



ARIZONA DEPARTMENT OF CHILD SAFETY
Five-Year Review Report
Title 21. Child Safety
Chapter 1. Administration

Article 1. Release of Department Information

I. INTRODUCTION

History

The Department adopted Article 1, consisting of Sections R21-1-101 through R21-1-110, by final exempt rulemaking. The rules became effective November 30, 2015.

The rules in Title 21, Chapter 1, Article 1, clarify Department procedures for the protection and disclosure of confidential DCS information, in accordance with controlling state and federal statutes. The rules describe the procedures for requesting confidential information, fees to be paid to the DCS for processing requests, and information that will be redacted from records and files prior to release. The rules also include a set of definitions relevant to confidentiality and release of records and files, and incorporate the definitions contained in A.R.S. §§ 8-531, 8-201, 8-807.

II. ANALYSIS OF RULES

A. STATUTORY AUTHORITY

1. GENERAL AUTHORITY

The Department is granted general authority to make rules under A.R.S. § 8-453(A)(5).

2. SPECIFIC AUTHORITY

Arizona Revised Statutes (A.R.S.) §§ 8-807 and 8-807.01, authorize the Department of Child Safety (the “Department”) to have rules for the release of Department information, including information related to incidents of fatalities and near fatalities of children in the State.

B. OBJECTIVES

R21-1-101. Definitions

The objective of this rule is to promote and facilitate uniform understanding of terminology used by the Department.

R21-1-102. Scope and Application

The purpose of this rule is to clarify the scope of matters covered by Article 1

R21-1-103. Procedures for Requesting DCS Information

The objective of this rule is to explain the procedures for requesting DCS information pursuant to A.R.S. § 8-807.

R21-1-104. Procedures for Processing a Request for DCS Information

The purpose of this rule is to explain the procedures the Department uses to process a request for DCS information.

R21-1-105. Procedures for Processing a Request for DCS Information from a Person or Entity Providing Services in Official Capacity

The purpose of this rule is to explain the procedures the Department uses to process a request for DCS information when the request is from a person or entity providing services in an official capacity.

R21-1-106. Release of Summary DCS Information to a Person Who Reported Suspected Child Abuse and Neglect

The objective of this rule is to explain the procedures that the Department uses to release DCS information to a person who reported child abuse or neglect.

R21-1-107. Release of DCS information for a Research or Evaluation Project

The objective of this rule is to explain the Department’s policy on releasing DCS information for a research or evaluation project.

R21-1-108. Release of DCS Information to a Legislator or a Committee of the Legislature, or Another Person that Provides Oversight

The objective of this rule is to explain the Department's policy on releasing DCS information to a legislator or another person that provides oversight.

R21-1-109. Release of DCS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality

The objective of this rule is to explain the Department's policy on releasing DCS information in a case of child abuse, abandonment, or neglect that has resulted in a fatality or near fatality.

R21-1-110. Fees

The objective of this rule is to explain the Department's process and policy regarding charging of fees for requested DCS information.

C. EFFECTIVENESS

During the timeframe covered by this report, the rules in Chapter 1, Article 1, have been effective in meeting their objectives. The rules should continue to be effective in meeting the objectives.

D. CONSISTENCY

Article 1 is consistent with state and Federal law and Department policy.

E. ENFORCEMENT POLICY

The Department enforces all Article 1 rules, as written, to the extent that they do not conflict with current state or federal law.

F. CLEAR, CONCISE, AND UNDERSTANDABLE

The Department believes the current rules are clear, concise and understandable. This belief is based on the 12,897 requests for information that were processed from April 1, 2016 through March 31, 2017.

G. WRITTEN CRITICISMS

In the making of this Article, the Department received one written comment during the public comment period. Foster parent, Richard, recommended that foster children's records be made available to foster parents. Upon placement of a foster child, the Department provides foster parents with information that is available at the time and then provides foster parents additional

information as it becomes available. The Department has received no written criticisms concerning Article 1 since the rules became effective in November 2015.

H. ECONOMIC IMPACT COMPARISON

The previous 5 Year Review Report stated that the Department did not charge a copying fee for requested records. The Department has not changed its practice. It still does not charge a copying fee for requested records.

R21-1-110 states that the Department may charge a fee for copying. The rule states that if a copying fee is charged the rates will be posted on the DCS website. Currently, there are no copying rates posted on the DCS website. DCS has not charged a copying fee to requesters.

A significant number of requests for DCS information involve a request for a redacted copy of a DCS record from individuals about whom a report was made or about case participants. From April 1, 2016 through March 31, 2017, DCS received 2,508 requests for redacted DCS records from individuals about whom the report was made or about case participants. The DCS did not charge a copy fee for the release of these redacted documents.

DCS also did not charge a copying fee for requests for DCS information from a client or an attorney representing the client in a dependency, guardianship, termination of parental rights, or other court proceeding. From April 1, 2016, through March 31, 2017, the DCS received approximately 5,996 of these requests. The 5,996 does not include other court proceedings, as there are several types of court requests the unit processes. BIA/GAL/CAA; county attorney; court order/subpoena; and public defender requests were an additional 2,460 requests. Conciliation court had 1,923 requests.

From April 1, 2016 through March 31, 2017, the DCS received 10 public records requests for DCS information from the media. The DCS did not impose a fee for these records.

I. BUSINESS COMPETITIVENESS ANALYSIS

A business competitive analysis was not received by the Department of Economic Security or the Department from a member of the public during the timeframe or the preparation of this report.

J. COURSE OF ACTION FROM PREVIOUS 5-YEAR REVIEW REPORT

The Department's intended course of action listed in the previous 5 Year Review Report was to adopt rules concerning Release of Department Information under 21 A.A.C., the Department Of Child Safety's new title. DCS Article 1, consisting of Sections R21-1-101 through R21-1-110, made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015.

K. DETERMINATION OF BURDEN AND COSTS

The Department believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public.

L. CORRESPONDING FEDERAL LAW

Federal laws 42 U.S.C. Ch. 67, §§ 5101 et seq., 42 U.S.C. Ch. 7, Subchapters IV/Part B and IV/Part E, and 42 U.S.C. § 670 et seq. apply to this rulemaking. The rules are not more stringent than federal law.

M. COMPLIANCE WITH A.R.S. § 41-1037

The rules are exempt from A.R.S. § 41-1037. A.R.S. § 41-1037(A)(5) provides an exception to the requirement to use a general permit for a permit, license, or authorization issued pursuant to A.R.S. §§ 8-503 and 8-505.

N. PROPOSED ACTION

The Department has reviewed the current rules and does not plan any additional rulemaking activity for these rules.