

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

BARBARA B. BLUM
Commissioner



[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 81 ADM-40
[Legal]

TO: Commissioners of Social Services

SUBJECT: Client Access to Records

DATE: September 4, 1981

SUGGESTED DISTRIBUTION: Income Maintenance Workers, MA Workers, Caseworkers, Administrative Personnel, Public Welfare Attorneys

CONTACT PERSON: Any questions relating to the Policies or procedures set forth in this Administrative Directive should be addressed to Sue Keating at 40 North Pearl Street, Albany, New York 12243 (800-342-3715, extension 4-9781)

I. PURPOSE:

The purpose of this administrative directive is to advise all Social Services districts that all clients, regardless of whether or not they are fair hearing appellants, are entitled to receive access to the entire contents of their case files as described herein, and to set forth appropriate conditions and procedures for providing access.

II. BACKGROUND:

As a result of a preliminary injunction granted in Bizjak v. Blum and Nassar (USDC/NDNY), this Department has been ordered to provide all ADC and MA fair hearing appellants access to the entire contents of their files both prior to and during their fair hearings, as well as providing notice of the right to access. Local districts were sent a Mailgram to this effect on June 25, 1980 which, for administrative purposes, expanded the group of individuals to whom access is granted to include Home Relief Recipients. Since that date, this Department has been sending notices to all fair hearing appellants advising them that they have the right to examine their files.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
79 INF-25	79 INF-25				

Given the Court of Appeals decision in Dunbar v. Toia and its application to access in the fair hearing context and recent developments in State and Federal legislation which indicate a definite trend in public policy toward disclosure of records absent some showing of a specific reason not to disclose, this Department has been for some time attempting to formulate a change in its access policy. The most recent communication prior to the response to developments in Bizjak was the circulation of 79-INF-25 dated December 31, 1979, which proposed a change in policy and invited comments on the proposal.

III. PROGRAM IMPLICATIONS:

The "case file" or "case record" for access purposes includes all paper records and machine readable data that can readily be converted to a comprehensible paper record relating to an individual's receipt of Home Relief, Aid to Dependent Children, Medical Assistance, Emergency Assistance, Child Support Enforcement or Title XX services. A simple test for whether a particular file is covered is whether it is filed under the name of the requesting individual. Access to these records shall be granted only to the person to whom they pertain or his or her authorized representative.

In the case of records which relate generally to a household, eligibility and income maintenance payment records shall be made available to any member authorized to act on behalf of a household.

Any records which are in fact maintained by the district with respect to an individual are subject to access by that individual whether or not the records are required to be maintained.

Medical records, whether or not they are marked "confidential," must be made available for review.

The only exceptions to access are:

- 1) Those materials to which access is governed by separate statute, such as child welfare, foster care, adoption or child abuse or neglect or any records maintained for the purpose of the Child Care Review Service;
- 2) Those materials which are being maintained separate from public assistance files for purposes of a criminal prosecution and referral to the District Attorney's office;
- 3) The County Attorney or Welfare Attorney's files.

If the case file review is in connection with a fair hearing and documents from a particular file not ordinarily open to the client will be used at the fair hearing by the agency, then the entire file from which those documents are taken must be open to inspection. This proviso will enable the client to inspect the file for possible exculpatory evidence.

Fraud files being maintained separate from the public assistance files for possible referral to the DA's office shall not ordinarily be available for inspection. However, if the agency intends to use information from the fraud file in the fair hearing context, the entire file shall be open to review.

Similarly, a Child Support Enforcement file kept in the name of a deserting parent is not ordinarily available to anyone other than that parent. However, if any document from the file is to be used in the fair hearing context, the individual against whom it is to be used may inspect the entire IVD file.

IV. REQUIRED ACTION:

Districts must, at a minimum, take the following steps to insure that clients or their authorized representatives receive access:

- 1) An individual or individuals in the employ of the district must be designated as responsible for locating all relevant files, setting up appointments for review, apprising clients of the status of file searches, making files available at a designated time and place, and overseeing access.
- 2) If the district receives a request for a review of a particular file, only that file need be produced. If, however, a general request for review is made with no specificity, every file pertaining to the requesting individual should be identified and gathered for that individual's review.
- 3) An appointment schedule may be set up for the purpose of case file review. If there are difficulties in locating the file, the client or his representative must be called.

No more than five working days should elapse between the date of receipt of request for review and notification that either the file is not yet located or the file is available at a specific date, time and place for review.

- 4) At the time of review, proper identification from the person requesting the file must be obtained: an applicant must present a fair hearing notice or some other form of identification; a recipient must present an ID card or notice of fair hearing and an attorney, paralegal or representative must present authorization signed by the applicant or recipient.
- 5) The option of allowing the client to make copies of documents from the file will rest with the local district. It is suggested that copying be allowed if the request is reasonable and copying facilities are available. The districts may charge a fee up to 25¢ per page for copying.
- 6) Districts must post a conspicuous notice in a location at which applications for assistance are taken indicating that applicants and recipients are entitled to access to case records in accordance with this Administrative Directive. Posting of a copy of this Administrative Directive will meet this requirement.

V. ADDITIONAL INFORMATION:

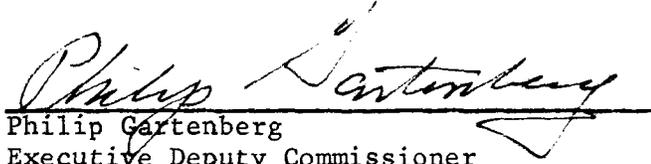
Since this access policy represents a substantial change in providing client access to records, districts should consider whether their current operating

practices have or will lead individuals providing information to believe that the source of content of information provided will not be disclosed to the applicant or recipient to whom it relates, and whether and in what manner they should inform these sources of the consequences of this policy change.

The policy set forth in this Administrative Directive should be construed wherever possible in favor of providing access to case files. Any questions as to access in particular circumstances should be referred to the contact person designated.

VI. EFFECTIVE DATE:

July 24, 1981


Philip Gartenberg
Executive Deputy Commissioner