

LONG TERM CARE OMBUDSMAN PROGRAM Long-Term Care Ombudsman Records	DAIL – LTCOP – 16.16
Effective Date: December 30, 2009 Revised Date: January 4, 2016 Review Date: July 1, 2017	<p style="text-align: right;">Page 1 of 3</p>

Policy Statement:

Records of the Long-Term Care Ombudsman Program (LTCOP) shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and these procedures.

Legal Authority: OAA § 712 (d)

45 CFR §1324.11

Procedure:

Access to Long-Term Care Ombudsman Records:

All LTCOP records are the property of the Office of the Kentucky Long-Term Care Ombudsman . The Kentucky Long-Term Care Ombudsman (KLTCO) or designee has access to all LTCOP records at all times for any purpose.

Ombudsman Access:

- (1) Each KLTCO has access to records of the District LTCOP for which he or she serves.
- (2) For the purpose of providing temporary coverage for another District LTCOP, a LTCO may have access to the LTCO records of the other District LTCOP to the extent necessary to provide such coverage.

Department for Aging and Independent Living (DAIL), Area Agencies on Aging and Independent Living (AAAIL), and Provider Agencies:

- (1) For the purposes of monitoring and supervising the LTCOP, DAIL, AAAIL and/or LTCO provider agency may review records, which reflect the activities of the LTCOP, including activity reports and complaint summary reports. DAIL, AAAIL, or LTCO provider agency may not review records that disclose or imply the identity of any resident or complainant.
- (2) No state agency, AAAIL or LTCO provider agency may require a LTCO to disclose the identity of a complainant or resident except as specifically provided by these procedures.

Response to Requests for Long-Term Care Ombudsman Records:

- (1) Where a request is made to any party for LTCO records, the KLTCO or designee shall be contacted. Records maintained by the LTCOP may not

LONG TERM CARE OMBUDSMAN PROGRAM Long-Term Care Ombudsman Records	DAIL – LTCOP – 16.16
Effective Date: December 30, 2009 Revised Date: January 4, 2016 Review Date: July 1, 2017	<p style="text-align: right;">Page 2 of 3</p>

be released, disclosed, duplicated or removed to anyone who is not a LTCO staff or volunteer without the written permission of the KLTCO.

(2) The KLTCO or designee shall determine whether to disclose all or part of the records as follows:

- (a) The KLTCO shall require that the request be made in writing and may require a copy of the request before determining the appropriate response. Where a resident makes the request orally, complainant, or legal representative of the resident or complainant, the request must be documented immediately and filed as a LTCO record by the LTCO to who consent was communicated in order to meet this requirement.
- (b) The KLTCO shall review the request with the relevant local LTCOP to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).
- (c) The KLTCO shall determine whether any part of the records should be redacted (i.e. all identifying information removed). The identities of residents or complainants who have not provided express consent for the release of their names shall not be revealed. Such consent must be in writing or made orally documented immediately and filed as a LTCO record by the LTCO to which consent was communicated.
- (d) The KLTCO or designee shall consider the source of the request as follows:

If the request for LTCO records is Made by:	Then the KLTCO or designee shall:
A resident,	Release any records generated by the LTCO, which are directly relevant to that resident provided that the identity of other residents or complainants is redacted.
A legal representative of a resident	Release any records generated by the LTCO which are directly relevant to that resident or legal representative, provided that: <ul style="list-style-type: none"> • The KLTCO has no reason to believe that the release shall be in conflict with the wishes or interest of the relevant resident, and • The identity of other residents or complainants is redacted.
Another agency or program	Release the records only if:

LONG TERM CARE OMBUDSMAN PROGRAM Long-Term Care Ombudsman Records	DAIL – LTCOP – 16.16
Effective Date: December 30, 2009 Revised Date: January 4, 2016 Review Date: July 1, 2017	<p style="text-align: right;">Page 3 of 3</p>

	<ul style="list-style-type: none"> • The resident has provided consent (If the resident is unable to provide consent, the resident’s legal representative may provide consent.) and • The identities of residents or complainants who have not provided consent for the release of their names are not revealed. <p>NOTE: where federal requirements conflict with Kentucky law, the federal requirements take precedence.</p>
A judge	<ul style="list-style-type: none"> • Release any records directly responsive to a court order, and • Provide an explanation to the court regarding the importance of not revealing the identity of residents and complainants and/or requesting court to seal the LTCO records where the KLTCO determines that the release of records would be inconsistent with the wishes or interest of the resident.
Any other party	<p>Release the records only if:</p> <ul style="list-style-type: none"> • The resident has provided consent (If the resident is unable to provide consent, the resident’s legal representative may provide consent.) and • The identities of residents or complainants who have not provided consent for the release of their names are not revealed.