DOCUMENTATION

The coalition must establish proper records maintenance and retention regarding record confidentiality based on the Grant Agreement between OEL and early learning coalitions.

AUTHORITY

- A. Chapter 119, F.S., Public Records
- B. Section 1002.75, F.S., Records of Children in the Voluntary Prekindergarten Program
- C. Section 1002.97, F.S., Records of Children in the School Readiness Program
- D. Section 1002.221, F.S., K-12 Education Records
- E. 45 C.F.R. Pt. 5b, Privacy Act Regulations

- F. 20 U.S.C. § 1232g, Family Rights and Educational Privacy Act
- G. 2 CFR Part 200.79, Definition of Personally Identifiable Information (PII)
- H. 2 CFR Part 200.82, Protected Personally Identifiable Information (Protected PII)
- I. 2 CFR Part 200.303(e), Internal controls to safeguard PII and PPII
- J. 2 CFR Part 200.337, Restrictions on Public Access to Records

HISTORY

This program guidance replaces Florida’s Office of Early Learning Fiscal Guidance 1.01. Issued July 1, 2015.

PLEASE DIRECT QUESTIONS AND COMMENTS TO THE OFFICE OF EARLY LEARNING AT
(850) 717-8550 OR EMAIL OEL QUESTIONS AT oel.questions@oel.myflorida.com