



The City of New York
Department of Investigation

NADIA I. SHIHATA
COMMISSIONER

180 MAIDEN LANE
NEW YORK, NY 10038
212-825-5900

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nyc.gov/doi

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CONTACT: DIANE STRUZZI
CLODAGH MCGOWAN
(212) 825-5931

**DOI REPORT: ACCESS DENIED – CHALLENGES TO DOI’S OVERSIGHT
OF THE CITY’S CHILD WELFARE SYSTEM**

Nadia I. Shihata, Commissioner of the New York City Department of Investigation (DOI), issued a Report today on the obstacles to DOI’s independent oversight of the City’s child welfare system due to the New York State Social Services Law (SSL) and the discretion provided by certain provisions of the SSL to a state entity. Specifically, five provisions in the law significantly restrict DOI’s access to records of the City Administration for Children’s Services (ACS) that are essential for rigorous oversight that includes investigating systemic or policy failures, criminality, corruption, and inefficiencies. This Report seeks to bring the public’s attention to the impediments presented by State law and the interpretation of these laws by state regulators that consistently hinder DOI investigations and the fulfillment of DOI’s legal mandate. Legislation has already been introduced into the state legislature by Senator Jabari Brisport and Assemblymember Andrew Hevesi that would allow DOI to fulfill its City Charter-mandated duty to oversee ACS’s performance and help ensure that ACS programs protect the City’s children. A copy of the Report can be found here: <https://www.nyc.gov/site/doi/newsroom/public-reports-current.page>

DOI Commissioner Nadia I. Shihata said, “DOI wholeheartedly supports the pending state legislation because it provides access to critical records that are essential for DOI to conduct rigorous and independent oversight that helps ensure ACS’s programs are effectively safeguarding the children in this City. Without this access, DOI cannot obtain the full picture of ACS’s actions. DOI’s comprehensive investigations have a meaningful impact by upholding best practices as well as providing accountability when there is criminality or other misconduct. Just as important, DOI’s investigations, including in ACS-related matters, support the many City workers who do their jobs everyday with integrity and instill public confidence in City operations.”

ACS is tasked with many of the City’s most sensitive functions related to the care of the City’s vulnerable children, including investigating reports of child abuse and maltreatment. The New York State Office of Children and Family Services (OCFS) is a state agency that creates and regulates many of ACS’s child-related policies and programs. ACS caseworkers follow the Child Protective Services Manual issued by OCFS and OCFS manages and maintains all reports received by the Statewide Central Register of Child Abuse and Maltreatment (SCR), a hotline that receives reports of child abuse and maltreatment.

The Report discusses five provisions in the SSL that are obstacles to DOI’s oversight of ACS:

- Three provisions in the SSL impose a requirement that DOI seek OCFS authorization before DOI can access almost any records related to children who have come into contact with ACS. This process often results in OCFS exercising its discretion in a manner that ultimately obstructs DOI’s investigations by denying or limiting access to records integral to DOI’s work. In DOI’s experience, OCFS’s responses to DOI record requests are often more restrictive than what the applicable laws intend or require and often appear to prioritize confidentiality over equally important concerns such as safety, transparency, and accountability.

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- Two other provisions of State law prohibit DOI from accessing certain categories of ACS records altogether, including records related to reports of child abuse and maltreatment that ACS determined to be unfounded and records related to reports of child abuse and maltreatment that have been diverted to Collaborative Assessment, Response, Engagement & Support (CARES), an alternative-to-investigation program where, rather than opening an investigation into an allegation of child abuse or maltreatment, cases can be diverted for a non-investigatory assessment of the family's "concerns and needs." These programs may only be used where caseworkers see that there is no immediate danger to children and where there are no allegations of serious child abuse. As a result, DOI is prohibited from conducting the kinds of investigations that it conducts into virtually every other City program, such as reports that an ACS employee failed to appropriately investigate alleged child abuse because the employee received a bribe. When a child dies after previous unsubstantiated ACS investigations or CARES cases, these provisions also prevent DOI from looking into a family's unsubstantiated or CARES history to determine if anything went wrong and if ACS's investigations could be improved.

Simply put, current state laws and the manner in which they are interpreted by OCFS have the practical effect of preventing DOI's Charter-mandated oversight of several core ACS functions, ultimately making New York City's children less safe.

The Report also notes that even where DOI is notified of child fatalities and is aware of potential misconduct, lack of access to records often prevents DOI from exercising meaningful, comprehensive oversight. In 2025, DOI was notified of 18 child fatalities where ACS had prior involvement with the family in the last decade. However, current state law bars DOI from accessing the full ACS history in 17 of those matters because they contained either unfounded child abuse investigations or had a history involving CARES. In 2024, that number was 13 out of 16, and in 2023, it was 19 out of 25. As a result, DOI is often forced to prematurely conclude during an initial evaluation of a case that no meaningful investigation is possible given the severe state law restrictions on its access to relevant records. This access restriction is particularly problematic because unfounded reports, and reports diverted to CARES, are exactly where one could expect to find lapses in ACS supervision or decision-making. In the Report, DOI discusses the facts of some of the critical matters that have gone without DOI's robust oversight given the current state laws.

DOI has spent years negotiating with OCFS leadership to improve the process by which DOI seeks and receives OCFS authorization for records. OCFS has repeatedly stated that it is following its legal obligations and that it does not wish to obstruct or delay DOI's work. However, OCFS's statements have not resulted in tangible improvements; to the contrary, the authorization process has become more burdensome over time, even in cases where ACS itself referred the initial allegations to DOI and is cooperating with the investigation. Many of DOI's investigations continue to be delayed by months of negotiations and stymied by OCFS decisions not to authorize access to crucial records.

DOI is aware of the body of work by academics and advocates explaining the sometimes-traumatizing effects child protective service investigations can have on families. But DOI's oversight will not lead to a re-investigation of families where allegations of child abuse or maltreatment were properly determined to be unfounded. Rather, DOI's investigations will provide independent oversight of ACS, ensuring that its workers handle cases appropriately, and support the many caseworkers who are working diligently and with integrity. And, if DOI can provide comprehensive recommendations to ACS on ways to improve their handling of child welfare investigations, it may reduce the risk that those investigations are handled in manners that are traumatizing in the first instance. The same laws that hamper DOI's criminal investigations also prevent DOI from conducting policy reviews to assess allegations of systemic unfairness in the child welfare system, such as racial disparities, and to offer recommendations on how to improve them.

This Report was prepared by Deputy Inspector General Harlyn Griffenberg and Senior Inspector General Laura Millendorf of DOI's Office of the Inspector General for ACS, assisted by Director of Intergovernmental Affairs/Special Counsel Rebecca Chasan and Special Investigative Counsel Zachary Bannon, and was supervised by Acting Deputy Commissioner/Chief of Investigations Audrey Feldman and Deputy Commissioner of Strategic Initiatives Christopher Ryan.

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New York City
Department of Investigation



Access Denied: Challenges to DOI's Oversight of the City's Child Welfare System

Nadia I. Shihata
Commissioner

Laura Millendorf
Senior Inspector General for the New York City Administration of
Children's Services

Harlyn Griffenberg
Deputy Inspector General for the New York City Administration of
Children's Services

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I. Executive Summary

The Administration for Children's Services (ACS) is tasked with many of the City's most sensitive functions related to the care of New York City's vulnerable children, including investigating reports of child abuse and maltreatment. The Department of Investigation (DOI) acts as ACS's independent watchdog—ensuring that ACS services are not tainted by systemic or policy failures, criminality, corruption, or inefficiencies, while reviewing ACS's program delivery to help ACS carry out its functions effectively and efficiently. Unfortunately, despite DOI's broad legal authority to serve as ACS's Inspector General, five provisions of the New York State Social Services Law (SSL), significantly restrict DOI's access to ACS records essential for rigorous oversight, even where ACS is otherwise willing and able to provide them. This report seeks to bring the public's attention to the impediments presented by state law, and the interpretation of these laws by state regulators, that consistently hinder DOI investigations and the fulfillment of DOI's legal mandate.

Three of the provisions discussed in this report impose a requirement that DOI seek authorization from the New York State Office of Children and Family Services (OCFS)—a state agency that creates and regulates many of ACS's child-related policies and programs—before DOI can access almost any records related to children who have come into contact with ACS. This process is not only burdensome and time-consuming, it often results in OCFS exercising its discretion in a manner that ultimately obstructs DOI's investigations by denying or limiting access to records integral to DOI's work. In DOI's experience, OCFS's responses to DOI's record requests are often more restrictive than what the applicable laws intend or require and often appear to prioritize confidentiality over equally important concerns such as safety, transparency, and accountability. For example, DOI has received complaints that ACS caseworkers entrusted to protect the City's children have themselves been allegedly engaged in abuse of children in their personal lives. When DOI sought to investigate these allegations to help determine whether ACS should prohibit those caseworkers from working with children, OCFS denied DOI access to any information about the caseworker's underlying abuse or maltreatment history, in one instance stating: "An ACS employee . . . being investigated in their professional capacity does not establish a need for DOI to review open child protective records pertaining to an individual's contact with the child welfare system in their personal capacity."

Moreover, in those instances when OCFS approves access requests, it often first requires that DOI provide it with confidential investigatory information, thereby compromising the integrity and independence of DOI's investigations. In addition to determining many ACS policies, OCFS works regularly and closely with ACS by supervising ACS child welfare programs. Accordingly, OCFS is understandably invested in ensuring that these policies and programs are viewed positively. The work of the two agencies is thus intertwined. If DOI pinpoints a failing in ACS policies,

publicly reports on ACS's systemic failures, or uncovers criminality related to regulatory issues, OCFS may be implicated by those results. There is, therefore, an inherent conflict of interest in having OCFS act as the gatekeeper of information necessary for DOI's independent investigations. By restricting DOI's access to information, OCFS may effectively shield itself from any scrutiny resulting from the oversight that DOI is mandated to provide to ACS.

The two other provisions of state law discussed in this report prohibit DOI from accessing certain categories of ACS records altogether, including records related to reports of child abuse and maltreatment that ACS determined to be unfounded. As a result, DOI is prohibited from conducting the kinds of investigations that it conducts into virtually every other City program, such as reports that an ACS employee failed to appropriately investigate alleged child abuse because the employee received a bribe. For example, if DOI receives a complaint that an ACS caseworker did not substantiate child abuse allegations against a mother because he coerced her to provide sexual favors in exchange for a favorable outcome, DOI would not be able to investigate the complaint because the underlying child abuse investigation would have been deemed unfounded by the ACS worker, and the record would be sealed under current law. When a child dies after previous unsubstantiated ACS investigations, these provisions also prevent DOI from looking into the family's unsubstantiated history to determine if anything went wrong and whether ACS's investigations could be improved.

Simply put, current state laws and the manner in which they are interpreted by OCFS have the practical effect of preventing DOI's Charter-mandated oversight of several core ACS functions, ultimately making New York City's children less safe.

By highlighting the oversight that DOI is prevented from conducting due to these provisions of the SSL, DOI seeks to bring to the public's attention the urgent need for legislation to change the law—legislation that has already been introduced into the state legislature by Senator Jabari Brisport and Assemblymember Andrew Hevesi. Passage of these bills will allow DOI to fulfill its City Charter-mandated duty to oversee ACS's performance and to help ensure that ACS programs protect the City's children.

II. Introduction

Often referred to as the “watchdogs” of government, Inspectors General hold officials and agencies accountable for misconduct, enhance government efficiency and effectiveness, and ensure operational transparency.¹ The Department of

¹ Glenn A. Fine, *Watchdogs: Inspectors General and the Battle for Honest and Accountable Government*, (Charlottesville: University of Virginia Press, 2024), 14.

Investigation (DOI) serves as New York City's Inspector General. The New York City Charter grants DOI the wide-ranging authority "to make any study or investigation which in [the Commissioner's] opinion may be in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency."² DOI thus has a mandate to hold government officials accountable and help ensure that City agencies serve the public in a manner that is free from criminality, corruption, waste, fraud, and abuse. To carry out its mission, DOI has broad investigative powers including the ability to compel the testimony of witnesses³ and to access records prepared or maintained by any Mayoral agency.⁴ The clear intent of the laws empowering DOI is to provide DOI with robust authority and access to the information it needs to conduct investigations. For virtually all City agencies, DOI has this access. However, DOI has long been hampered in its ability to exercise oversight of the agency charged with protecting New York City's most vulnerable children.

Specifically, DOI is tasked with oversight of the Administration for Children's Services (ACS), which is responsible for "the care and protection of children."⁵ ACS carries out some of the most critical government functions imaginable—for example, investigating reports of child abuse or maltreatment and removing children from severely abusive homes.⁶ Most ACS staff fulfill their duties diligently and with integrity. But when there are allegations of wrongdoing or systemic failures by ACS employees who are supposed to keep children safe, it is DOI's Charter-mandated duty to investigate those allegations and hold ACS and its employees to account when warranted. However, several provisions of state law have limited DOI's ability to investigate these cases. Broadly, these laws: (1) subject DOI's access to many records to the discretion of a state agency, the New York State Office of Children and Family Services (OCFS); and (2) prohibit DOI from accessing entire categories of records critical to its investigations.

These restrictions have prevented DOI from accessing evidence needed to provide oversight with respect to some of ACS's most important functions, including ACS's role in investigating the death of children whose families have previously been the subjects of reported abuse or maltreatment. In some circumstances, such as when

² New York City Charter § 803(b).

³ New York City Charter § 805.

⁴ Mayoral Executive Order 16 of 1978 § 4(a).

⁵ New York City Charter § 617.

⁶ For the purposes of this report, DOI will use the phrase "child abuse or maltreatment" to describe all types of child welfare cases including abuse, maltreatment, and neglect. This is the same terminology ACS uses in its child welfare investigations. See New York City Administration for Children's Services, *A Parent's Guide to a Child Abuse or Maltreatment Investigation*, available at <https://www.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page>.

ACS does not substantiate allegations of child abuse or diverts those allegations to its alternative-to-investigation program, the laws functionally prohibit DOI from conducting any oversight to determine whether ACS's investigations or diversion assessments were tainted by criminality, corruption, or incompetence. While ACS is not unique among City agencies in the legal requirement for independent oversight, state law places unique limitations on DOI's ability to provide that oversight.

Former DOI Commissioner Jocelyn Strauber brought this issue to the public's attention plainly last spring when she wrote:

When a New York City child dies or suffers severe injury due to neglect or abuse, it's not only a tragedy — it's a failure that should prompt city government to ask where we went wrong and what we can do better.

If the child and family are known to the city Administration for Children's Services, only an independent, objective look at ACS's work can answer that question.

But right now that is impossible.

Why?

Because New York state law prevents any independent oversight body from accessing the full record of ACS's involvement with the city's children and families.⁷

Senator Jabari Brisport and Assemblymember Andrew Hevesi have introduced bills into the state legislature (S.8205 and A.8248A)⁸ that would allow DOI to access the records that it needs to exercise meaningful oversight of ACS's most critical functions. DOI supports (and has long supported)⁹ passage of this proposed legislation.

⁷ Jocelyn Strauber, *NYC's child protectors lack oversight even when kids die – unleash the city's watchdog*, THE NY POST (May 30, 2025), available at <https://nypost.com/2025/05/30/opinion/acs-hides-deadly-child-abuse-unleash-the-citys-watchdog/>.

⁸ Available for review at <https://www.nysenate.gov/legislation/bills/2025/A8248/amendment/A>.

⁹ See, e.g., Annika Pergament, *Exclusive: DOI commissioner emphasizes the need for transparency in ACS cases*, SPECTRUM NEWS NY1 (May 19, 2025), available at <https://ny1.com/nyc/all-boroughs/the-rush-hour/2025/05/19/doi-commissioner-emphasizes-the-need-for-transparency-in-acs-cases>.

DOI's public reports often bring its investigative findings to the public's attention, while highlighting the ways in which agency programs could be reformed.¹⁰ This report seeks to accomplish something slightly different—to bring to the public's attention the kinds of investigations that DOI *has been prevented from* conducting because of the state laws referenced above and OCFS's overly broad exercise of the discretion some of those laws provide. In doing so, DOI will draw attention to the practical consequences of the complicated information-sharing restrictions imposed by those provisions. This discussion will show the urgency of passing legislation to amend the SSL.

This report will proceed in three parts. First, it will explain the relationship between the three entities principally addressed in the state laws that are the subject of this report—ACS, OCFS, and DOI. Second, it will explain the two types of information-sharing restrictions imposed by the state laws and how those restrictions have hampered DOI's investigations of specific matters of immense public importance. And third, it will explain the changes introduced by the bills pending in the State Legislature, including how the legislation would empower DOI to conduct the kind of oversight that the New York City Charter contemplates (and the public expects) it will exercise over ACS.

III. ACS and Its Oversight

ACS is a City agency that carries out its mission to protect the well-being of children, subject to the statewide policies, regulations, and supervision of OCFS. DOI is a law enforcement agency that investigates and seeks to prevent criminality, corruption, fraud, waste, abuse, conflicts of interest, unethical conduct, and inefficiency in City government. DOI is the independent oversight agency with both criminal and civil investigatory authority for nearly all New York City agencies, employees, elected officials, and contractors that do business with the City, including ACS and its contractors.¹¹ The responsibilities of and relationships between each of these entities, as are relevant to this report, are discussed below.

a. Administration for Children's Services (ACS)

ACS is a City agency vested with the Charter authority to “perform functions related to the care and protection of children.”¹² These responsibilities include

¹⁰ DOI's reports are available on its website: <https://www.nyc.gov/site/doi/newsroom/public-reports-current.page>.

¹¹ New York City Charter § 803(f).

¹² New York City Charter § 617(a).

providing families with preventive services,¹³ operating juvenile detention centers, managing foster care, providing child care subsidies, and investigating reports of child abuse and maltreatment.¹⁴ In the past, DOI investigations have uncovered deficiencies with ACS's performance of several of these functions, prompting DOI to issue recommendations to address systemic failures and strengthen ACS's services.¹⁵ This report will focus primarily on ACS's child welfare responsibilities.

With respect to reports of child abuse or maltreatment, in general, ACS's investigations begin when ACS receives a report from the Statewide Central Register of Child Abuse and Maltreatment (SCR), a hotline maintained by OCFS to receive reports of child abuse and maltreatment.¹⁶ Once allegations are received by the SCR, the terms of ACS investigations are dictated by state law.¹⁷ Within sixty days of ACS initiating an investigation, ACS employees must determine whether the SCR report is "indicated" (meaning that a preponderance of the evidence supports the allegation of abuse) or "unfounded" (a preponderance of the evidence does not support the allegation of abuse).¹⁸ By law, unfounded reports are sealed and unavailable to the public or law enforcement, with limited exceptions, although those reports are available to an ACS employee assigned to subsequent child abuse or maltreatment investigations involving the same subject, same child, or the child's sibling.¹⁹

¹³ Preventive services are designed to help families keep their children safely at home. They help to promote safety, permanency, and well-being for children and their families in their own homes and communities. See Administration for Children's Services, *Preventive Services*, available at <https://www.nyc.gov/site/acs/child-welfare/parent-support.page>.

¹⁴ New York City Charter § 617(a); see also New York City Administration for Children's Services, *About ACS*, <https://www.nyc.gov/site/acs/about/about.page> (last visited May 14, 2025).

¹⁵ For example, in 2018, a DOI evaluation of ACS's oversight of several Family Foster Care providers led to the issuance of twelve policy and procedure recommendations, all of which were accepted by ACS. See Mark G. Peters, *Review of ACS' Systematic Safety Accountability Mechanisms for Foster Care Providers* (Oct. 2018), available at https://www.nyc.gov/assets/doi/reports/pdf/2018/Oct/ACS_Rpt_Release_Final_10122018.pdf.

¹⁶ Social Services Law (SSL) § 422(2). Tens of thousands of reports are filed with SCR each year. See New York City, Administration for Children's Services, Flash Report monthly Indicators March 2026, available at <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2026/03.pdf>.

¹⁷ SSL § 422(2)(a); see also New York City Administration for Children's Services, *A Parent's Guide to a Child Abuse or Maltreatment Investigation*, available at <https://www.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page>.

¹⁸ In 2024, 29.0% of ACS child welfare investigations were indicated. In 2025, 31.1% of child welfare investigations were indicated. See New York City Administration for Children's Services, Flash Report monthly Indicators March 2026, available at <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2026/03.pdf>.

¹⁹ SSL § 422(5).

State law also allows for alternative-to-investigation programs where, rather than opening an investigation into an allegation of child abuse or maltreatment, cases can be diverted for a non-investigatory assessment of the family's "concerns and needs."²⁰ These programs focus on collaboration with families to assess child safety needs and to provide support for a family's ability to safely care for their children.²¹ These programs may only be used "where caseworkers see that there is no immediate danger to children and where there are no allegations of serious child abuse."²² ACS's program is called Collaborative Assessment, Response, Engagement & Support (CARES). In the last several years, ACS has nearly doubled its use of CARES.²³ By 2024, 25% of ACS's SCR reports were diverted into CARES.²⁴ ACS screens "a broad range of allegations" for CARES eligibility²⁵ and, while there are criteria in place to guide CARES eligibility, diversion determinations remain subject to the fallibility of individual decision-making. As with unfounded reports, records of cases diverted to CARES are sealed under the current law, subject to limited exceptions.²⁶

Local law prescribes a limited role for ACS to conduct reviews of its own work with respect to child fatalities. Pursuant to Local Law 19 of 2018, ACS is required to issue a systemic child fatality review every year, which includes: (1) the number of fatalities of children known to ACS; (2) the manner and/or cause of death; (3) demographic information about the children; (4) any relevant trends and systemic recommendations; and (5) a summary of any case practice findings and agency policy changes made in response to child fatalities in the previous 12 months. ACS's most recent report was issued in June 2025 for the 2023 calendar year.²⁷ These reports discuss fatalities from a bird's eye view and focus on statistical data and systemic

²⁰ SSL § 427-a; *see also* New York State Office of Children and Family Services, *Family Assessment Response*, available at <https://ocfs.ny.gov/programs/cps/assessment-response.php>.

²¹ *Id.*

²² *Id.*

²³ New York City Administration for Children's Services, Flash Report monthly Indicators January 2026, available at <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2026/01.pdf>.

²⁴ Press Release, *Administration for Children's Services Doubles Number of 'CARES' Units in Just Two Years*, ADMINISTRATION FOR CHILDREN'S SERVICES (Jan. 23, 2024), available at <https://www.nyc.gov/assets/acs/pdf/PressReleases/2024/number-of-cares-units-double.pdf>.

²⁵ New York City Administration for Children's Services, *New York City Family Assessment Response (FAR) Application* (2012), available at <https://ocfs.ny.gov/programs/prevention/assets/docs/far-apps/Queens-FAR-Application-2012.pdf>.

²⁶ SSL § 427-a(5).

²⁷ New York City Administration for Children's Services, *Systemic Child Fatality Review - 2023 Annual Report*, available at <https://www.nyc.gov/assets/acs/pdf/data-analysis/2023/annual-child-fatality-report.pdf>.

changes. They do not discuss specific fatalities,²⁸ nor do they include any assessment of potential misconduct or criminality on the part of the ACS employees or contractors involved in individual cases.

b. The Office of Children and Family Services (OCFS)

OCFS is a state entity that supervises ACS and directs ACS policy in many areas—by promulgating regulations and guidance for programs administered by ACS and overseeing ACS's compliance with certain regulatory requirements. For example, when conducting child welfare investigations, ACS caseworkers follow the Child Protective Services Manual issued by OCFS.²⁹ OCFS manages and maintains all reports received by the SCR and all information documenting child welfare investigations by ACS. OCFS also establishes statewide administrative rules relating to the management of child welfare subsidies, attendance records at child care facilities, and the daily operations at juvenile detention facilities. ACS and OCFS have publicized their partnership across a broad range of ACS programs, from working together on projects ranging from improvements to ACS's foster care program³⁰ to efforts to reduce racial disparities in the child welfare system.³¹ Because of these partnerships, OCFS often shares in ACS's programmatic successes and failures.

OCFS also plays an oversight role with respect to ACS's child fatality investigations; it is required to review each ACS investigation that involves a child fatality and to issue a summary report within six months of ACS's investigation.³² These reviews are required to document certain statutorily required information, including the cause of death; the child protective services provided to the child; information on the circumstances of the death; the nature of assistance and care received by the child from ACS prior to death; a summary of the investigation undertaken by ACS; and, as appropriate, recommendations for local or state

²⁸ See SSL §§ 422-b, 20(5).

²⁹ See New York State Office of Children and Family, *Child Protective Services Manual*, available at <https://ocfs.ny.gov/programs/cps/manual/>.

³⁰ See New York City Administration for Children's Services, *Strong Families Initiative*, available at <https://www.nyc.gov/site/acs/about/titleIV.page> (discussing ACS's partnership with OCFS to utilize federal funding "to promote greater stability, permanency and well-being for children in foster care").

³¹ See *NYC's ACS, Public Schools, and NYS OCFS Unveil Plans to Tackle Racial Disparities in Child Welfare*, HARLEM WORLD (Oct. 19, 2023), available at <https://www.harlemworldmagazine.com/nycs-acs-public-schools-and-nys-ocfs-unveil-plans-to-tackle-racial-disparities-in-child-welfare/> (discussing ACS's partnership with OCFS in improving training for mandatory reporters).

³² SSL §§ 20(5)(a), 422-b. OCFS is not obligated to conduct these reviews where an OCFS-approved Child Fatality Review Team has prepared a fatality report that has been approved by OCFS. SSL § 442-b(2). ACS has informed DOI that it has a state-approved Child Fatality Review Team.

administrative or policy changes.³³ OCFS describes its review of ACS's investigation as being to determine whether "there were lapses in adhering to state regulation or policy" that require corrective action.³⁴ OCFS's fatality reviews rely solely on the "documents collected or created by the child welfare agency that is involved with the family" and OCFS "do[es] not interview the people involved."³⁵ Importantly, OCFS reports do not include any assessment of potential misconduct, negligence, or criminality on the part of the ACS employees or contracted agencies involved in the underlying ACS investigations. OCFS is also required by state law to publish an annual child fatality report similar to the systemic child fatality review conducted by ACS,³⁶ but the last report available online from OCFS covers 2022.³⁷

c. The Department of Investigation (DOI)

Unlike OCFS, DOI does not play a direct supervisory role in the implementation of ACS programs and therefore does not have an intertwined relationship with ACS. DOI's only role with respect to ACS is to provide independent oversight. DOI's reviews also go beyond assessing compliance with state regulations or policies. Its broad oversight mandate is set forth in the Charter, which "authorize[s] and empower[s] [DOI] to make any study or investigation which in [its] opinion may be in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel, or efficiency of any agency."³⁸ Also unlike OCFS, DOI is an investigatory and law enforcement

³³ *Id.* § 20(5)(b).

³⁴ New York State Office of Children and Family Services, *Child Fatality Reports*, available at <https://ocfs.ny.gov/reports/cfrp/>.

³⁵ New York State Office of Children and Family Services, *Child Fatality Review and Prevention*, available at <https://ocfs.ny.gov/programs/cwcs/cfrp.php>. By conducting only a review of records provided by ACS, OCFS is prevented from identifying or investigating situations where those records themselves are compromised.

³⁶ SSL § 20(5).

³⁷ New York State Office of Children and Family Services, *Reports Search*, available at <https://ocfs.ny.gov/reports/>.

³⁸ New York City Charter § 803(b). Decades of case law supports DOI's broad investigatory jurisdiction, which extends to all aspects of the City's child welfare system and ACS's discharge of its duties. DOI may conduct any investigation that is "a means to the end of a better discharge of some duty imposed upon, or a better exercise of some power that lawfully may be exercised by, the executive branch of the city government." *In re Ellis*, 176 Misc. 887, 888 (N.Y. Sup. Ct. 1941). DOI's Charter-mandated powers "are of great importance for the efficient administration of the huge machinery of government in the city of New York." *In re Edge Ho Holding Corp.*, 256 N.Y. 374, 381 (1931). DOI may investigate, for example, "the efficiency of governmental methods" (*In re Edge Ho Holding Corp.* at 379), criminal matters (*City of New York v. Uniformed Fire Officers Ass'n*, 95 N.Y.2d, 273 (2000)), and "private businesses licensed by a City agency" (*New York Shredding Corp. v. New York City Dep't of Investigation*, 184 Misc. 2d 174, 178 (N.Y. Sup. Ct. 2000)). Private individuals or entities are not "shield[ed] from DOI's investigative power." *New York City Dep't of*

agency that routinely conducts criminal investigations, works alongside prosecutorial partners on long-term, pre-arrest investigations, and investigates individual employee misconduct as well as systemic failures that lead to real-world harm.

Given this wide-ranging authority and investigatory expertise, DOI's investigations have spanned many of the different programs administered by ACS, from reviews of the impact of Raise the Age legislation on ACS's juvenile detention centers³⁹ to reviews of ACS's safety accountability mechanisms to ensure child safety at foster care providers⁴⁰ to in-depth investigations into failures in ACS's Emergency Children's Services unit in a case of child abuse and neglect.⁴¹ DOI's investigations also range broadly in their substantive scope, from holistic reviews of program functions over several years (like the foster care provider investigation mentioned above) to investigations into the criminality of individual ACS employees (which have led to the convictions, for example, of ACS employees for stealing City funds designated to help children in need⁴² and of an ACS contractor for having sex with children in City-contracted juvenile centers⁴³).

* * *

Investigation v. Passannante, 148 A.D.2d 101, 104 (1st Dept. 1989). In short, "DOI has a mandate, based on the City Charter, to ensure that the practices and procedures of city agencies are legitimate, do not lead to abuse of process, and are in the best interests of the City." *Parkhouse v. Stringer*, 55 A.D.3d 1, 8 (1st Dept. 2008), aff'd 12 N.Y.3d 660 (2009).

³⁹ Jocelyn E. Strauber, *The Impact of Raise the Age & Bail Reform: Safety, Disciplinary, & Staffing Challenges at the City's Juvenile Detention Facilities* (Oct. 2024), available at <https://www.nyc.gov/assets/doi/press-releases/2024/October/40DYFJRpt.Release.pdf>.

⁴⁰ Mark G. Peters, *Review of ACS' Systemic Safety Accountability Mechanisms for Foster Care Providers* (Oct. 2018), available at https://www.nyc.gov/assets/doi/reports/pdf/2018/Oct/ACS_Rpt_Release_Final_10122018.pdf.

⁴¹ Mark G. Peters, *Summary of DOI's Investigation of the City Administration for Children's Services' Response to Abuse and Neglect Allegations Related to Jaden Jordan* (Jan. 26, 2017), available at <https://www.nyc.gov/assets/doi/press-releases/2017/jan/05ACSstmt01-26-2017.pdf>. DOI's investigation found that the depth of errors by ACS over a two-day period prior to Jaden's death were so significant, and the errors involved the overall implementation of policies so basic, that they went to the heart of ACS's core mission of protecting children and implicated high-level, systemic problems.

⁴² Press Release, *D.A. Bragg, DOI Commissioner Strauber Announce Guilty Plea of Former ACS Director for Stealing Gift Cards from Children*, DISTRICT ATTORNEY, NEW YORK COUNTY (Apr. 9, 2024), available at <https://www.nyc.gov/assets/doi/press-releases/2024/April/DANYGiftCards04.09.2024.pdf>.

⁴³ Press Release, *D.A. Rocah, Former Juvenile Center Employee Convicted for Having Intercourse with Teen at Westchester Campus*, DISTRICT ATTORNEY, WESTCHESTER COUNTY (Oct. 15, 2024), available at <https://www.westchesterda.net/october-2024/former-juvenile-center-employee-convicted-for-having-intercourse-with-teen-at-westchester-campus>.

OCFS and DOI's individual relationships to ACS are different. OCFS acts as a partner to ACS in the supervision and implementation of ACS programs and provides oversight heavily focused on preserving confidentiality of records and ensuring compliance with OCFS's own administrative rules. To DOI's knowledge, OCFS rarely refers criminal matters to law enforcement. Meanwhile, DOI's mandate is broader—conducting systemic reviews of ACS's programs, issuing public recommendations to improve public safety and agency accountability, and investigating potential criminal conduct of individual ACS employees. DOI's independent oversight is legally mandated for all City agencies, and critical to ensuring the proper functioning of programs implemented by ACS, which in turn keep the children of New York City safe. As explained below, the independence of DOI's work is compromised where its investigations are subject to the approval of an entity that directly supervises and often partners with ACS in implementing ACS's programs, as state law currently requires. For example, DOI examinations of ACS child welfare investigations may involve a review and critique of the standards and procedures set out in OCFS's Child Protective Services Manual, which ACS caseworkers rely on when investigating allegations of child abuse or maltreatment. OCFS can shield its own standards from scrutiny by declining to authorize DOI access to records that would implicate OCFS standards, even where DOI is attempting to conduct the oversight of ACS required by the New York City Charter. These concerns are not hypothetical; multiple DOI investigations into ACS's handling of child abuse or maltreatment investigations have resulted in policy recommendations to OCFS.⁴⁴ Changes in state law are necessary to eliminate the conflict inherent in this statutory regime and to restore DOI's ability to conduct independent oversight of ACS.

IV. State Law Restrictions on DOI's Access to Records and Their Consequences

State law imposes two categories of restrictions on DOI's access to records that are critical to its oversight of ACS: (1) requirements that DOI receive OCFS approval before accessing certain categories of records; and (2) outright prohibitions on DOI's access to certain categories of records. These restrictions impact DOI's investigations in many ways, as record-access restrictions can result in DOI conducting investigations with only a partial view of the relevant facts. In some circumstances, entire areas of ACS's practices are fully insulated from DOI's oversight. It is

⁴⁴ See Rose Gill Hearn, DOI & John B. Mattingly, ACS, *A Department of Investigation Examination of Eleven Child Fatalities and One Near Fatality*, at 128 (Aug. 2007), available at https://www.nyc.gov/assets/doi/reports/pdf/2007/2007-08-09-Acsreport_pdfaug.pdf (recommending that OCFS tape calls to the SCR hotline); Mark G. Peters, *Summary of DOI's Investigation of the City Administration for Children's Services' Response to Abuse and Neglect Allegations Related to Jaden Jordan* at 3 (Jan. 26, 2017), available at <https://www.nyc.gov/assets/doi/press-releases/2017/jan/05ACSstmt01-26-2017.pdf> (recommending that ACS work with OCFS to ensure that OCFS refers allegations of criminal activity to ACS and the NYPD concurrently).

important for the public to understand that these restrictions are not merely theoretical—they impact every DOI investigation involving child abuse, foster care, or juvenile detention. This section will demonstrate the existence of tangible hurdles by describing the access restrictions that DOI faces as well as providing real examples⁴⁵ of how those restrictions have impaired DOI's investigations.

a. Laws that Require OCFS Approval for DOI to Access Records

The Laws: Three provisions of the SSL, specifically §§ 372, 422, and 496, require DOI to seek authorization from OCFS before receiving virtually any child-related records from ACS.⁴⁶

SSL § 422(4)(A) makes all records related to reports of abuse or maltreatment to the SCR presumptively confidential. Most criminal law enforcement agents—ranging from district attorneys to sworn officers of a county department of parks—may nevertheless access these records by requesting them from ACS and asserting that the records are necessary to conduct a specified criminal investigation or an investigation of a missing child.⁴⁷ These agencies need not seek approval from OCFS to access those records. However, the statute distinguishes DOI, stating that DOI can only access the same records if they are “essential to an investigation within the legal authority of [DOI]” *and* if OCFS provides “prior approval.”⁴⁸ The SSL does not define “essential,” nor does it specify which entity should determine whether records are “essential” to DOI.⁴⁹

During discussions about DOI's records access over several years, OCFS executive staff have asserted that OCFS does not wish to dictate what information is essential to DOI's work, nor to obstruct or delay DOI's work, nor to undermine or direct DOI's investigative methods. Notwithstanding its stated intentions, in practice, OCFS has made unilateral determinations as to what records are “essential,” frequently rejecting DOI's own explanation of its need for records to further its investigations. Ultimately, OCFS's position on what qualifies as “essential” to a DOI investigation appears to reflect a fundamental misunderstanding of DOI's mandate and jurisdiction. For example, OCFS has informed DOI that it cannot produce records to DOI related to allegations that someone made a false report

⁴⁵ To preserve privacy and confidentiality, all examples utilized in this report are either anonymized or based on public materials.

⁴⁶ Records related to child care subsidies are not subject to the confidentiality rules discussed in this report. *See* SSL § 410.

⁴⁷ SSL § 422(4)(A)(l).

⁴⁸ SSL § 422(4)(A)(m).

⁴⁹ SSL §§ 422(4)(A)(m), (2).

of child abuse because “[f]alse reporting is a crime by a member of the public.” But every false report triggers an obligation on ACS to investigate the report, draining ACS’s limited resources, which DOI is mandated to help protect.⁵⁰ As another example, OCFS has informed DOI that it cannot produce records to DOI “to investigate how ACS conducts [child abuse] investigations and determine if [the] work of ACS could be improved,” reasoning that “DOI is not a social services agency and is not statutorily charged with general oversight over child protective services.” Again, this response appears to fundamentally misunderstand DOI’s mandate under the City Charter. Recommending policy reforms to City agencies – including social services agencies – falls squarely within DOI’s statutory jurisdiction and DOI has done so on multiple occasions with respect to ACS’s child abuse investigations.⁵¹ ⁵² DOI’s jurisdiction is broad, extending to “any study or investigation which in [the Commissioner of Investigation’s] opinion may be in the best interests of the city including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency.”⁵³

SSL § 372 makes all records related to children in foster care and juvenile detention presumptively confidential. The law sets forth conditions under which some entities can receive those records, for example, comptrollers for audits and researchers for research purposes,⁵⁴ but contains no mention of DOI. DOI’s access to these records is left to the complete discretion of OCFS. In multiple conversations with OCFS leadership, OCFS has informed DOI that it interprets the statutory silence on DOI’s access to such records as license to apply a heightened standard to DOI’s request for these records. It is unclear why OCFS believes that this approach is required by the statute or consistent with the public interest.

⁵⁰ ACS has previously requested that DOI investigate false reporting for this very reason, and District Attorney’s offices have referred false reporting complaints to DOI for investigation as well.

⁵¹ See Rose Gill Hearn, DOI & John B. Mattingly, ACS, *A Department of Investigation Examination of Eleven Child Fatalities and One Near Fatality* (Aug. 2007), available at https://www.nyc.gov/assets/doi/reports/pdf/2007/2007-08-09-Acsreport_pdfaug.pdf; Mark G. Peters, *Report on ACS Policy and Practice Violations Identified in Three Child Welfare Cases and Related Analysis of Certain Systemic Data* (Apr. 2016), available at <https://www.nyc.gov/assets/doi/reports/pdf/2016/2016-05-03-14-ACS-Report-FINAL.pdf>; Mark G. Peters, *Summary of DOI’s Investigation of the City Administration for Children’s Services’ Response to Abuse and Neglect Allegations Related to Jaden Jordan* (Jan. 26, 2017), available at <https://www.nyc.gov/assets/doi/press-releases/2017/jan/05ACSstmt01-26-2017.pdf>.

⁵² While many of DOI’s staff are subject matter experts, there is no requirement that oversight agencies or Inspectors General share a professional background with the agencies they oversee. Inspectors General routinely have investigative backgrounds and oversee a wide range of government functions while not performing those functions themselves.

⁵³ New York City Charter § 803(b).

⁵⁴ SSL § 372(4)(b), (4-b).

Finally, SSL § 496 makes records related to investigations of abuse pursuant to the Protection of People with Special Needs title of the SSL presumptively confidential.⁵⁵ As with SSL § 422, most law enforcement agencies can nevertheless access these records by stating that their access is for approved purposes, but DOI cannot access these records without seeking prior approval from OCFS upon a showing that the records are “essential to an investigation within the legal authority of [DOI].”⁵⁶

The Consequences: The OCFS authorization process routinely impairs DOI's ability to conduct thorough, independent investigations and to assess initial complaints. Moreover, because these access restrictions apply to communications as well as written records, they have prevented DOI from conducting interviews with victims of alleged criminal conduct. The authorization process is often time consuming and compromises investigations that are time sensitive. In several instances, DOI has spent months negotiating with OCFS to gain access to pedigree information of witnesses or copies of child welfare investigative files. DOI receives hundreds of complaints from the public each year alleging misconduct or systemic failures at ACS. DOI takes care to assess which complaints are serious and credible before requesting OCFS authorizations for those select cases. Even then, the built-in delay of the OCFS prior approval process means that DOI cannot properly assess the legitimacy or credibility of many of these complaints. DOI recognizes OCFS's position that it takes seriously its obligations under the law and that OCFS seeks to act in accordance with the law in making good-faith determinations about DOI's access to ACS records. In DOI's experience, however, OCFS often exercises its discretion in a manner more restrictive than intended or required by the applicable statutes, which ultimately hinders DOI's ability to fulfill its legal oversight mandate regardless of OCFS's intentions.

More fundamentally, OCFS routinely denies, limits, or delays DOI's requests for records, acting as the sole arbiter of whether DOI's requests are “essential” to DOI's investigations.⁵⁷ These denials, limitations, and delays derail ongoing

⁵⁵ While this report focuses on child welfare investigations, SSL § 496 prevents DOI from getting access to records from the Justice Center for the Protection of People with Special Needs about several ACS facilities, including the juvenile detention centers. These records, too, are integral to DOI's ability to provide comprehensive oversight to ACS.

⁵⁶ SSL § 496(l)-(m).

⁵⁷ OCFS stated in its response to a draft of this report that “it is aware of only one recent records request that has gone ungranted.” It is unclear how OCFS defines “ungranted,” and this report is replete with examples showing that OCFS's denials are far more widespread, including those on pages 16 and 17 of this report. Moreover, OCFS's practices often constructively deny DOI's requests for records by, for example, authorizing access to records so narrowly as to impede meaningful investigation, requiring information from DOI that cannot be obtained without an authorization, or suggesting DOI seek records by other means that would be infeasible and inappropriate in the

investigations. Even where OCFS approves a request, it often does so only if DOI agrees to provide it with confidential investigatory information, thereby compromising the integrity of DOI's investigations and its independence. Further, OCFS's responses are inconsistent; even when DOI submits similar requests for similar facts, OCFS's responses have differed without rational basis. OCFS's decisions often appear to reflect an unfortunate territoriality, as it pointedly reminds DOI in its authorization letters of its "supervisory role over ACS" and its ability to withhold future authorizations if DOI does not comply with the terms of its authorizations. As discussed above, both OCFS and DOI serve distinct roles with respect to ACS, with neither organization designed to be answerable to the other.

Again, these issues are not theoretical. To better explain the practical consequences of the authorization framework and how it hinders DOI's child welfare related investigations, discussion of several practical examples from between 2023 and 2026 is warranted:

- Sexual Misconduct: DOI received two separate complaints alleging that a particular ACS caseworker committed sexual misconduct towards minors who were part of their caseload. DOI requested access to unredacted records regarding one of those clients and the other children and families that were part of that caseworker's caseload to determine whether the caseworker had victimized other children. OCFS denied the authorization and refused to grant DOI access to the requested information, despite DOI explaining this factual context to OCFS. ACS would have been able to provide DOI with the requested records if OCFS had authorized their release. Since OCFS chose to deny DOI's request, ACS was prohibited from doing so.

In the same year, DOI received two separate complaints alleging that another ACS caseworker committed sexual misconduct towards clients who were part of their caseload. DOI requested access to the caseworker's case files regarding both known clients and other children and families that were part of that caseworker's caseload to determine whether the caseworker had victimized anybody else. Again, ACS was willing to provide DOI with the needed information but could only do so legally with an authorization from OCFS. OCFS denied the authorization and refused to grant DOI access to any of the requested information. After OCFS's denial, DOI was able to confirm through other investigative means that there were additional victims on the ACS

context of a confidential independent investigation, including suggesting that ACS conduct investigations on DOI's behalf.

caseworker's caseload.⁵⁸ This confirmed that the files to which DOI sought access contained essential information about additional instances of sexual misconduct that OCFS prevented DOI from investigating.

In both denials, OCFS referenced the victims' privacy as the basis for its decision. OCFS's denials did not indicate that the victims were consulted before OCFS determined that their privacy interests should outweigh an investigation into the crimes allegedly committed against them.

- Personal Misconduct: DOI has received multiple complaints about ACS employees who are alleged to have engaged in abuse or maltreatment of children in their personal lives, calling into question whether they should be permitted to work with children in their professional capacities at ACS.⁵⁹ DOI requested authorizations to access the ACS records regarding these allegations to investigate whether the ACS employees engaged in conduct that should prevent them from interacting with children in their professional capacities. OCFS denied these authorizations, stating: "An ACS employee or contractor/program provider employee being investigated in their professional capacity does not establish a need for DOI to review open child protective records pertaining to an individual's contact with the child welfare system in their personal capacity."
- Physical Abuse: DOI received a complaint from the grandmother of a child placed in foster care alleging that the foster family was abusing the complainant's grandchild, noting that her grandchild had visible injuries during visits with the grandmother. The grandmother did not know the type or legal process of foster care placement, but she submitted a complaint to DOI describing the injuries she observed and asking DOI to pursue an investigation into potential foster care abuse. OCFS denied DOI's request for the foster care records because DOI did not have the details about the foster care placement at the time of its request. Without these records, DOI could not determine the very details that had served as the basis for OCFS's denial, thereby cutting off DOI's ability to investigate the grandmother's complaint.
- Fraud: DOI received a credible complaint that an ACS contractor forged and submitted to a New York City Family Court more than sixty sets of falsified records. When DOI sought OCFS authorization to access and review all the

⁵⁸ While unique circumstances allowed DOI to identify these victims in this case, DOI cannot rely on these alternative methods routinely. DOI should have direct access to records, as explained in this report.

⁵⁹ DOI routinely recommends personnel actions to ACS as part of its investigations.

contractor's casework records to identify additional potential forgeries, OCFS denied the request.

As these examples highlight, authorization requirements give OCFS a functional veto over DOI's investigations within the core of its Charter-mandated authority, even in cases when ACS would otherwise be fully cooperative. This power is not consistent with DOI's role as an *independent* oversight agency for ACS and does not serve the public's interests. Moreover, the cases highlight the inherent conflict of interest in OCFS essentially determining which cases DOI can investigate when those investigations could reveal issues in programs that OCFS helps to manage.

b. Laws that Prohibit DOI from Accessing Records

The Laws: Two laws—SSL §§ 422(5)(a) and 427-a—impose outright bars on DOI's ability to receive records related to allegations of child abuse or maltreatment where ACS staff deemed the allegations “unfounded” (not supported by a preponderance of the evidence, according to ACS staff) or where ACS diverted the allegations to its CARES program (as discussed above, an alternative to the investigative track that focuses on providing families with resources and support).

SSL § 422(5)(a) seals all records associated with reports of child abuse or maltreatment if those reports are deemed unfounded by ACS. Although the law permits some exceptions, none apply to DOI; meaning DOI cannot obtain these records under any circumstances. This result is peculiar given the nature of several of those exceptions. For example, the law recognizes the importance of documents related to unfounded reports for ACS caseworkers investigating subsequent allegations of child abuse or maltreatment⁶⁰ and it permits OCFS to review documents related to prior unfounded child abuse or maltreatment reports during subsequent regulatory fatality reviews.⁶¹ These exceptions provide ACS and OCFS with a more complete picture of family history to make informed conclusions during child abuse investigations. Yet DOI cannot access the same information when conducting similar, independent reviews.

⁶⁰ ACS instructs their caseworkers that it is critical to assess new allegations in the context of all previous allegations. Prior unfounded investigations must be considered as relevant when information from the prior unfounded investigation, combined with new information, shows a pattern that may contribute to abuse or maltreatment. Prior unfounded investigations may also be relevant to the new investigation if they provide evidence contrary to the new allegations. See New York City Administration for Children's Services, *Division of Child Protection Casework Practice Requirements Manual – Fifth Edition* (Dec. 2013); see also New York City, Administration for Children's Services, *CPS Review of Unfounded Cases* (Dec. 1, 2013).

⁶¹ SSL § 422(5)(a)(ii).

Moreover, the law permits certain non-DOI law enforcement agents to review unfounded records when investigating whether a reporter made a false report of child abuse or maltreatment in violation of Penal Law § 240.50.⁶² The law does not permit DOI to access the same information to investigate the same allegation of false reporting, even where DOI is working with prosecutors who rely on DOI for pre-arrest investigative work. And, perversely, the law does not allow DOI to use the same information to investigate whether ACS personnel wrongly deemed a report unfounded even when there was credible evidence of abuse or maltreatment. Significantly, these scenarios come up regularly in complaints made to DOI by members of the public about child abuse or maltreatment cases being allegedly mishandled by ACS, either due to incompetence, negligence, or criminal intent. Due to this prohibition, DOI is unable to respond to these complaints, either by pursuing appropriate action if the allegations are confirmed or by confirming that ACS acted appropriately, thereby reassuring the public and restoring confidence in the agency.

SSL § 427-a(5)(d) makes all records related to a child abuse or maltreatment case that has been diverted to the CARES program presumptively confidential and available only to enumerated entities. Again, DOI cannot obtain these records under any circumstances. And again, this is so despite the fact that the law recognizes the importance of the records for investigations into subsequent allegations of abuse or maltreatment; it expressly provides that records can be made available to “any social services district investigating a subsequent report of abuse or maltreatment involving the same subject or the same child or children named in the report.”⁶³

The Consequences: Perhaps the most glaring effect of the laws prohibiting DOI from accessing these categories of ACS records is that it insulates entire areas of ACS's programs from the oversight that all City agencies expect of the programs that they operate. In recent years, ACS has increased its diversion of child abuse and maltreatment allegations to CARES, with 25% of incoming child protection cases diverted in 2024.⁶⁴ SSL § 427-a(5)(d) thus effectively shields up to a quarter of ACS's child protective work from DOI's oversight. DOI regularly receives complaints about ACS's alleged mishandling of child abuse and maltreatment investigations from a variety of sources, including mandatory reporters, victims seeking help, members of the media, concerned citizens, and from ACS itself. But, given the restrictions on DOI's access to ACS information, DOI frequently cannot meaningfully investigate entire categories of cases, including:

⁶² SSL § 422(5)(a)(v).

⁶³ SSL § 427-a(5)(a)(v).

⁶⁴ Press Release, *Administration for Children's Services Doubles Number of 'CARES' Units in Just Two Years*, ADMINISTRATION FOR CHILDREN'S SERVICES (Jan. 23, 2024), available at <https://www.nyc.gov/assets/acs/pdf/PressReleases/2024/number-of-cares-units-double.pdf>.

- Investigations into Case Decisions: Because unfounded and diverted CARES case files cannot be reviewed by DOI, DOI cannot conduct investigations into whether decisions to unfound an allegation or divert a case to CARES were tainted by the criminality or incompetence of the ACS worker assigned to handle the case. For example, DOI routinely investigates cases where City workers solicit bribes or extort clients in exchange for favorable outcomes in City services. However, if an ACS caseworker solicited a bribe from or extorted a family to find a report of child abuse unfounded, the entire case file related to that report would remain outside of DOI's review. As another routine example, if an ACS caseworker falsified records stating that they conducted a safety check on an abused child and determined a report of child abuse or maltreatment to be unfounded, but the caseworker did not in fact visit the family, then the falsified records documenting the home visit would be insulated from DOI's review and investigation. As currently written, the law allows abused children to fall through the cracks of two safety nets: the child welfare system and the agency responsible for its oversight.
- Investigations into Case Handling: The sealing of unfounded and diverted CARES case files also insulates the conduct of individuals during an investigation or CARES case from review. For example, if an ACS caseworker makes sexual advances towards children during an investigation that the same caseworker eventually determines to be unfounded, records related to that investigation would be unavailable to DOI, even in the context of investigating the criminal sexual misconduct towards minors. And again, although the law permits other law enforcement agencies to access unfounded case files during an investigation into whether a false report of child abuse or maltreatment was made to the SCR, DOI cannot access those same case files to conduct the same investigation even though DOI is charged with long-term and pre-arrest investigations and DOI often receives reports from the public about this type of false reporting.
- Investigations into Fatalities: Under an agreement between DOI, ACS, and OCFS, ACS requests an OCFS authorization on DOI's behalf when a child dies with an open child abuse or maltreatment case, or with a history of indicated child abuse or maltreatment cases in the past ten years. DOI is notified of the fatality if and when OCFS grants that request. Only then can DOI determine whether an independent investigation is warranted. Additionally, because DOI cannot access records related to unfounded or CARES cases, DOI does not receive the same notification if a child dies with a recent history of only unfounded child abuse or maltreatment allegations or CARES cases. As a result, DOI cannot evaluate child fatalities where children had recently encountered ACS, but where ACS did not indicate any child abuse or where ACS diverted allegations to CARES programming. In those cases, DOI is

blocked from investigating whether those crucial ACS decisions were made appropriately, or if staff misconduct, negligence, or systemic failures played a role. In 2023, ACS investigated forty-five child fatality cases,⁶⁵ but DOI was only notified of twenty-five of them, leaving twenty with no chance of independent oversight. Disturbingly, the cases most in need of oversight, where a child dies after a history of unfounded ACS cases, have the least chance of independent review by DOI under current law.

Even where DOI is notified of these fatalities and is aware of potential misconduct, lack of access to records often prevents DOI from exercising meaningful, comprehensive oversight. In 2025, DOI was notified of eighteen child fatalities where ACS had prior involvement with the family in the last decade, but seventeen had either unfounded or CARES history that DOI was barred from accessing. In 2024, that number was thirteen out of sixteen, and in 2023, it was nineteen out of twenty-five. As a result, DOI is often forced to prematurely conclude during an initial evaluation of a case that no meaningful investigation is possible given the severe state law restrictions on its access to relevant records. This access restriction is particularly problematic because unfounded reports are exactly where one would expect to find lapses in ACS supervision or decision-making; as noted above, the law recognizes as much in granting ACS and OCFS the ability to review them in subsequent investigations. Nevertheless, DOI is hampered in its ability to determine either that lapses occurred or that they did not.

The facts of some of the matters that go without DOI's oversight are truly harrowing given the current state laws. None of the information detailed below was derived from any information received from ACS or OCFS, and each piece of information is attributed solely to a publicly available news article or press release. Due to the access restrictions imposed by current state law, DOI has been unable to fully investigate, or sometimes investigate at all, whether ACS could have done more to protect the children at issue or whether policies and procedures could be strengthened to prevent future fatalities:⁶⁶

- Brian Santiago⁶⁷: In August 2024, the New York Post reported that the bodies of ten-year-old Brian Santiago and his mother were found in their

⁶⁵ New York City Administration for Children's Services, Systemic Child Fatality Review - 2023 Annual Report, available at <https://www.nyc.gov/assets/acs/pdf/data-analysis/2023/annual-child-fatality-report.pdf>.

⁶⁶ No inference should be drawn from any statement or description of the publicly reported events in this report that unfounded or CARES cases did or did not exist regarding any of the individual children named below.

⁶⁷ Reporting summarized in this paragraph is found in the following article: Georgett Roberts et al., Neighbors 'Shocked' by Likely Starving Death of Disabled NYC Boy Who Was *Returned to His Mom*, Demand ACS 'Do Better', THE NY POST (Aug. 16, 2024), available at

apartment. According to the news report, Brian's mother was "investigated by the ACS and even had her son temporarily removed from her care at some point before she died, leaving her special-needs boy, who used a feeding tube, to likely starve to death." If the press reporting on these ACS interactions is accurate, DOI has been unable to assess whether those earlier interactions could have led to interventions that may have saved Brian's life.

- Joseph Heben, Jr.⁶⁸: In November 2024, The New York Times and silive.com reported that in July 2024, one-month-old Joseph Heben, Jr. died of severe malnutrition. The child's parents were both charged with murder and their prosecutions are ongoing. To the extent Joseph's family had any interactions with ACS prior to his death that were unfounded or handled as CARES cases, DOI has no ability to investigate those interactions under current state law.
- Nazier Millien⁶⁹: In April 2025, the New York Post reported that eight-year-old Nazier Millien, who had a feeding tube, died in his home after his mother died, likely leaving him to starve to death; Nazier's younger, four-year-old sister survived for days by eating chocolate. The New York Post further described that in the days before the bodies were discovered, both the New York Police Department (NYPD) and ACS allegedly "knocked on the family's door – but simply walked away."⁷⁰ The New York Post also

<https://nypost.com/2024/08/16/us-news/neighbors-shocked-by-death-of-disabled-boy-demand-acs-do-better/>.

⁶⁸ Reporting summarized in this paragraph is found in the following articles: Hurubie Meko & Mark Bonamo, *Starvation Death of 1-Month-Old on Staten Island Is Rule a Homicide*, THE NEW YORK TIMES (Nov. 6, 2024), available at <https://nypost.com/2025/04/19/us-news/nyc-mom-son-found-dead-inside-squalid-bronx-apartment-cops/>; Kyle Lawson, *Hours After Staten Island baby's death, cops spoke with parents at hospital. Footage played in court*, SILIVE.COM (Jan. 10, 2026), available at <https://www.silive.com/crime-safety/2026/01/hours-after-staten-island-babys-death-cops-spoke-with-parents-at-hospital-footage-played-in-court.html>.

⁶⁹ Reporting summarized in this paragraph is found in the following articles: Marie Pohl et al., *NYC mom, son found dead inside squalid Bronx apartment – where 4-year-old girl was subsisting on chocolate to survive: sources*, THE NY POST (Apr. 19, 2025), available at <https://www.silive.com/crime-safety/2026/01/hours-after-staten-island-babys-death-cops-spoke-with-parents-at-hospital-footage-played-in-court.html>; Georgett Roberts et al., *Here's how NYC's child services agency is failing innocent kids, with sometimes deadly results: 'Doesn't have to come to this'*, THE NY POST (May 4, 2025), available at <https://nypost.com/2025/05/04/us-news/heres-how-nycs-child-services-agency-is-failing-innocent-kids-with-sometimes-deadly-results-doesnt-have-to-come-to-this/>.

⁷⁰ Reporting summarized in this paragraph is found in the following article: Georgett Roberts et al., *Here's how NYC's child services agency is failing innocent kids, with sometimes deadly results: 'Doesn't have to come to this'*, THE NY POST (May 4, 2025), available at

- reported that in 2021, Nazier's mother was arrested on "child abandonment charges after she was caught acting erratically, swinging her then infant daughter around in a stroller and lighting a wig on fire in front of a commercial strip," but the case was sealed. To the extent Nazier's family had any interactions with ACS prior to his death that were unfounded or handled as CARES cases, DOI has no ability to investigate those interactions under current state law.
- De'Neil Timberlake⁷¹: In July 2024, the New York Post and the New York Daily News reported that five-year-old De'Neil Timberlake died from methadone intoxication after De'Neil reportedly ingested his father's methadone. According to the news reports, when police arrived at De'Neil's apartment, they found "him foaming at the mouth." The news articles describe that the NYPD alleged that De'Neil's father was a "methadone user with a long history of child neglect cases." It was further reported in the news that the family's ACS history included "nine investigations – including educational neglect and inadequate guardianship, among others." If this reporting is accurate and any of the ACS investigations that allegedly occurred were unfounded or handled through CARES, DOI would be prohibited from reviewing and analyzing records of those ACS investigations under current state law.
 - Jelayah Eason⁷²: According to a post-indictment press release by the Bronx County District Attorney and news reports from The New York Times and

<https://nypost.com/2025/05/04/us-news/heres-how-nycs-child-services-agency-is-failing-innocent-kids-with-sometimes-deadly-results-doesnt-have-to-come-to-this/>.

⁷¹ Reporting summarized in this paragraph is found in the following stories: Annika Pergament, *A closer look into the city's Administration for Children's Services*, SPECTRUM NEWS NY 1 (Oct. 28, 2024), available at <https://ny1.com/nyc/all-boroughs/public-safety/2024/10/29/a-closer-look-inside-the-city-s-administration-for-children-s-services>; Amanda Woods et al., *NYC boy, 5, found foaming at the mouth had methadone in system, father has history of neglect cases: cops*, THE NY POST (Jul. 17, 2024), available at <https://nypost.com/2024/07/17/us-news/nyc-boy-5-found-foaming-at-mouth-had-methadone-in-system-father-has-history-of-neglect-cases-cops/>; Rocco Parascandola & Elizabeth Keogh, *Boy, 5, found dead in Bronx apartment had methadone in his system, cops*, THE NY DAILY NEWS (Jul. 17, 2024), available at <https://www.nydailynews.com/2024/07/17/boy-5-found-dead-in-bronx-apartment-had-methadone-in-his-system-cops-say/>.

⁷² Information summarized in this paragraph is found in the following sources: Press Release, *Bronx Mom Indicted in Murder of 6-Year-Old Daughter; Hanged Her in Closet and Beat Her*, BRONX COUNTY DISTRICT ATTORNEY'S OFFICE (May 28, 2024), available at <https://www.bronxda.nyc.gov/downloads/pdf/pr/2024/41-2024%20Lynija-Eason-indicted-murder-6-year-old-daughter.pdf>; Annika Pergament, *Three months after 6-year-old's death, her body remains in a city morgue*, SPECTRUM NEWS NY 1 (Aug. 28, 2022), available at https://ny1.com/nyc/bronx/public-safety/2023/08/22/three-months-after-6-year-old-s-death--her-body-remains-in-a-city-morgue-?utm_source=chatgpt.com; Erin Nolan, *Bronx Woman Charged with*

NY1, in May 2023, six-year-old Jelayah Eason died. The New York City Office of the Chief Medical Examiner ruled that the cause of death was child abuse. According to news reports, Jelayah's mother allegedly caused her daughter's death by "hanging her by her wrists in a closet of their home and repeatedly striking her with a hard object." According to the publicly available records, when police entered the apartment, they found soiled clothing and rotting food. Jelayah's mother was charged with her murder and the prosecution is ongoing.

According to NY1, in March 2023, ACS substantiated a "claim that the children were left home alone," and the children were last seen by ACS in early May, just before Jelayah's death. Additional press reporting stated that Jelayah's mother was the subject of an ACS unfounded child abuse or maltreatment investigation in 2022, after it was alleged that Jelayah's older brother was seen at school with a bruised and swollen face and told his teacher that his mother kicked and punched him. If this reporting is accurate and there was in fact an ACS investigation in 2022 that was unfounded or handled through CARES, DOI would be prohibited from reviewing and analyzing those records under current state law.

- The Merdy Children⁷³: According to a post-indictment press release by the Kings County District Attorney and news reports by NY1, the New York Post, and the New York Daily News, in September 2022, seven-year-old Zachary Merdy, four-year-old Liliana Stephens Merdy, and three-month-old Oliver Bandarev died after their mother allegedly brought them to the beach near their home in Coney Island and drowned them. According to these publicly available sources, the NYPD found the two older children "lying on the shoreline unresponsive, wet, and with sand on their bodies." The children's mother was charged with the children's murders and her prosecution is ongoing.

According to the press reports, Zachary's father reported that after a mandated visit, the child's mother would hand Zachary over "dirty and

Murder in Death of Her 6-Year-Old Daughter, THE NEW YORK TIMES (Apr. 26, 2024), available at <https://www.nytimes.com/2024/04/26/nyregion/bronx-mother-charged-child-death.html>.

⁷³ Press Release, *Brooklyn Mother Indicted for Killing her Three Children*, KINGS COUNTY DISTRICT ATTORNEY'S OFFICE (Oct. 6, 2022), available at <https://www.brooklynnda.org/2022/10/06/brooklyn-mother-indicted-for-killing-her-three-children/>; Corey Kilgannon & Chelsia Rose Marcius, *Children's Drownings Mark the End of a Mother's Descent*, THE NEW YORK TIMES (Sept. 18, 2022), available at <https://www.nytimes.com/2022/09/18/nyregion/coney-island-drownings-children-mother.html>; Hurubie Meko & Chelsea Rose Marcius, *Father Says He Sought Custody Before 3 Children Drowned in Brooklyn*, THE NEW YORK TIMES (Sept. 16, 2022), available at <https://www.nytimes.com/2022/09/12/nyregion/three-children-dead-coney-island.html>.

hungry” and Zachary also told his father that his mother “makes [him] starve.” Zachary’s father told the media that “it didn’t matter how much [he] called child protective services. They would tell [him], ‘Oh, you don’t have any real evidence.’ But they didn’t do a real investigation.” Despite the reportedly sincere concerns of Zachary’s father described in the news, if any of the ACS investigations that Zachary’s father alleges took place actually occurred and were unfounded or handled through CARES, DOI would be prohibited from reviewing and analyzing those records under current state law.

- Jah’Meik Modlin⁷⁴: According to a post-indictment press release by the New York County District Attorney and news reports by The New York Times, four-year-old Jah’Meik Modlin died in June 2024, reportedly from child abuse including starvation and neglect. Jah’Meik’s parents allegedly “actively starved their children for approximately two years while purchasing food for themselves on a daily basis. The apartment had a working refrigerator that contained fresh produce but was turned so that the door was facing the wall and could not be opened. Any cabinet containing food had a zip tie on the handle.” Additionally, according to the publicly available news sources, the walls in one of the bedrooms was reportedly “smeared with feces the approximate height of a child” and was the only room in the apartment with an outside lock. At the time of his death, Jah’Meik weighed only approximately 19 pounds, had almost no body fat, and suffered from malnutrition, dehydration, and starvation. Ultimately, Jah’Meik’s parents were charged with his murder and their prosecution is ongoing

The press articles further reported that Jah’Meik’s parents were the “subject of no less than four ACS neglect reports since 2019 – yet were allowed to retain custody of the boy and his three siblings.” The press also reported that the family had a 2022 ACS case that was closed as unfounded because ACS did not find sufficient evidence that the children were being maltreated and that the family had a 2020 ACS case that was closed as unfounded wherein the parents were allegedly using drugs around the children and inadequately supervising their children. To the extent this

⁷⁴ Press Release, *Parents of 4-Year-Old Jahmeik Modlin Indicted for Murder*, MANHATTAN DISTRICT ATTORNEY’S OFFICE (Nov. 6, 2024), available at <https://manhattanda.org/d-a-bragg-parents-of-4-year-old-jahmeik-modlin-indicted-for-murder/>; Andy Newman, *a 4-Year-Old Starved to death at Home. How were the Signs Missed?*, THE NEW YORK TIMES (Oct. 23, 2024), available at <https://www.nytimes.com/2024/10/23/nyregion/jahmeik-modlin-dead-nyc-acs.html>; Andy Newman, *Aunt of 4-Year-Old Who Starved to Death is Suing Child-Welfare Agency*, THE NEW YORK TIMES (Oct. 24, 2024), available at <https://www.nytimes.com/2024/10/24/nyregion/child-death-harlem-acs-lawsuit.html>.

press reporting is accurate and there was in fact a prior unfounded ACS investigation, DOI would be prohibited from reviewing and analyzing those records under current state law.

ACS's response to the Jah'Meik Modlin case is noteworthy to exemplify the need for DOI's independent oversight in these critical matters. Then-ACS Commissioner Jess Dannauser testified before the New York City Council about Jah'Meik's death, stating that the agency was assembling a multidisciplinary expert panel⁷⁵ to assess what could have been done differently.⁷⁶ Additionally, in a television interview, Commissioner Danhausser said that ACS would conduct an in-depth review of the case to identify policies, practices, and services that could be strengthened, but wants ACS to "understand all the facts of this case before we publish any results."⁷⁷ To date, ACS has not published any findings from the multidisciplinary expert panel or its in-depth review. Historically, ACS has published very little about details of cases like these, stating that legal restrictions, confidentiality, and the privacy interests of the decedent's surviving siblings prevent additional disclosure.⁷⁸

By contrast, even limited by the access restrictions discussed above, DOI has a history of bringing important issues in ACS's handling of child welfare matters to the public's attention, while recommending changes for ACS to address those issues. In 2007, DOI worked jointly with ACS to review eleven child fatalities after reports of abuse or maltreatment.⁷⁹ Because DOI partnered with ACS, it could review unfounded cases. In its investigation, DOI determined that "ACS staff often closed cases as 'unfounded' when little or no investigation had been conducted" and even "often closed cases as 'unfounded' after their investigation had substantiated the factual allegations of the report."⁸⁰ DOI's review resulted in twenty-six

⁷⁵ Notably, this panel would not include DOI representation.

⁷⁶ ACS Testimony to New York City Council Committees on Finance & Children and Youth (May 19, 2025), available at <https://legistar.council.nyc.gov/Calendar.aspx>.

⁷⁷ 'Heartbreaking': ACS responds to 4-year-old Harlem boy's death, PIX11 (Oct. 31, 2024), available at <https://pix11.com/news/morning/heartbreaking-acs-responds-to-concerns-over-4-year-old-harlem-boys-death/>.

⁷⁸ Spectrum News Staff, *Full interview: ACS commissioner on agency changes*, SPECTRUM NEWS NY 1 (Apr. 24, 2023), available at <https://ny1.com/nyc/all-boroughs/public-safety/2023/04/23/full-interview-acs-commissioner-on-agency-changes>.

⁷⁹ Rose Gill Hearn, DOI & John B. Mattingly, ACS, *A Department of Investigation Examination of Eleven Child Fatalities and One Near Fatality* (Aug. 2007), available at https://www.nyc.gov/assets/doi/reports/pdf/2007/2007-08-09-Acsreport_pdfaug.pdf.

⁸⁰ *Id.* at 89.

recommendations to improve ACS's case handling.⁸¹ In 2016, DOI concluded an investigation into two child fatality cases and one near-fatality case that resulted in five more recommendations.⁸² During this investigation, DOI “did not have access to[] ‘unfounded’ records,” but nevertheless gathered circumstantial evidence that “raise[d] questions regarding the thoroughness of ACS’s [] investigation[s] and how many other children are left in unsafe homes because of inadequate ACS investigation practice.”⁸³ The following year, DOI investigated ACS's response to additional allegations of abuse and neglect and issued nine more recommendations.⁸⁴

But as there continue to be unfounded investigations and the volume of cases diverted to CARES grows annually, the kind of oversight that DOI has long provided to ACS—for the betterment of the children ACS protects—becomes more difficult. Removing DOI's access restrictions would allow DOI to continue to help ACS protect New York City's children and would also allow DOI to bring ACS personnel who violate the law at the expense of children's safety to justice.

V. The Effect and Importance of State Legislation to Amend the SSL

DOI has spent years negotiating with OCFS leadership to improve the process by which DOI seeks and receives OCFS authorization for records. OCFS has repeatedly stated that it is simply following its legal obligations and that it does not wish to obstruct or delay DOI's work. For example, in many conversations about the inefficiencies, obstacles, and conflicts of interest in the authorization process, OCFS executive staff have stated they do not wish to “stand in the shoes of DOI” when determining what records are essential to DOI's work, nor do they want to undermine DOI's ability to direct its own investigative process. However, OCFS's statements have not resulted in tangible improvements; to the contrary, the authorization process has become more burdensome over time, even in cases where ACS itself referred the initial allegations to DOI and is cooperating with the investigation. Many of DOI's investigations continue to be delayed by months of negotiations and stymied by OCFS decisions not to authorize access to crucial records. A legislative change that

⁸¹ *Id.* at 117-29. DOI's investigation came at the request of then-ACS Commissioner John Mattingly, who understood that practices needed to be improved. Annika Pergament, *How the city's Administration for Children's Services communicates with the public when an at-risk child dies*, SPECTRUM NEWS NY1 (Apr. 24, 2023), available at <https://ny1.com/nyc/all-boroughs/news/2023/04/21/how-the-acsc-communicates-when-an-at-risk-child-dies>.

⁸² Mark G. Peters, *Report on ACS Policy and Practice Violations Identified in Three Child Welfare Cases and Related Analysis of Certain Systemic Data* (Apr. 2016), available at https://www.nyc.gov/assets/doi/press-releases/2016/may/14-ACSReport05-03-16_FINALwReport.pdf.

⁸³ *Id.* at 14 & n.36.

⁸⁴ Mark G. Peters, *Summary of DOI's Investigation of the City Administration for Children's Services' Response to Abuse and Neglect Allegations Related to Jaden Jordan* (Jan. 26, 2017), available at <https://www.nyc.gov/assets/doi/press-releases/2017/jan/05ACSstmt01-26-2017.pdf>.

removes the need for OCFS to authorize DOI's access to records is necessary to ensure independent oversight. Moreover, the only solution to DOI's lack of access to records related to unfounded and CARES cases is legislative. Because the complete restriction is currently written into law, the law needs to be amended to remove the restriction.

Assemblymember Andrew Hevesi has introduced legislation (A.8248A) that would eliminate each of the five legal barriers to DOI's investigations discussed above, and Senator Brisport has introduced legislation (S.8205) that would eliminate four of the barriers. Specifically, the legislation would:

- Amend SSL § 372(4) to add DOI to the list of entities that are entitled to access confidential records relating to foster care and juvenile detention without the need for OCFS approval;
- Amend SSL § 422(4)(m) to remove the requirement that DOI receive prior approval from OCFS before receiving access to records related to reports made pursuant to the Child Protective Services title of the social services law;
- Amend SSL § 422(5)(a) to authorize DOI to access unfounded reports of abuse or maltreatment for the purpose of investigating an allegation of an improperly conducted investigation by ACS or falsely reporting an incident;
- Amend SSL § 427-a(5)(d) and (e) to authorize DOI to access CARES records;⁸⁵ and
- Amend SSL § 496(2)(m) to remove the requirement that DOI receive prior approval before receiving access to records related to reports made pursuant to the Protection of People with Special Needs title of the social services law.

DOI supports this proposed legislation wholeheartedly.

DOI is aware of the body of work by academics and advocates explaining the sometimes-traumatizing effects child protective service investigations can have on families.⁸⁶ But DOI's mission to investigate City agencies, employees, and vendors for criminality, misconduct, corruption, and systemic failures will not lead to a re-

⁸⁵ This amendment is not included in the bill currently introduced by Senator Brisport.

⁸⁶ See, e.g., Daniella Rohr & Melissa Friedman, *Overreporting and Investigation in the New York City Child Welfare System: A Child's Perspective*, 15 Colum. J. of Race and Law 1160 (2025); Christina N. Schmidt, et al., *Widespread Surveillance by the Child Protection System: Lasting Effects on Families*, 11 Am. J. on Pub. Health e1 (Dec. 2021); Daniel Moritz-Rabson, 'Never Designed To Help': How New York's Child Welfare System Preys on Families, NEW YORK CIVIL LIBERTIES UNION (May 16, 2023).

investigation of families where allegations of child abuse or maltreatment were properly determined to be unfounded. Rather, DOI's investigations will ensure that ACS receives the oversight necessary to ensure that its workers handle cases appropriately. If an ACS child abuse or maltreatment investigation is improperly unfounded or was inappropriately diverted to CARES, that necessarily means that child abuse or maltreatment is being left unaddressed and a child is left unsafe. Such an outcome does not prioritize child safety or children under the care of ACS. And, if DOI can provide comprehensive recommendations to ACS on ways to improve their handling of child welfare investigations, it may reduce the risk that those investigations are handled in manners that are traumatizing in the first instance. The same laws that hamper DOI's criminal investigations also prevent DOI from conducting policy reviews to assess allegations of systemic unfairness, such as racial disparities, in the child welfare system and to offer recommendations on how to improve them.

DOI is not the first law enforcement body to recognize this need for legislative change. As a Suffolk County Supreme Court Special Grand Jury wrote in a 2024 report about the impact of the current confidentiality laws on the ability of law enforcement to investigate mishandled child abuse allegations preceding a child's death: "[T]hose laws and rules, intended to protect the privacy rights of individuals, have had the unintended consequence of shielding an entire agency, its leadership, and its hundreds of employees, from criminal investigation and prosecution. If the government is to be held accountable, that must not be the case."⁸⁷

Previous amendments to the SSL support the legislative goal of increasing ACS's disclosure of information, particularly with respect to fatality investigations. The Child Protective Services Reform Act of 1996, *i.e.*, Elisa's Law, was enacted after six-year-old Elisa Izquierdo was murdered by her mother in 1995, despite the fact that her mother was well-known to child welfare authorities who had not acted on multiple reports of Elisa's abuse.⁸⁸ Prior to Elisa's death, ACS's predecessor agency had unfounded numerous investigations into Elisa's abuse. Documents later revealed

⁸⁷ Suffolk County Supreme Court Special Grand Jury, September 14, 2023 – March 14, 2024 Term E Grand Jury Report CPL § 190.85(1)(c) at 60 (Mar. 12, 2024), *available at* https://www.suffolkcountyda.org/wp-content/uploads/Final_GJ_Report_On_CPS_4.3.24_MG_-_small.pdf; *see also id.* at 12 ("evidence of willful misconduct or gross negligence by caseworkers contained within reports deemed unfounded is effectively impossible to obtain by prosecuting authorities").

⁸⁸ Raymond Hernandez, *Law to Ease Disclosures on Child Abuse*, THE NEW YORK TIMES (Feb. 13, 1996), *available at* <https://www.nytimes.com/1996/02/13/nyregion/law-to-ease-disclosures-on-child-abuse.html>; Jo Craven McGinty, *State Keeps Death Files of Abused Children Secret*, THE NEW YORK TIMES (Feb. 28, 2012), *available at* <https://www.nytimes.com/2012/02/29/nyregion/nys-evades-requirement-for-disclosure-on-childrens-deaths.html> (outlining the aim of Elisa's Law, and OCFS's attempts to reverse the reforms).

that child welfare workers had not reviewed these critical past reports when reviewing subsequent abuse allegations.⁸⁹ The Legislature found that the laws “which bar legitimate and appropriate inquiries about the activities of such agencies” and “impair the ability of independent government agencies to determine the effectiveness of services, staff and funding; corrode public trust; and undermine the right of the public to determine whether abused children are being adequately protected.”⁹⁰ As a result, the Legislature increased the degree of permissible disclosure of child welfare information so that ACS and other child welfare agencies would be more accountable to the public and its vulnerable children. But, these amendments did not address DOI's access to the same records. As a result, if Elisa's death were to happen today, just like the above-mentioned child fatality examples, DOI would not be able to access unfounded investigations, severely limiting its ability to conduct a thorough investigation into her death and whether ACS could have prevented it. Passage of the legislation further amending the SSL would correct that problem before additional children fall in harm's way.

VI. Conclusion

Several provisions of the SSL have hampered DOI's ability to meaningfully investigate critically important aspects of ACS's work to protect New York City's vulnerable children. From criminal investigations into whether ACS caseworkers sexually abused children during their casework to programmatic reviews into whether ACS could improve its processes for determining whether allegations of child abuse should be substantiated or not, the SSL restricts DOI's access to records that would enable the kind of oversight that DOI provides to virtually every other City agency. Simply put, these laws leave the City's children less safe, and they should be amended so that DOI can carry out its New York City Charter-mandated responsibility to provide oversight to ACS as it conducts its important work.⁹¹

⁸⁹ Douglas J. Besharov, *Ignoring the Danger Signs of Child Abuse*, NEWSDAY (Apr. 21, 1996).

⁹⁰ Elisa's Law, Child Protective Services Reform Act, 1996 NY Laws S. 5959-A §1 (1996).

⁹¹ A draft of this report was provided to ACS and OCFS for comment. ACS and OCFS provided comments, which DOI considered when finalizing this report.