

# Confidentiality

If CPS becomes involved with your family, it will gather lots of information about you and your child. This may include information that you think should be private – for example, personal information (name, birthdate, social security number), medical information, school records, criminal records, and therapist or counseling notes. They can ask you questions, ask your child questions, and ask your friends and families questions.

But even though CPS has the right to lots of information, there are limits. Some information is “confidential,” which means that CPS cannot request certain information or make some people answer certain questions without your permission. It is always important to think about confidentiality and the limits to confidentiality when you are speaking with CPS caseworkers, relatives and friends, and anyone else who might become involved in the case.

To help build trust, there are rules about what information a lawyer can share with other people. Information is confidential when it is kept private between you and your lawyer and not shared with other people, like your CPS caseworker or the judge. You should talk to your lawyer about anything you think is important for you and your child, but you should know that there are some things a lawyer does not have to keep confidential.

## WHAT IS CONFIDENTIAL

***In general, your lawyer must keep what you tell her and what she learns about your case confidential.***

You want to develop a strong and trusting relationship with your lawyer. If you don't trust your lawyer, you may not want to tell her the truth, but she may not be able to represent you very well.

## WHAT IS NOT CONFIDENTIAL

Two of the most important things that a lawyer does not have to keep secret:

- A lawyer has a duty to make a report **if she believes that a child has been abused or neglected, or that a child will be abused or neglected.**
- A lawyer may share confidential information if doing so will **stop a crime from happening.**

## Will My Lawyer Share Confidential Information?

Sometimes, it can be a good strategy to share confidential information. In other words, just because your lawyer can keep what you tell her private doesn't mean that she should. In fact, it might help your case for your lawyer to share some of the things you have told her. For example, if you are doing very well in counseling or drug treatment, sharing information about your progress can help convince the judge and CPS that your child should be returned home.

Your lawyer should talk to you about what information she wants to share and why she wants to share it. In the end, it is always your right to decide whether to agree to let her share the information.

## Talking to People Other Than My Lawyer?

Conversations that you have with anyone other than your lawyer are not confidential. This includes conversations with your CPS caseworker, other lawyers in the case including your child's lawyer, your child's guardian ad litem or CASA worker, and family or friends. ***If something is not confidential, it can be used without your permission, even if you told the person you were talking to that you wanted it to be kept secret.*** The people you talked to could be called to testify in court later on in your case. What you told them could be used as evidence to terminate your parental rights.

An important exception to this rule involves information that comes out during mediation. Usually, everyone involved in the mediation will sign something called a "confidentiality agreement" at the beginning of the mediation. By signing, everyone is agreeing that whatever is talked about during the mediation will be considered confidential and cannot be used outside of the mediation. For more information on mediation, see page 68.

The Family Group Conference, which is part of the CPS Team Decision-Making process, is like mediation in that information shared during the conference will be kept confidential. An important exception to this rule, however, is if information that is shared raises concerns about a child's safety. In that case, CPS will use the information in deciding how best to protect the child.



## IMPORTANT

*Conversations with your CPS caseworker are **NOT** confidential.  
Conversations with your child's lawyer are **NOT** confidential.  
Conversations with the CASA worker are **NOT** confidential.*

## What If I Also Have an Open Criminal Case?

You should never discuss criminal charges with anyone unless your lawyer is there with you or tells you it is OK. **You do NOT have a confidential relationship with anyone but your lawyer! This means that anything you say to anyone other than your lawyer can be used as evidence against you in the criminal case.**

The lawyer who represents you in your criminal case may be different from the lawyer who represents you in your CPS case. Both lawyers have to keep what you tell them confidential but a criminal lawyer can better advise you about how any statements you make to CPS, CASA, or other people involved with the CPS case might affect your criminal case.

You should encourage your CPS lawyer and your criminal lawyer to talk to each other and have a joint plan for how to resolve both cases.

You should take your criminal case very seriously! If you are convicted or placed on deferred adjudication or probation for a crime involving injury to a child or endangerment of a child, this could be used as a reason to terminate your parental rights.



## IMPORTANT

*If you have an open criminal case involving child abuse or neglect, speak to your criminal defense lawyer before speaking with CPS or **any** other person who is not your lawyer. Remember that conversations with relatives, teachers, or friends are **NOT** confidential or protected, even if they promise not to tell anyone.*

## Your Child Has The Right to Confidentiality, Too!

Every child involved in a CPS case is appointed a lawyer. Your child's lawyer has a duty of confidentiality to your child, just like your lawyer has a duty of confidentiality to you. In other words, your child can tell her lawyer things in secret, and the lawyer must keep those things a secret unless the child says it is OK to share them.

It can be hard to understand why your child's lawyer is allowed to know things that you do not know. However, that is how the attorney-client relationship works and it is important that your child be able to trust her lawyer. Your child's lawyer's job is to represent what your child wants. It is important for your child to have a voice because her life is being affected just as much as yours.

Remember that it is **not** appropriate to ask your child's lawyer to tell you things your child has said or to get angry at your child's lawyer if she says things in court that you don't agree with. It is also **not** appropriate to get mad at your child for sharing his feelings with his lawyer.

## STOP! Online Information = Public Information

Are you someone who likes to use Facebook and Twitter, or who shares photos and other personal information online? If so, you need to be careful about what information you share and who you share it with. **This is because everything that you share online is public information.** If CPS becomes involved with your family, it is almost certain that someone who is working on the case – lawyers, CPS caseworkers, CASA volunteers – will search online to see what they can find out about you and your friends and relatives.

It is important to think about how the things you post online can hurt your case. What would a CPS caseworker or the judge think if they saw:

- A picture of you surrounded by empty alcohol bottles?
- A comment you make about using drugs or going out and partying?
- A video of you getting into a fight?
- A picture of you with an ex-boyfriend who has abused you or your child in the past?

Any of these things could suggest that you are not a safe parent. You don't want to have to explain these things to a judge in court.

## SOCIAL MEDIA TIPS

Everything you share online is public information! Anything you say or do online can come back to haunt you, even if you posted it many years ago. And once something is online, it is hard to get rid of it, especially if it has been shared with many people.

What can you do to avoid problems?

**DON'T POST!** If CPS is involved in your life, you should avoid using social media. Anyone can see what you post and you cannot control what other people post on your accounts or how information that you post will be used by other people. Posts or pictures involving drugs, alcohol, gangs, weapons, and things like that will suggest your child would be unsafe at your home or around your friends and relatives. Also, think about comments you make on other people's sites or when you choose to "like" someone else's post. Could someone make a mistake about what your actions mean? If so, don't post!

**CHECK PRIVACY SETTINGS.** If your information is not set to private, ANYONE can see everything you post online. On sites like Facebook, Twitter, and Instagram, you can change your settings so that only friends can see your information. However, even this may not be enough. Remember that your friends could give your information to CPS or someone involved in the case, like a CPS caseworker or CASA, could ask to become your friend.

**KEEP TRACK OF WHAT OTHER PEOPLE POST ABOUT YOU.** Even if you are careful about what you post, other people can still post pictures or videos of you or your children on websites like Facebook and YouTube. The best thing you can do is not put yourself in any situation where a bad or not so good picture of you could be taken. You can also tell your friends and family that you want to keep your private life off the internet.

**DO NOT DELETE YOUR ACCOUNT OR DESTROY EARLIER POSTS.** If CPS files a court case against you, it is against the law to destroy information that CPS might ask for during the investigation or want to use in court. Courts are still trying to figure out how to deal with Facebook, Twitter or other social media accounts, but deleting your account or even deleting individual pictures or other information could be considered destroying evidence and get you into a lot of trouble. It is NOT against the law to deactivate your accounts or become an inactive user.

So be safe! Avoid social media while you have a CPS case or investigation pending. And always talk to your lawyer before disabling your accounts, deleting pictures or videos you've posted online, or asking friends to delete pictures they've posted of you. Your lawyer will advise you about what action is safe to take.