

## IDAHO COMMISSION ON AGING POLICY

| Policy Subject   | Policy # |
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| Adult Protection Services (ASP) Investigation Records<br><u>Confidentiality and Disclosure</u> | PO.AD.08 |

### Purpose:

This policy describes the confidential nature of Adult Protection Services (APS) investigation records and sets forth the manner in which APS investigation records may be disclosed by the Idaho Commission on Aging (ICOA) to persons or entities outside ICOA.

Local area agencies on aging (AAA) providing APS investigation services on behalf of ICOA are encouraged to adopt an equivalent policy with regard to the disclosure of APS investigation records to persons or entities outside ICOA or the AAA.

### Scope:

This policy pertains to all records gathered, received, or developed by ICOA in providing APS services and identifies which persons or entities may receive APS investigation records from ICOA.

### Definitions and Terms:

1. Adult Protection Services (APS) investigations: Investigations conducted by ICOA, or a AAA on behalf of ICOA, in response to allegations of abuse, neglect, self-neglect, or exploitation involving a vulnerable adult. See Idaho Code Section 39-5301A.
2. Adult Protection Services (APS) investigation records: All records received, gathered, or developed by ICOA, or a AAA on behalf of ICOA, during an APS investigation. Such records include, but are not limited to:
  - a. Notes of interviews with clients or collateral contacts;
  - b. Medical records or diagnosis;
  - c. Records created by an agency or entity authorized to carry out duties under the Adult Abuse, Neglect and Exploitation Act (Title 39, Chapter 53, Idaho Code);
  - d. All records received gathered, or developed during an APS investigation, regardless of medium (i.e.: photographs, videos, audio recordings, etc.); and
  - e. All records received by ICOA from a local AAA, conducting an APS investigation on behalf of ICOA, pertaining to an APS investigation, regardless of medium (i.e.: photographs, videos, audio recordings, etc.).
3. Court order: A lawful order issued, and signed, by the presiding judge in a court of competent jurisdiction.
4. Law enforcement agency: A local, state, or federal governmental unit of one (1) or more persons employed full-time or part-time for the purpose of preventing and detecting crime and enforcing state or federal laws or local ordinances, employees of which unit are authorized by law to make arrests for crimes while acting within the scope of their authority.

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5. Public protective service agency: A local, state, or federal governmental unit of one (1) or more persons employed full-time or part-time for the purpose of providing, or facilitating the provision of, protective services for vulnerable persons that may be subject to abuse, neglect, self-neglect, or exploitation. Such agencies include, but are not limited to, the ICOA's Longer Term Care Ombudsman Program, the Board of Community Guardians, the Idaho Department of Health & Welfare Child Protection Services, the U.S. Attorney's Office, and the U.S. Social Security Administration.
6. Licensing or certification agency: A state or federal governmental unit of one (1) or more persons employed full-time or part-time for the purpose of issuing licenses or certifications in accordance with state or federal law. Such agencies include, but are not limited to, the Idaho Department of Health & Welfare Division of Licensing & Certification, the Idaho Department of Health & Welfare Bureau of Facility Standards, and the Idaho Department of Health & Welfare Criminal History Unit.
7. Ombudsman Office: The office of ombudsman for the elderly created within ICOA, pursuant to Idaho Code Section 67-5009, or any similar office maintained and operated in other states.
8. Protection or advocacy system: Non-profit organizations dedicated to providing, or facilitating the provision of, protective services for vulnerable persons that may be subject to abuse, neglect, self-neglect, or exploitation. Such agencies include, but are not limited to, Disability Rights Idaho, Inc.
9. Vulnerable Adult - a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources. See Idaho Code Section 18-1505(4)(e).

**Procedure:** In accordance with applicable state and federal law, ICOA's disclosure of APS investigation records is governed as follows:

1. Confidentiality of APS investigation records: All APS investigation records are confidential and may not be disclosed, except as provided in this policy.
2. Exempt from public disclosure: APS Investigation Records are exempt from public disclosure under the Idaho Public Records Act. See Idaho Code Section 74-105(11).
3. Disclosure of APS investigation records: APS investigation records are confidential and shall only be disclosed as follows:
  - a. If all parties to a complaint or report consent in writing to the release of such information (notably, all parties include the complainant, the vulnerable adult(s), alleged offenders, and any identifiable witnesses);

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- b. To a law enforcement agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system; or
- c. Pursuant to a court order for the release of records for a specified person or entity.

**Exceptions: At the discretion of ICOA's State Manager of Adult Protection Services, ICOA may provide copies of certain APS investigation records to the person or entity having submitted such records to ICOA or a AAA.**

### **References:**

1. IDAPA 15.01.01 (Rule Governing Senior Services Program)
2. IDAPA 15.01.02 (Rules Governing Area Agency Adult Protection Programs)
3. Idaho Code Section 39-5304 (Reporting Requirements, Investigations, Emergency Access)
4. Idaho Code Section 39-5307 (Access to Records)
5. Idaho Code Section 39-5308 (Interagency Cooperation)
6. Idaho Code Section 39-5310 (Report to Law Enforcement – Prosecution)
7. 42 U.S.C. 3058i (Prevention of Elder Abuse, Neglect, and Exploitation)