

Justification and Applicable Statutes and Other Laws

The *Multidisciplinary Team – Conference Report* (Report) dated July 15, 2024, is the most recent report produced by the child protective review panel pursuant to section 587A-43, HRS, as requested by Requester. It is a government record that is confidential pursuant to state and federal law. The unredacted information in the Report that was provided to Requester is the case information that is pertinent to the abuse or neglect that led to the fatality or near fatality that is required to be disclosed in accordance with federal and state laws as provided below.

UIPA General Rule of Disclosure

Section 92F-11(a), HRS, provides the general rule that “[a]ll government records are open to public inspection unless access is restricted or closed by law. Section 92F-11(b), HRS, acknowledges the exceptions to this general rule as provided in section 92F-13, HRS.

Exceptions to UIPA General Rule of Disclosure

Section 92F-13, HRS, provides the list of records that do not require disclosure, including subsection (4) that provides “[g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure[.]”

Pursuant to section 350-1.4(a), HRS, “[a]ll reports to the department concerning child abuse or neglect made pursuant to this chapter, as well as all records of such reports, are confidential.” The Report produced by the child protective review panel child pursuant to section 587A-43, HRS, is a record of a “report to the department concerning child abuse or neglect” that is confidential under section 350-1.4(a), HRS.

In addition, the Report contains information related to the children and families receiving DHS child welfare services and is prohibited from disclosure pursuant to section 346-10(a), HRS, that provides in part:

The department and its agents shall keep records that may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential.

Further, section 17-1601-3, Hawaii Administrative Rules (HAR), provides:

The department of human services, social services division, child welfare services branch, shall keep records to document information acquired in the administration of the child welfare services program, including but not limited to all reports of child abuse and neglect and other services provided by the child welfare services program. Information

gathered by the department shall be kept in confidential records and files and shall not be used or disclosed except as provided for by this chapter.

Finally, the federal law on child abuse and neglect provides that “ all records of child abuse and neglect are confidential, and the State generally is prohibited from disclosing those confidential records to the public.” ACF Child Welfare Policy Manual (CWPM) Q& A 1

As such the Report is a government record which, pursuant to state and federal law is “protected from disclosure” pursuant to section 92F-13(4), HRS.

Limited Disclosures Required by CAPTA

Although the records of child abuse and neglect are generally confidential as a matter of state and federal law, as described above, both state and federal law authorize, and require in some cases, disclosure of limited information about a case of child abuse or neglect that results in a child fatality or near fatality. Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA), 42 USC 5101 et seq, 42 USC 5116 et seq, and its enacting regulations, 45 CFR 1340, require a State to provide for release of information to the public in certain circumstances, including the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality. Pursuant to CAPTA, a State is required to disclose to the public, if requested, the following information:

- 1) the cause of and circumstances regarding the fatality or near fatality;
- 2) the age and gender of the child;
- 3) information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality;
- 4) the result of any such investigations; and
- 5) the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

45 CFR 1340.

Consistent with CAPTA, state law similarly provides for disclosure of certain limited information related to a child fatality or near fatality:

- (1) The cause of and circumstances regarding the fatality or near fatality;
- (2) The age and gender of the child;
- (3) Information describing any previous reports and results of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; and
- (4) the action taken by the department on behalf of the child that is pertinent to the child abuse or neglect that led to the fatality or near fatality.

Section 350-2(g), HRS. In addition, section 17-1601-6(16)(D), HAR, provides for “[d]isclosure to the public when...the child named in the report is missing, has suffered a near fatality, been critically injured, or has died[.]”

Redactions Made To Protect Information Not Required To Be Disclosed by CAPTA

CAPTA provides that the State is not required to release all the information in the entire case record, even for a case involving the death or near fatality of a child. See, CWPM Section 2.1A.4, Q/A 5. For example, the State is NOT required to disclose the following information:

- 1) Date of birth;
- 2) Date of death;
- 3) Other personal information;
- 4) Information about siblings or other children in the household, unless it is pertinent to the abuse or neglect that led to the fatality or near fatality. (Note this information may be protected from disclosure by other laws including: titles IV-B/IV-E of SSA or other federal confidentiality laws such as HIPAA.)

CWPM Section 2.1A.4, Q/A 8

Thus, the unredacted information in the Report provided to the Requester is the case information that is required to be disclosed by law, pertinent to the abuse or neglect that led to the fatality or near fatality, in accordance with section 106(b)(2)(B)(x) of CAPTA and section 350-2(g), HRS.

The redacted portions of the Report constitute records of child abuse and neglect required by state and federal law to be protected as confidential pursuant to CAPTA and section 350-1.4, HRS, and are not required by state or federal law to be disclosed, and thus are not subject to disclosure pursuant to section 92F-11, HRS.