

Subpoenas and Release of Confidential Information

(Issued June 2008)
(Reviewed May 2014)

Purpose

To provide staff with information on accepting subpoenas, the need to obtain a Release of Information (ROI) to provide confidential information when a subpoena is received, and releasing information at a hearing.

Rationale

Staff have asked for clarification on how to respond to subpoenas and when information can be released.

Accepting a Subpoena

Any DVR employee can accept a subpoena on behalf of another DVR employee or supervisor. DVR can accept mailed subpoenas.

The subpoena does not need to name a specific DVR staff person. If the subpoena states "DVR records custodian," "DVR supervisor," or "DVR designee," it should be accepted.

Releasing Confidential Records

When you receive a subpoena, a **valid signed release is also required** to provide records on a DVR consumer. However, if DVR does not have records on a particular individual, you can respond by saying "We have your subpoena for records relating to John Doe, however, there are no such records." At times lawyers will send a subpoena simply to find out if there are records.

Releasing Information at a Hearing

If the consumer refuses to sign a release of information, or if you cannot obtain a release prior to going to the hearing, take a release with you to the hearing. Have the consumer sign the release at the hearing which then allows you to share information about the consumer.

If the consumer refuses to sign a release, when you are called to testify, you must explain that you cannot release information due to confidentiality laws and privileged communications under Wisconsin State Statutes (s.47 and s. 146) and title 34 of the Code of Federal Regulations 361.38.

In order to provide information from the file, you must ask the judge to be granted immunity from prosecution. Only a judge can grant immunity; a hearing examiner cannot grant immunity. If the judge grants you immunity, you can proceed to share information as if you had a signed release. If the judge refuses to grant immunity, you should respectfully refuse to share information and contact your supervisor who will contact legal counsel for further assistance.

It is important that you consult with your supervisor on any questions you may have about specific situations you encounter. Howard Bernstein, DWD legal counsel, can also be contacted with specific questions. He can be reached at 608-266-9427 or howard.bernstein@dwd.wisconsin.gov..