

A new Part 703 is added to Title 14, NYCRR, to read as follows:

Part 703 JUSTICE CENTER FACILITY AND PROVIDER DISCLOSURE

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§ 703.1 Background

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) provides that access to records relating to the abuse or neglect of vulnerable persons may be obtained from facilities or provider agencies as defined in subdivision (4) of section 488 of the Social Services Law that are not agencies of state government. Subdivision (6) of section 490 of the Social Services Law provides that records in those providers' possession that relate to abuse or neglect shall be made available to the same extent that they would be available under Article Six of the Public Officers Law from a state agency.

§ 703.2 Applicability

(a) This Part governs the process for obtaining the disclosure of records of state certified or licensed facilities or provider agencies, as defined in subdivision (4) of section 488 of the Social Services Law, relating to the abuse or neglect of vulnerable persons, as mandated by subdivision 6 of section 490 of the Social Services Law.

(b) Individual requests for records under other statutory authority, including section 33.25 of the Mental Hygiene Law, section 422-A of the Social Services Law and Article Six of the Public

Officers Law as applied to the records of the Justice Center for the Protection of People with Special Needs as a state agency, are not covered by this Part.

§ 703.3 Legal Authority

(a) The Protection of People with Special Needs Act creates the Justice Center for the Protection of People with Special Needs and authorizes the Justice Center to promulgate regulations to implement its mandate.

(b) Subdivision (6) of section 490 of the Social Services Law requires the Justice Center to respond to requests for disclosure of records of state certified or licensed facilities or provider agencies, as defined in subdivision (4) of section 488 of the Social Services Law, relating to the abuse or neglect of vulnerable persons.

§ 703.4 Definitions

Whenever used in this Part:

(a) “Justice Center” means the New York State Justice Center for the Protection of People with Special Needs.

(b) “Requester” means the person submitting a request to the Justice Center for disclosure of facility or provider agency records under this Part.

(c) “Record” means any information kept, held, filed, produced or reproduced by, with or for a provider, in any physical form whatsoever, insofar as it is related to abuse and neglect as defined in subdivision (1) of section 488 of the Social Services Law. This definition includes, but is not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

§ 703.5 Record Requests

(a) The Justice Center shall receive, process and respond to requests for access to facility or provider agency records in accordance with this Part.

(b) All requests to inspect or copy records shall be made in writing and shall reasonably describe the records to which access is being sought. Such requests shall be directed to the Justice Center records access officer at the address indicated on the Justice Center website.

(c) All requests for facility or provider agency records shall include the following information:

(1) the name, mailing address, phone number and electronic mail address, if any, of the requester;

(2) the name and address or other identifying information of the facility or provider agency from which the records are sought; and

(3) a description of the nature and content of the record sought to be disclosed sufficient to enable the facility or provider agency and the Justice Center to identify responsive records.

§ 703.6 Record Request Processing

(a) As soon as practicable after receipt of a request for facility or provider agency records, the Justice Center shall notify the applicable facility or provider agency of the request and shall request such facility or provider agency to begin a search for any responsive records.

(b) Within 10 calendar days from the first business day following the receipt of the request for facility or provider agency records, the Justice Center shall issue an acknowledgement of the request, which may include an approximate date upon which the request will be granted or denied, and/or a request for clarification or further particularization of the types of records the requestor is seeking.

(c) Within a reasonable time thereafter, as determined by the complexity of the request, the volume of records, the ease or difficulty for the facility or provider agencies to locate or retrieve records, the need to review records to determine the extent to which they must be disclosed or other circumstances, the Justice Center shall make the records available to the person requesting them or deny the request for the records.

§ 703.7 Provider Duties and Responsibilities

(a) Facility and provider agencies shall respond to Justice Center inquiries and requests for records in a timely manner and to the extent disclosure is authorized by federal and state law, and shall keep the Justice Center informed of any difficulties or delays in retrieving potentially responsive records.

(b) In providing records to the Justice Center for purposes of this Part, a facility or provider agency may use any appropriate means of transmittal, including electronic mail and electronic document transfers, taking appropriate measures to ensure confidentiality of communications. However, the Justice Center shall have access to the original records in possession of the facility or provider agency whenever it deems it necessary, taking into account the need for the facility or provider agency to maintain such records for provision of services to individuals in its care.

(c) The facility or provider agency shall produce any potentially responsive records to the records access officer of the Justice Center.

(d) The Justice Center shall advise the applicable state oversight agency when a facility or provider agency does not comply with their duties and responsibilities under this Part.

§ 703.8 Record Review and Exemptions from Disclosure

(a) As soon as practicable after receipt of potentially responsive records, the Justice Center shall review the records provided to it and make its determination regarding redactions of information contained in such records and exemptions from disclosure of those records consistent with the exemptions to disclosure contained in Article 6 of the Public Officers Law.

§ 703.9 Decisions

(a) Grants of requests for disclosure of records shall be in writing and shall indicate the manner of production.

(b) Denials of requests for records shall be in writing and shall state the basis of the decision. The denial shall also inform the requester of the opportunity to appeal the decision to the Executive Director of the Justice Center.

(c) Where no responsive records exist, or the facility or provider agency has been unable to locate responsive records, the decision shall so state.

§ 703.10 Fees

(a) Fees for the production of records pursuant to this Part shall be charged as follows:

(1) The requester shall be charged no more than 0.25 cents per page per photocopy. At the Justice Center's discretion, photocopying fees may be waived in any case.

(2) Photocopying costs incurred by the facility or provider agency in making records available to the Justice Center for review shall be factored into the calculation of the cost of producing the record.

(3) There shall be a one-time charge for processing responses provided in electronic form in accordance with paragraph (c) of subdivision (1) of section 87 of the Public Officers Law.

(4) If the records copying process exceeds two hours of employee time, additional charges may be levied in accordance with paragraph (c) of subdivision (1) or section 87 of the Public Officers Law. Included in this calculation will be the time and cost to the facility or provider agency to reproduce records for Justice Center review.

(5) In any event the requester will be advised of the total amount of the fees due, prior to the provision of the records.

§ 703.11 Records Access

(a) Records that the Justice Center determines are subject to disclosure shall be made available in the following manner, respecting the requester's preference as to the medium of reproduction if such copy can reasonably be made.

(1) To the extent practicable, records requested by electronic means shall be provided in like form to the requester upon payment of any fees for production, as required under this Part.

(2) Photocopied records shall be provided to the requester by mail at the physical or electronic address provided upon payment of the fees for production, as required under this Part.

(3) Records determined to be subject to disclosure by the Justice Center, may be inspected at the Justice Center's main offices by the requester, as indicated on the Justice Center website and during weekday business hours when the records access officer is present.

§ 703.12 Appeal

(a) Any person denied access to a record under this Part may, within 30 days of such denial, appeal to the Executive Director of the Justice Center.

(b) The time for deciding an appeal shall commence upon receipt of a written request for appeal that identifies the record that is the subject of the appeal and the name and return address of the appellant. The written request may include reasons why such record should be disclosed.

(c) Within a reasonable time after receipt of the written request for appeal, the Executive Director shall:

(1) provide access to the record; or

(2) explain in writing the factual and statutory reasons for denial of access to the record;
and

(3) inform the individual of the right to seek judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules.