§ 496. Confidentiality. 1. Unless an investigation of a report conducted pursuant to this article has been substantiated, all information, including information identifying the subject of the report and other persons named in the report, shall be sealed forthwith by the vulnerable persons' central register, the state oversight agency and the facility or provider agency. Such reports may only be unsealed and made available, consistent with any other applicable state or federal law, to:

(a) the state agency operating, licensing or certifying a facility or program for the purpose of monitoring or licensing such facility or program;

(b) any state agency operating, licensing, or certifying a facility or provider agency when investigating a report of suspected abuse or neglect involving the subject of a previously sealed report accepted by the vulnerable persons' central register;

(c) the subject of the report;

(d) a court of relevant jurisdiction or a law enforcement official when such court or official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision four of section 240.50 of the penal law;

(e) the justice center medical review board, for the purposes of preparing a fatality report pursuant to section five hundred fifty-six of the executive law;

(f) the independent agency designated pursuant to subdivision (b) of section five hundred fifty-eight of the executive law, provided that such information is relevant to a matter within the legal authority of such agency; or

(g) other persons named in the report, as defined in subdivision thirteen of section four hundred eighty-eight of this article which includes, but is not limited to, the service recipient's parent, guardian or other person legally responsible for such person; provided, however, that the names and other personally identifying information of custodians and other service recipients shall not be included unless such custodians and service recipients authorize disclosure. Notwithstanding the prohibitions on non-redisclosure set forth in the closing sentence of this subdivision, the service recipient, and such service recipient's parent, guardian or other person legally responsible

for such service recipient may disclose information and reports made available pursuant to this paragraph to an attorney, who shall not further disclose except as is necessary for use by such attorney in rendering advice, assistance and representation.
When a report is unsealed, persons given access to it shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request that the court redact any copies of such reports produced in any court proceeding to remove the names of those persons irrelevant to the proceeding such as the source of the report, the name of the subject, and other persons named in the reports; or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure.

2. Reports made pursuant to this article and found to be substantiated as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the justice center, a state oversight agency, a delegate investigatory entity, facility or provider agency covered by this article shall be confidential and shall not be disclosed to any other party unless authorized pursuant to this section or any other applicable state or federal law. In the event that other applicable state or federal law provisions are more restrictive than the provisions of this section, the provisions of such other state or federal law shall apply. In accordance with this section, such information shall be made available only to:

(a) a person who is the subject of the report;

(b) other persons named in the report, which includes, but is not limited to, the service recipient's parent, guardian or other person legally responsible for such person. Notwithstanding the prohibitions on non-redisclosure set forth in subdivision four of this section, the service recipient, and such service recipient's parent, guardian or other person legally responsible for such service recipient may disclose information and reports made available pursuant to this paragraph to an attorney, who shall not further disclose except as is necessary for use by such attorney in rendering advice, assistance and representation;

(c) the justice center;

(d) the applicable state oversight agency, the director or operator of the applicable facility or provider agency and, as appropriate, the

local social services commissioner, the commissioner of the office of children and family services, or the school district placing the service recipient, or an agency providing adult protective services to the service recipient;

(e) a physician who has before him or her a service recipient whom he or she reasonably suspects may be or may have been abused or neglected;

(f) a court, upon a finding that the information in the record is relevant to the determination of an issue before the court;

(g) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(h) any appropriate state legislative committee responsible for legislation affecting vulnerable persons, provided, however, that no information identifying or tending to identify the subjects of the report or other persons named in the report shall be made available;

(i) any person engaged in a bona fide research purpose; provided, however, that no information identifying or tending to identify the subjects of the report or other persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the justice center, after consultation with the commissioner of the applicable state oversight agency, gives prior approval;

(j) a facility or provider agency, other providers of services to vulnerable persons in programs licensed or certified by any state oversight agency, or any other provider agency as defined in subdivision three of section four hundred twenty-four-a of this chapter or a licensing agency as defined in subdivision four of section four hundred twenty-four-a of this chapter, in accordance with the provisions of subdivision two of section four hundred ninety-five of this article;

(k) a probation service regarding a person about whom it is conducting an investigation pursuant to article three hundred ninety of the criminal procedure law, or a probation service or the department of corrections and community supervision regarding a person to whom the service or department is providing supervision pursuant to article sixty of the penal law or article eight of the correction law, where the service or department requests the information upon a certification that such information is necessary to conduct its investigation, that there is reasonable cause to believe that the subject of an investigation is

the subject of a substantiated report and that there is reasonable cause to believe that such records are necessary to the investigation by the probation service or the department, provided, however, that only substantiated reports shall be furnished pursuant to this subdivision;

(l) a district attorney, an assistant district attorney or investigator employed by the office of a district attorney, a sworn officer of the division of state police, of the regional state park police, of a city police department, or of a county, town or village police department or county sheriff's office or department upon written verification that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, and that there is reasonable cause to believe that such person is the subject of a report; provided, however, that only substantiated reports shall be furnished pursuant to this subdivision;

(m) the New York city department of investigation; provided, however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the department of investigation unless such information is essential to an investigation within the legal authority of the department of investigation and the justice center or the applicable state oversight agency gives prior approval;

(n) a provider or coordinator of services to which a facility or provider agency or social services district has referred a service recipient or a service recipient's family or to whom the service recipient or the recipient's family have referred themselves at the request of such agency or social services district, when said service recipient is reported to the vulnerable persons' central register as the vulnerable person and when the records, reports or other information are necessary to enable the provider or coordinator to establish and implement a plan of service for the service recipient or the service recipient's family, or to monitor the provision and coordination of services and the circumstances of the service recipient and the service recipient's family, or to directly provide services in accordance with requirements established by the applicable state oversight agency to the extent that the sharing of such information is not otherwise prohibited by federal law; provided, however, a provider or coordinator of services given access to information concerning a service recipient pursuant to

this paragraph shall be authorized to redisclose such information to other persons or agencies which also provide services to the service recipient or the service recipient's family only if an agreement has been or will be reached between the provider or coordinator of service and such facility or provider agency, operating state agency or local district. An agreement entered into pursuant to this paragraph shall include the specific agencies and categories of individuals to whom redisclosure by the provider or coordinator of services is authorized. Persons or agencies given access to information pursuant to this paragraph may exchange such information in order to facilitate the provision or coordination of services to the service recipient or the service recipient's family;

(o) a disinterested person making an investigation pursuant to section one hundred sixteen of the domestic relations law, provided that such disinterested person shall only make this information available to the judge before whom the adoption proceeding is pending;

(p) a criminal justice agency conducting an investigation of a missing child or vulnerable adult where there is reason to suspect information in a substantiated report under this article is needed to further such investigation;

(q) the director or operator of the facility or provider agency and, as appropriate, the local social services commissioner, commissioner of the office of children and family services, or school district placing a child in that program, the applicable executive agency, and, for any report involving abuse or neglect of a child, any attorney appointed to represent the child whose appointment has been continued by a family court judge during the term of the placement and subject to the limitations contained in section four hundred ninety-five of this article;

(r) for any report alleging abuse or neglect of a child, a child protective service of another state when such service certifies that the records and reports are necessary in order to conduct a child abuse or maltreatment investigation within its jurisdiction of the subject of the report and shall only be used for purposes of conducting such investigation and will not be redisclosed to any other person or agency;

(s) an attorney for a child, appointed pursuant to section one thousand sixteen of the family court act, at any time such appointment

is in effect, in relation to any report in which the respondent in the proceeding in which the attorney for the child is appointed is the subject or another person named in the report, pursuant to sections one thousand thirty-nine-a and one thousand fifty-two-a of the family court act;

(t) officers and employees of the state comptroller, for purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the justice center to limit access to service recipient-identifiable information to persons requiring such information for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of service recipient-identifiable information contained in the conduct of the audit.

(i) Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such vulnerable person or such person's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the justice center gives prior written approval.

(ii) Any failure to maintain the confidentiality of service recipient-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the justice center. Such justice center shall establish the grounds for denial of access to records contained under this section and shall recommend as necessary a plan of remediation to the audit agency. Except as provided in this section, nothing in this subparagraph shall be construed as limiting the powers of such comptroller or officer to access records which he or she is otherwise authorized to audit or obtain under any other applicable provision of law;

(u) an entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster and adoptive

parents where disclosure of information regarding the prospective foster or adoptive parents and other persons over the age of eighteen residing in the home of such prospective parents is required by paragraph twenty of subdivision (a) of section six hundred seventy-one of title forty-two of the United States Code;

(v) a social services official who is investigating whether an adult is in need of protective services in accordance with the provisions of section four hundred seventy-three of this chapter or a child is in need of child protective services pursuant to the provisions of title six of article six of this chapter, when such official has reasonable cause to believe that such reports and information are needed to further the present investigation;

(w) for reports alleging abuse or neglect of children, members of a citizen review panel as established pursuant to section three hundred seventy-one-b of this chapter; provided, however, such members shall not disclose to any person or governmental official any identifying information which the panel has been provided and shall not make public other information unless otherwise authorized by statute;

(x) officers and employees of the education department and, where applicable, the department of health, for the purpose of investigating charges and maintaining professional discipline proceedings against the professional license of the subject of the report pursuant to Title VIII of the education law, and to employees of the education department for the purpose of investigating charges and maintaining good moral character proceedings against the teaching, school administrator or school leader certificate or license of the subject of the report; and

(y) the independent agency designated pursuant to subdivision (b) of section five hundred fifty-eight of the executive law, provided that such information is relevant to a matter within the legal authority of such agency.

3. (a) The executive director, in consultation with the applicable state oversight agency may disclose information regarding the abuse or neglect of a vulnerable person as set forth in this subdivision, and the investigation thereof and any services related thereto, to persons other than those authorized to receive records under subdivision two of this section if otherwise permitted by applicable federal law and if he or

she determines that such disclosure shall not be contrary to the best interests of the vulnerable person and any one of the following factors are present:

(i) the subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained in the vulnerable persons' central register; or

(ii) the investigation of the abuse or neglect of the vulnerable person or the provision of services by the facility or provider agency has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a district attorney, any other state or local investigative agency or official, or by judge of the unified court system; or

(iii) there has been a prior knowing, voluntary, public disclosure by an individual concerning a report of abuse or neglect in which such individual is named as the subject of the report; or

(iv) the vulnerable person named in the report has died or the report involves the near fatality of a vulnerable person. For the purposes of this section, "near fatality" means an act that results in the vulnerable person being placed, as certified by a physician, in serious or critical condition.

(b) For the purposes of this subdivision, only the following information may be disclosed:

(i) the name of the abused or neglected vulnerable person;

(ii) the determination by the justice center and the findings upon which such determination was based;

(iii) identification of services provided or actions, if any, taken regarding the vulnerable person named in the report and his or her family as a result of any such report or reports;

(iv) whether any report of abuse or neglect regarding such vulnerable person has been "substantiated" as maintained by the vulnerable persons' central register;

(v) any actions taken by the state oversight agency or the facility or provider agency in response to reports of abuse or neglect of the vulnerable person to the vulnerable persons' central register, including but not limited to actions taken after each and every report of abuse or neglect of such person and the dates of such reports; and

(vi) any extraordinary or pertinent information concerning the

circumstances of the abuse or neglect of the vulnerable person and the investigation thereof, where the executive director, in consultation with the commissioner of the applicable state oversight agency determines such disclosure is consistent with the public interest.

(c) Information may be disclosed pursuant to this subdivision as follows:

(i) information released prior to the completion of the investigation of a report shall be limited to a statement that a report is "under investigation";

(ii) when there has been a prior disclosure pursuant to paragraph (a) of this subdivision, information released in a case in which the investigation of the report has been completed but not substantiated, information shall be limited to the statement that "the investigation has been completed and the report has been unsubstantiated";

(iii) if the report has been "substantiated" then information may be released pursuant to paragraph (a) of this subdivision.

(d) Any disclosure of information pursuant to this subdivision shall be consistent with the provisions of paragraph (b) of this subdivision. Such disclosure shall not identify or provide an identifying description of the source of the report, and shall not identify the name of the abused or neglected vulnerable person's siblings or children, the parent or other person legally responsible for such person or any other members of such person's household.

(e) In determining, pursuant to paragraph (a) of this subdivision, whether disclosure will be contrary to the best interests of the vulnerable person, the executive director shall consider the interest in privacy of the vulnerable person and such person's siblings or children, the parent or other person legally responsible for such person or any other members of such person's household.

(f) Except as it applies directly to the cause of the abuse or neglect of the vulnerable person, nothing in this subdivision shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such person or such person's family. Any such information that applies directly to the cause of the abuse or neglect of the vulnerable person may be disclosed only if disclosure is not otherwise restricted by applicable

federal or state laws.

4. A person given access to the names or other information identifying the subject of the report or other persons named in the report shall not divulge or make public such identifying information unless he or she is a district attorney or other law enforcement official and the purpose is to initiate court action or the disclosure is necessary in connection with the investigation or prosecution of the subject of the report for a crime alleged to have been committed by the subject against another person named in the report. Nothing in this section shall be construed to permit any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected abuse or neglect to the vulnerable persons' central register or the state oversight agency, facility or provider agency or other entity where such persons are employed or with which they are associated without such persons' written permission except to persons, officials, and agencies enumerated in paragraphs (f), (g), (l), (m) and (v) of subdivision two of this section. To the extent that persons or agencies are given access to information pursuant to paragraphs (c), (d), (e), (k), (l), (m), (n) and (p) of subdivision two of this section, such persons or agencies may give and receive such information to each other in order to facilitate an investigation conducted, or the provision of services, by such persons or agencies.

5. Notwithstanding any contrary provision of this section, mental hygiene legal service shall have access to all information, books, records and data as provided for in subdivision (d) of section 47.03 of the mental hygiene law.