



Department of
Job and Family Services

John R. Kasich, Governor
Cynthia C. Dungey, Director

Family Assistance Letter # 134
OFFICE OF FAMILY ASSISTANCE
March 14, 2014

TO: Directors, County Departments of Job and Family Services

FROM: Kara B. Wentz, Deputy Director 
Office of Family Assistance

Lewis George, Chief Legal Counsel 
Office of Legal and Acquisition Services

SUBJECT: Subpoenas for Food Assistance Recipient Data

BACKGROUND

It has been brought to the department's attention that over the last year, a number of county departments of job and family services have received inquiries and/or subpoenas from county prosecutors and law enforcement agencies seeking confidential food assistance recipient data. These particular inquiries and subpoenas were not directly or indirectly connected to the administration of the food assistance program, or to an investigation of food assistance fraud, and instead pertained to alleged crimes unrelated to the food assistance program. Moreover, in each of these instances, the subpoena or inquiry either failed to properly identify the food assistance recipient by name, failed to establish that the individual was a fleeing felon or in violation of probation or parole, or sought information beyond that which can legally be released under federal law or regulation. Also, in each instance, questions were raised about the county department of job and family services' obligations under federal/state food assistance confidentiality laws and regulations, and whether or not those obligations permitted the county department of job and family services to comply with the subpoena or inquiry they had received. This guidance letter is being provided in response to these questions, and includes the applicable federal law and regulation, which clearly address the topic of what information may be released to law enforcement agencies, and under what circumstances. The following statement was issued by the United States Department of Agriculture, Food and Nutrition Services (USDA FNS), which they indicated applies to both county and state agencies administering food assistance benefits:

“If there is a subpoena, and the name of the recipient is not provided, the State agency would not be authorized to release the information. At that point, the State agency should move to quash to [sic] the subpoena because the Act does not permit the State agency to disclose the information to law enforcement. If the State agency is forced to release the information under a court order and the recipient's name is still not provided, the State agency should contact FNS. A request will be made to the U.S. Department of Justice to

ask that the Department of Justice (DOJ) intervene in the matter and remove the case to federal court. Likewise, if the State agency loses its motion to quash the subpoena, the State agency should also contact FNS, and a request will be made to the U.S. Department of Justice.”

USDA FNS’ statement is consistent with federal law and regulation, which are provided below.

REQUIREMENTS OF 7 USC 2020(e)(8):

...(e) Requisites of State plan of operation. The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—

...

(8) safeguards which prohibit the use or disclosure of information obtained from applicant households, except that—...

(C) notwithstanding any other provision of law, all information obtained under this Act [7 USCS §§ 2011 et seq.] from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this Act [7 USCS §§ 2011 et seq.] or any regulation issued under this Act [7 USCS §§ 2011 et seq.]...

(E) notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any member of a household shall be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the State agency with the name of the member and notifies the agency that—

(i) the member—

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law; or

(II) has information that is necessary for the officer to conduct an official duty related to subclause (I);

(ii) locating or apprehending the member is an official duty; and

(iii) the request is being made in the proper exercise of an official duty; and...

REQUIREMENTS OF 7 CFR 272.1 (c)(1):

...(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to:...

(vi) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and

his authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(vii) Local, State or Federal law enforcement officers, upon written request, for the purpose of obtaining the address, social security number, and, if available, photograph of any household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under a Federal or State law. The State agency shall not require a household to present photographic identification as a condition of eligibility and must accept any document that reasonably establishes the applicant's identity. The State agency shall also provide information regarding a household member, upon the written request of a law enforcement officer acting in his or her official capacity, where such member has information necessary for the apprehension or investigation of another member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall terminate the participation of the member. A request for information absent documentation would not be sufficient to terminate the member's participation. The State agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.

CONCLUSION

The law and regulation cited above, along with the USDA FNS statement, clearly describe the limited circumstances under which client case information may be released, even when the agency receives a subpoena. Moreover, Ohio Administrative Code rule 5101:4-1-13(A)(7) reflects the above-cited federal law and regulation.

We hope this letter strengthens and reinforces your knowledge and understanding of food assistance recipient confidentiality requirements, and helps eliminate any confusion that might exist about the obligations of state and county job and family services staff with respect to confidential recipient data. While the letter is being provided for informational purposes, it may be shared with your agency's legal representative or county prosecutor. Any questions may be directed to the ODJFS Office of Legal and Acquisition Services at (614)466-4605 or to the ODJFS Office of Family Assistance, Program Policy Section via email at TANF-FSTA@jfs.ohio.gov.

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