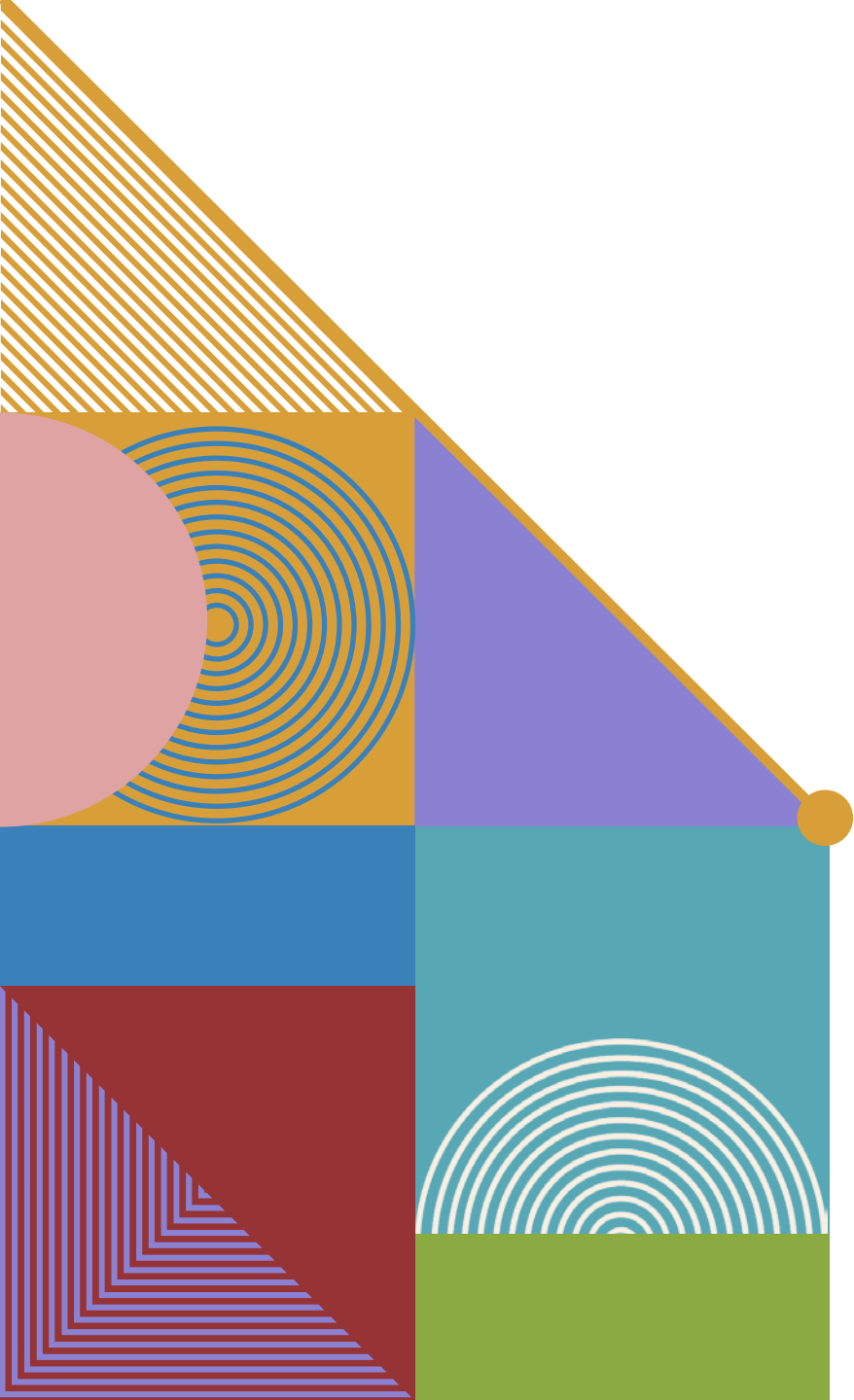




Can I Share It?

Confidentiality, CASA,
and the Law



Presenter

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What We'll Cover

SHARING PROTECTED INFORMATION

- Personal Identifying Information (PHI)
- Protected Health Information (PHI), Laws, Rules, Regs

SHARING IN COURT CASES

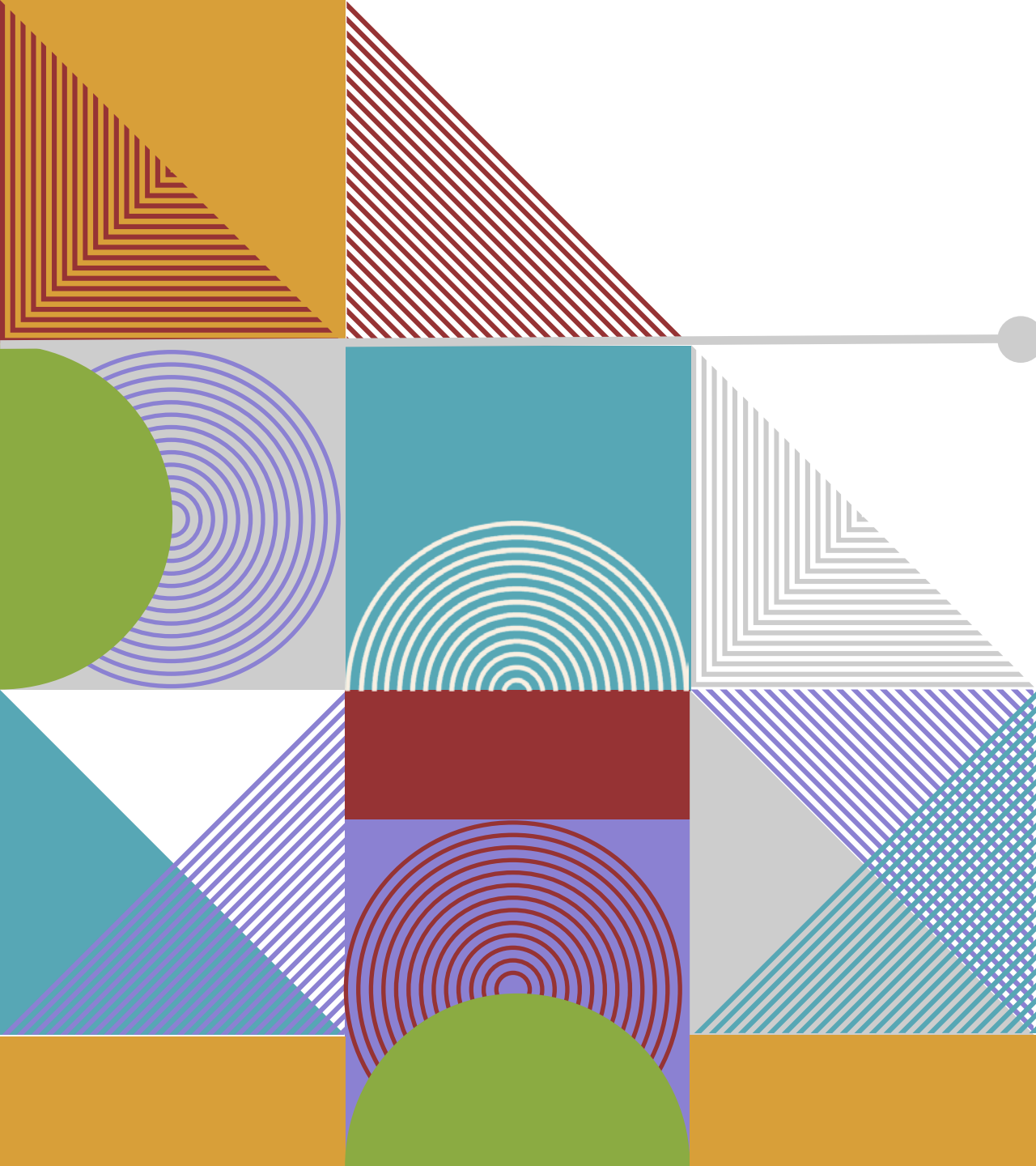
- Discovery, Trial

SHARING WITH THIRD PARTIES

- Texas Public Information Act
- Other third parties seeking data

SHARING BY SLIP-UP

- Scenarios



SHARING CASE INFORMATION



CONFIDENTIAL CASE INFORMATION

PII (Personal Identifying Information) and
PHI (Protected Health Information)

- All Information, communications, records - everything relating to a specific child abuse investigation or child welfare case.
- **PII and PHI include information about ANY CASA case - not just the child subject of CASA appointment**

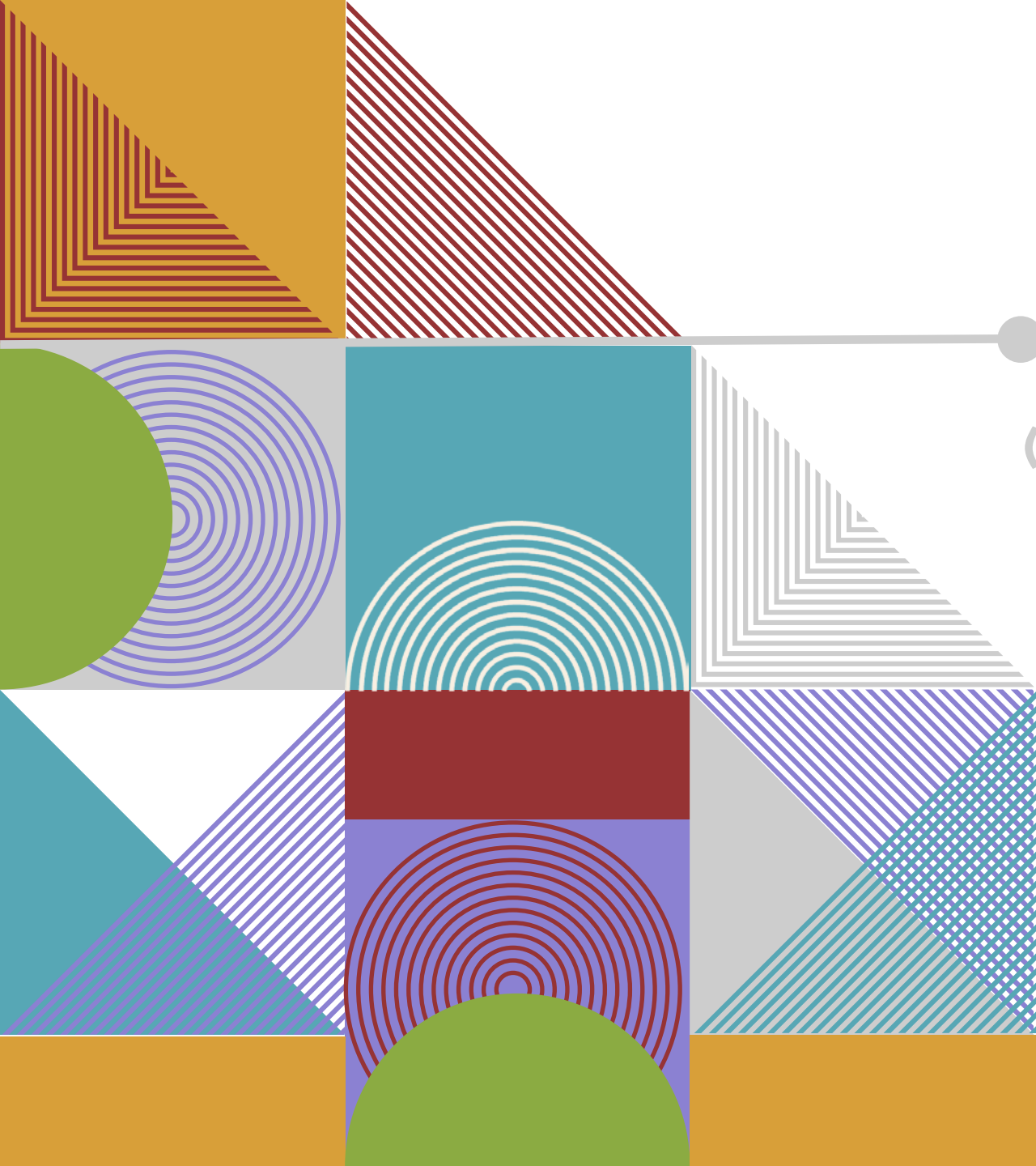


CONFIDENTIAL CASE INFORMATION

- Information is **not yours to share** with anyone outside of the case.
- Your role is that of a **neutral observer**, reporting the facts.
- **Recommendations** belong in the court report.
- *Leave Judgments to the Judge.*

Shhhhh.





SHARING PII

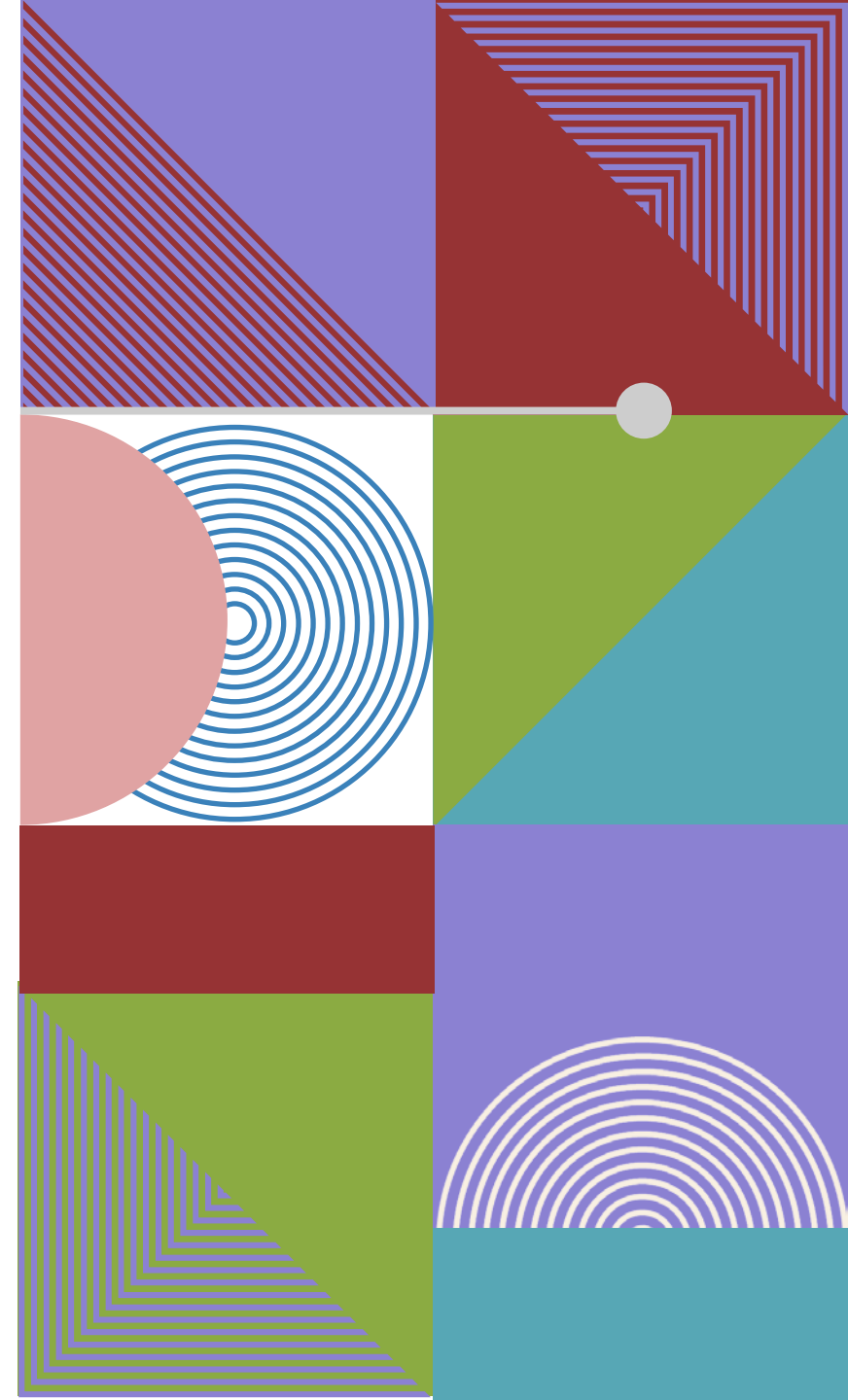
(Personal Identifying Information)

VOCA

VICTIM COMPENSATION AND ASSISTANCE PROGRAM

- Programs are **REQUIRED** to have written confidentiality policies and procedures and **FOLLOW** them
- If not, sanctions can include *individual* fines, penalties, and termination of VOCA funding for the program

VOCA is authorized to conduct a “privacy audit” –review of a program’s privacy policies and controls.



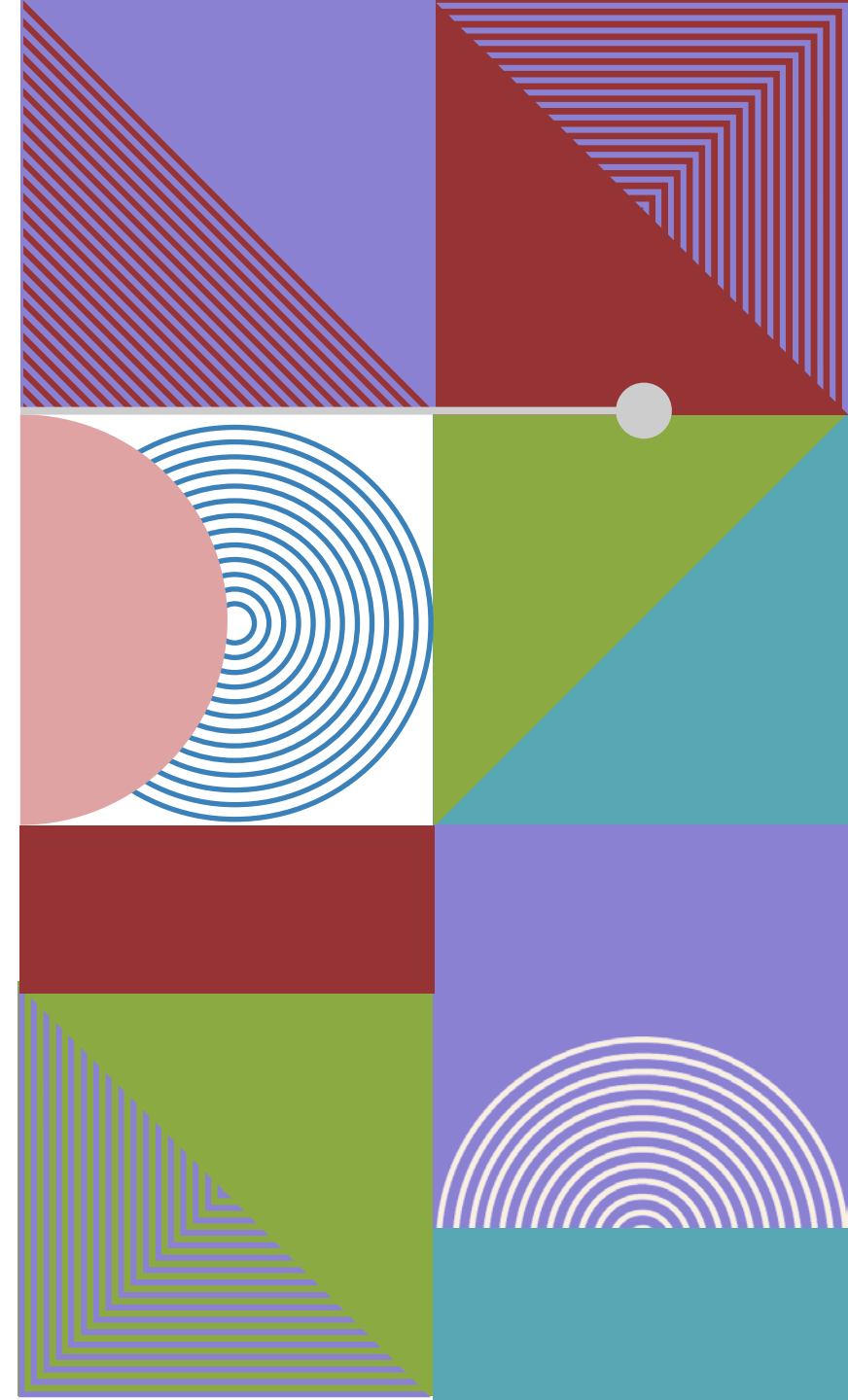
CPS

CASA MOU With CPS

CASA's MOU with CPS states:

"All information and records regarding a child case will be kept confidential.

Local CASA programs will have board-approved written policies and procedures in place to assure confidentiality of case information and records in accordance with TFC 261.201"



CASA

STATEWIDE PROGRAM CONFIDENTIALITY STANDARDS

4.B.1. Policies and Procedures

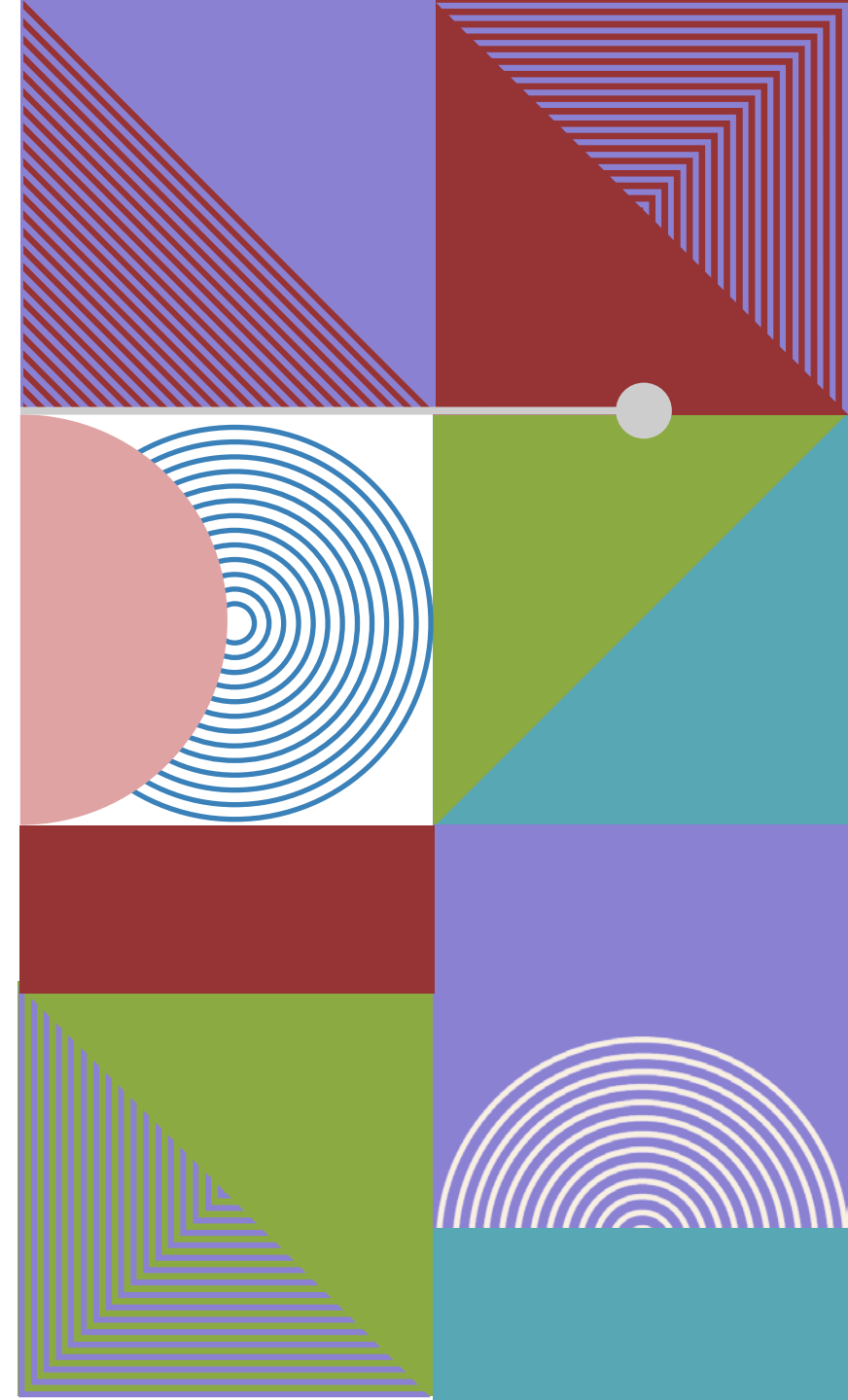
Must have written policies and procedures regarding access, use, and release of information.

4.B.3. Volunteer Confidentiality Oath and Statements

Volunteers must take an oath after training AND sign a confidentiality statement for each case they accept.

4.B.4. Staff and Board Confidentiality Statements

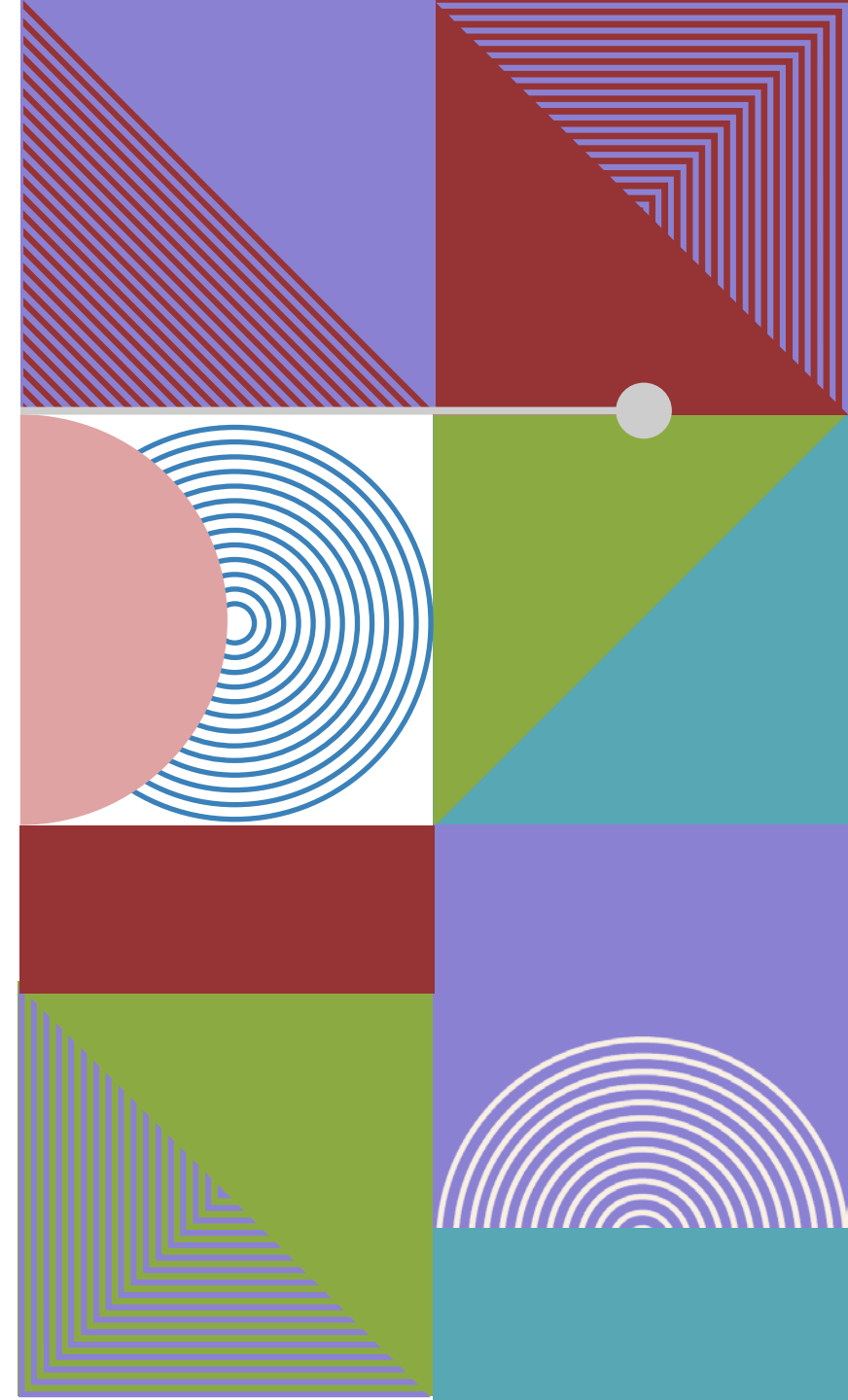
Staff must sign a confidentiality statement when hired. Board must sign a statement when they join.



CASA

4.B.9. The program shall not share, except as state law or court order allow, the following:

- the child's full **name**;
- the child's **location**;
- the child's **placement**;
- the child's **history** of abuse and neglect;
- records regarding **social services**,
- law **enforcement records**,
- **school** records,
- Records of a probate or **court proceeding**,
- **Medical, mental health or drug or alcohol treatment** record;
- *or any relevant records related to the child obtained as Guardian ad Litem or CASA advocate.*



FAMILY CODE

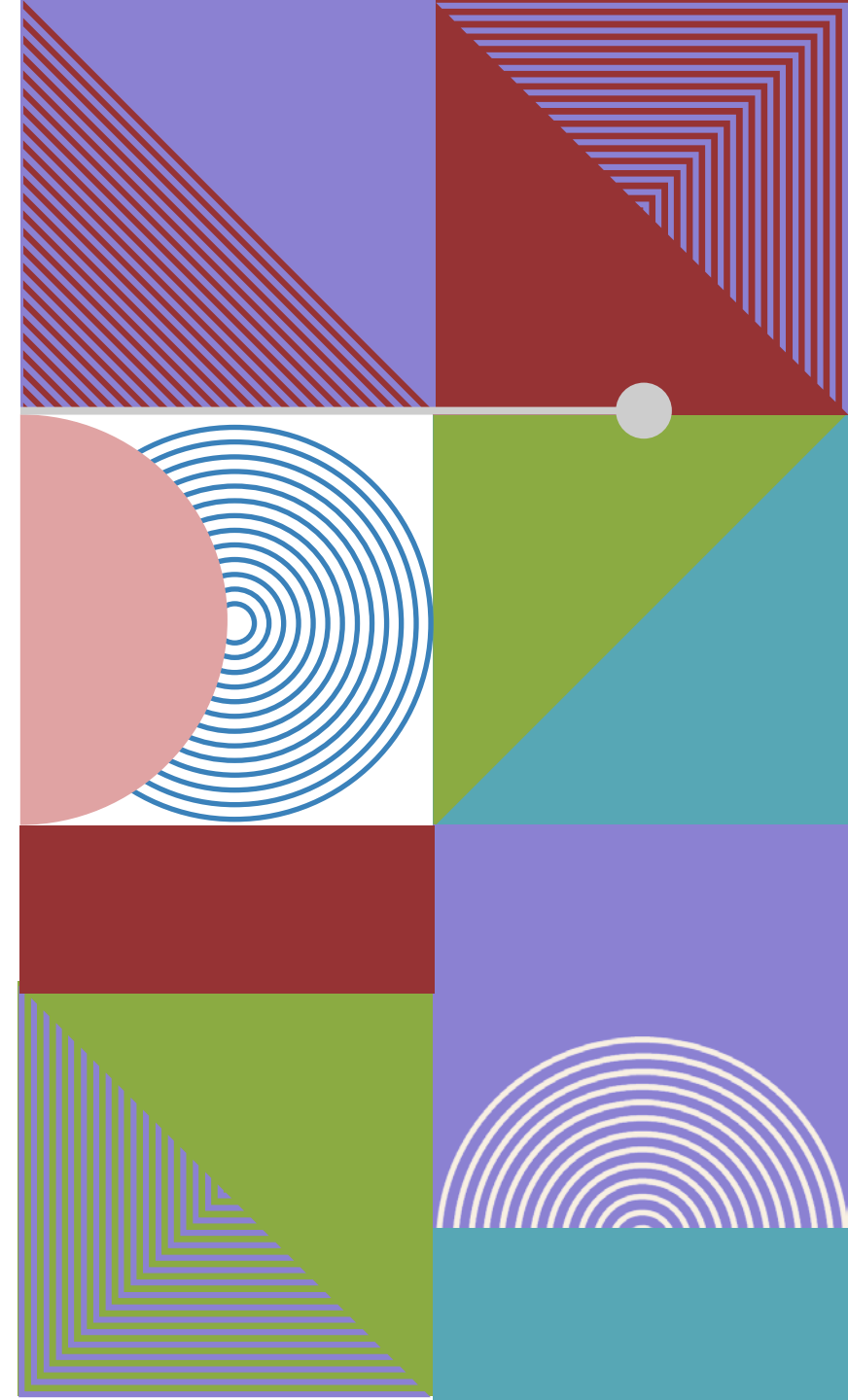
CHILD ABUSE INVESTIGATION

Information about a *child abuse investigation* is confidential; no disclosure without notice of hearing and court order.

Even *with* a court order *after* a hearing, disclosure must be:

- essential to the administration of justice; and
- not likely to endanger the life or safety of the child or anyone else participating in the investigation.

Confidentiality and Disclosure of Information – TFC 261.201(a)



FAMILY CODE

CHILD WELFARE

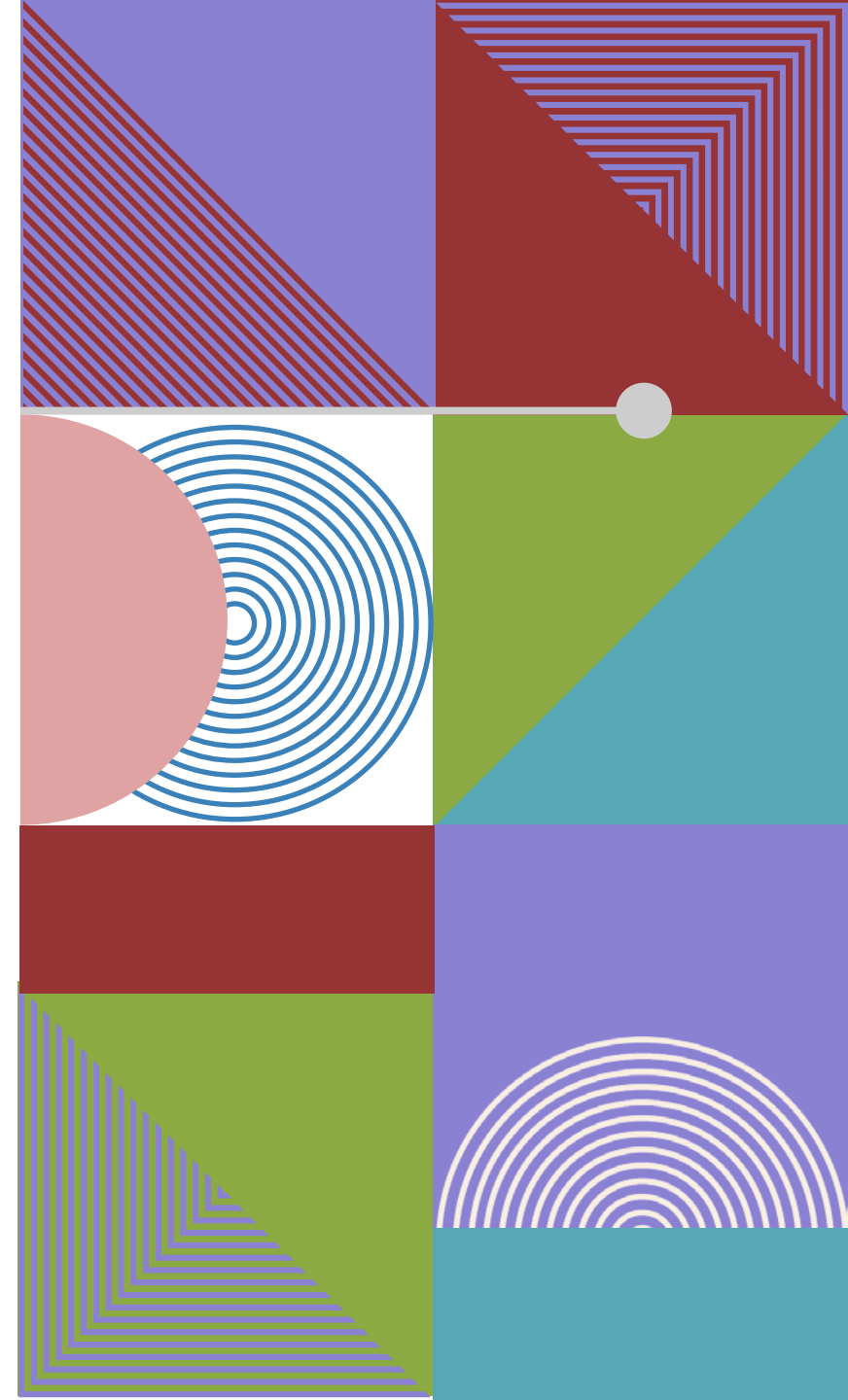
Everything related to providing services in a *child welfare case* (reports, communications, etc.) is confidential.

Disclosure is allowed to:

- DFPS, law enforcement, prosecuting attorneys, medical professionals, state agencies serving children and families;
- AAL for child; and
- Eligible children's advocacy centers

-Statute doesn't mention GALs

Use of Information and Records; Confidentiality - 264.613 (a)



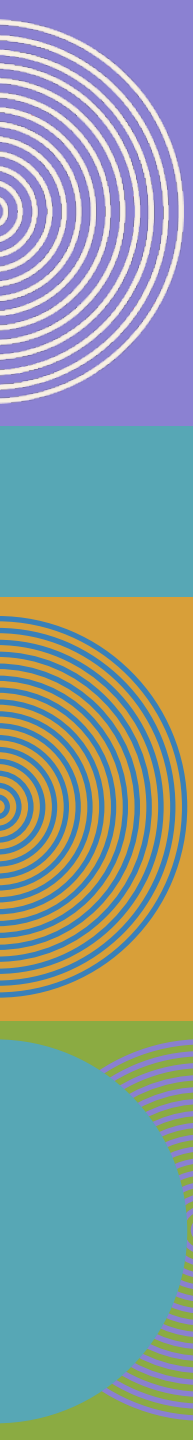
TX BUS & COMM. CODE

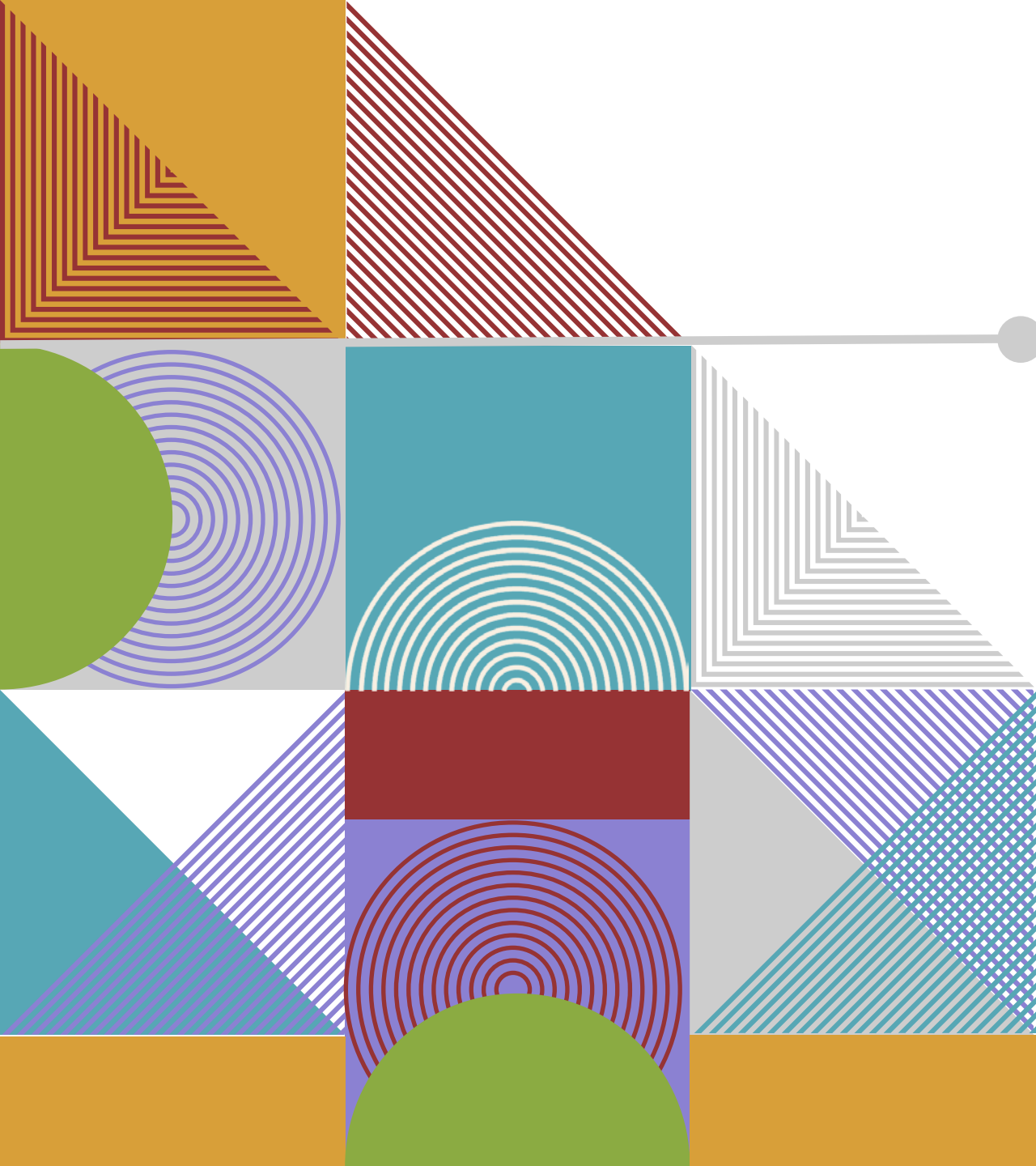
AFFIRMATIVE DUTY TO PROTECT PII

PERSONAL IDENTIFYING INFORMATION

what is it?

- First name or initial, and last name
- SSN, DOB
- Mother's maiden name
- Driver's license or gov't-issued ID number
- Unique biometric data
- Account numbers
- Health information



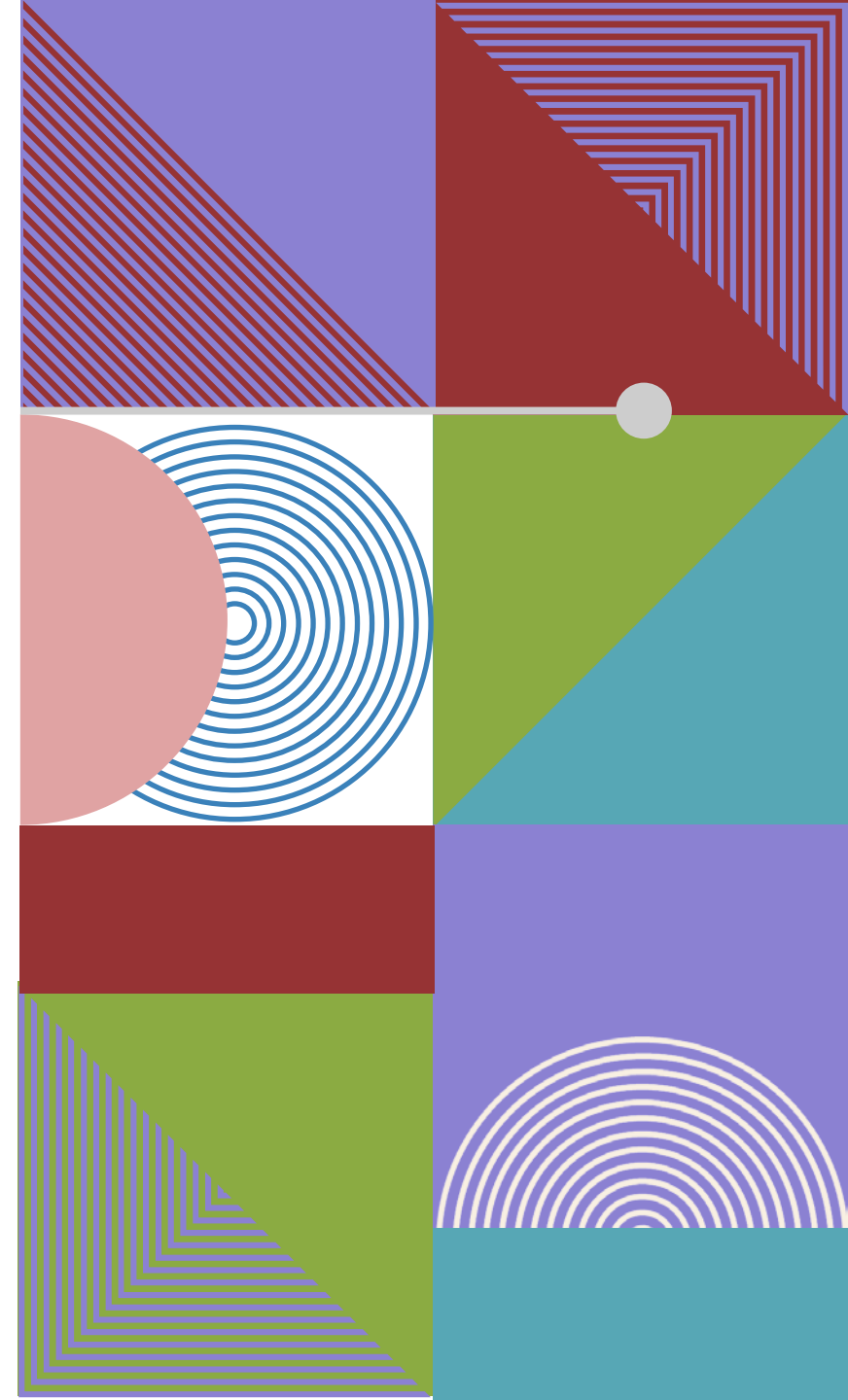


SHARING PHI

(Protected Health Information)

PROTECTED HEALTH INFORMATION

“all individually identifiable health information that is held or transmitted in any form or media, whether electronic, paper, or oral.”



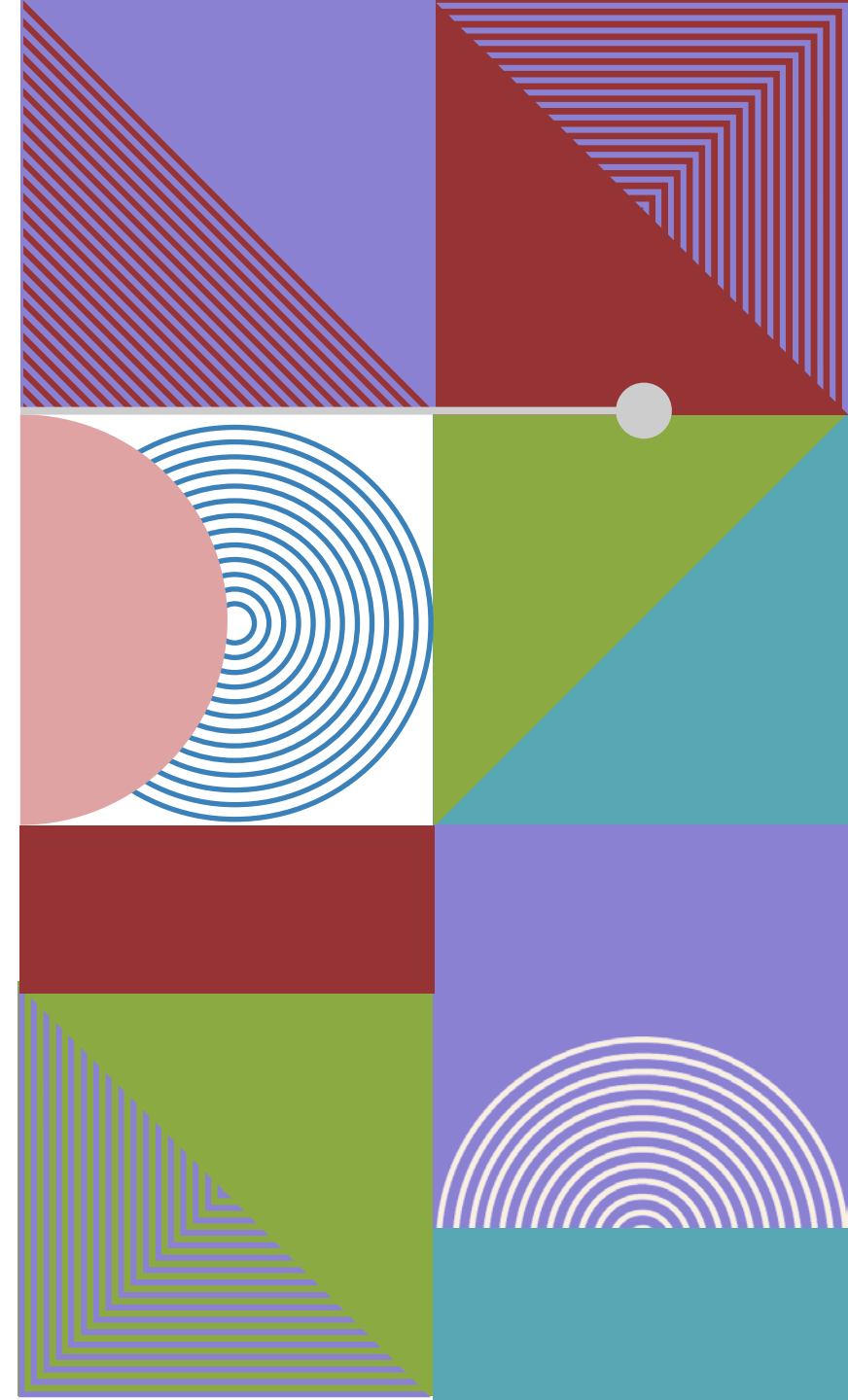
HIPAA

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

Entities covered by HIPAA include health care providers, health plans, and entities that process health insurance claims.

Those covered by HIPAA can disclose PHI only

- At the individual's own request
- Via valid, written release
- Via a subpoena or court order

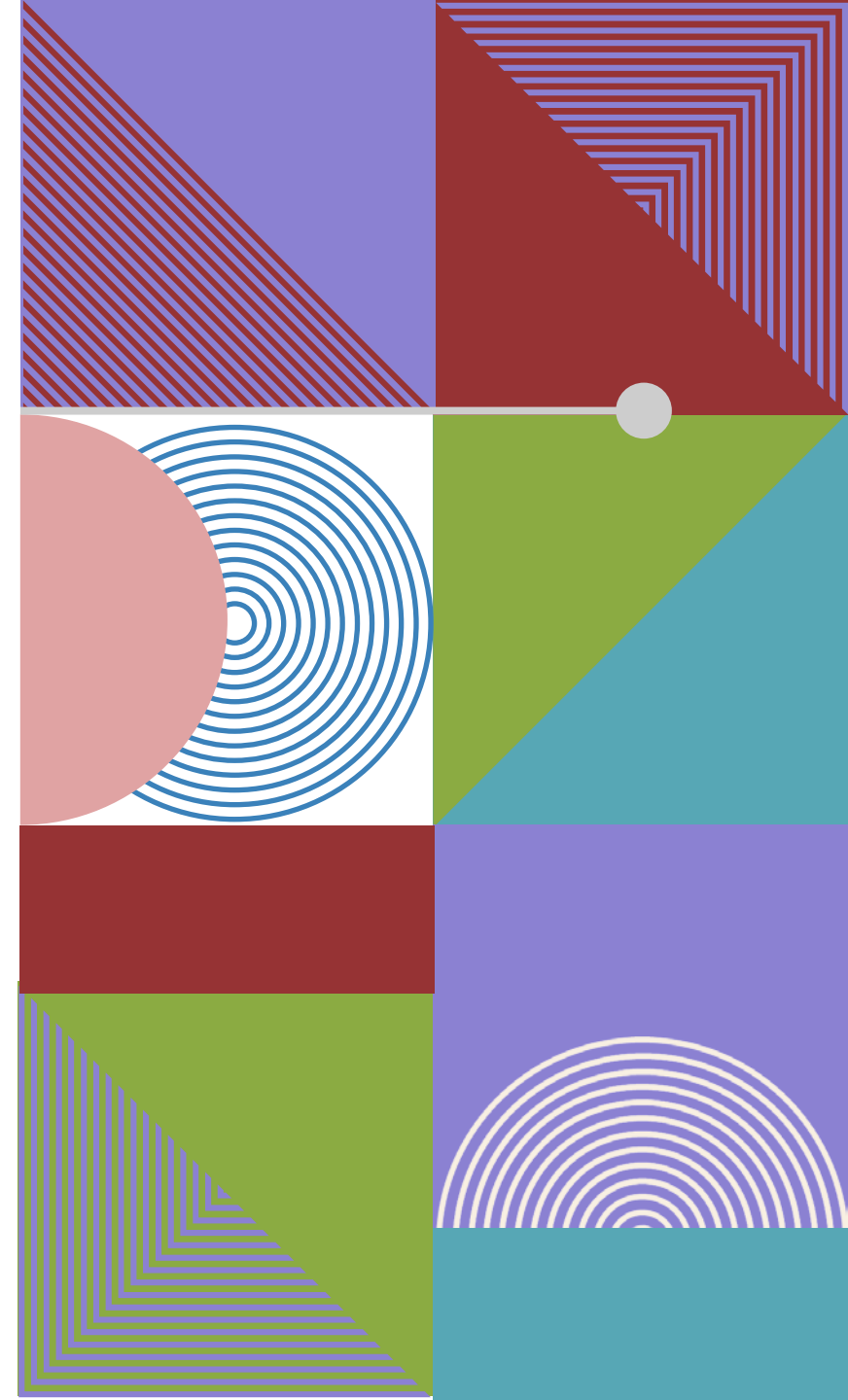


PROTECTED HEALTH INFORMATION

PHI includes TMRPA – Texas Medical Records Privacy Act – greater confidentiality protection mental health and medical information than HIPAA. TMRPA gives an individual a greater right of access to their PHI than HIPAA

If conflict between HIPAA and TMRPA, TMRPA controls.

45 C.F.R. §160.203





MORE PROTECTIONS IN TEXAS

- Psychotherapy\mental health records
- Drug and alcohol treatment records
- Genetic test info and results
- HIV\AIDS records

Separate PHI authorization required for these

(per HB 300, eff 2102) Ch. 611 Tx Health & Safety Code



ABOUT PHI RELEASES

AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION should:

- identify information to be disclosed and to whom (which may change over the course of a case)
- specify expiration date (if none stated, default expiration usually w/in a year)
- specify the use and dissemination of PHI; tailor form to the disclosure sought
- signed and dated.

RELEASE OF PROTECTED HEALTH INFORMATION

OAG developed [HB 300 –compliant release](#)

WHAT INFORMATION CAN BE DISCLOSED? Complete the following by indicating those items that you want disclosed. The signature of a minor patient is required for the release of some of these items. If all health information is to be released, then check only the first box.

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> All health information | <input type="checkbox"/> History/Physical Exam | <input type="checkbox"/> Past/Present Medications | <input type="checkbox"/> Lab Results |
| <input type="checkbox"/> Physician's Orders | <input type="checkbox"/> Patient Allergies | <input type="checkbox"/> Operation Reports | <input type="checkbox"/> Consultation Reports |
| <input type="checkbox"/> Progress Notes | <input type="checkbox"/> Discharge Summary | <input type="checkbox"/> Diagnostic Test Reports | <input type="checkbox"/> EKG/Cardiology Reports |
| <input type="checkbox"/> Pathology Reports | <input type="checkbox"/> Billing Information | <input type="checkbox"/> Radiology Reports & Images | <input type="checkbox"/> Other _____ |

Your initials are required to release the following information:

_____ Mental Health Records (excluding psychotherapy notes)

_____ Genetic Information (including Genetic Test Results)

_____ Drug, Alcohol, or Substance Abuse Records

_____ HIV/AIDS Test Results/Treatment

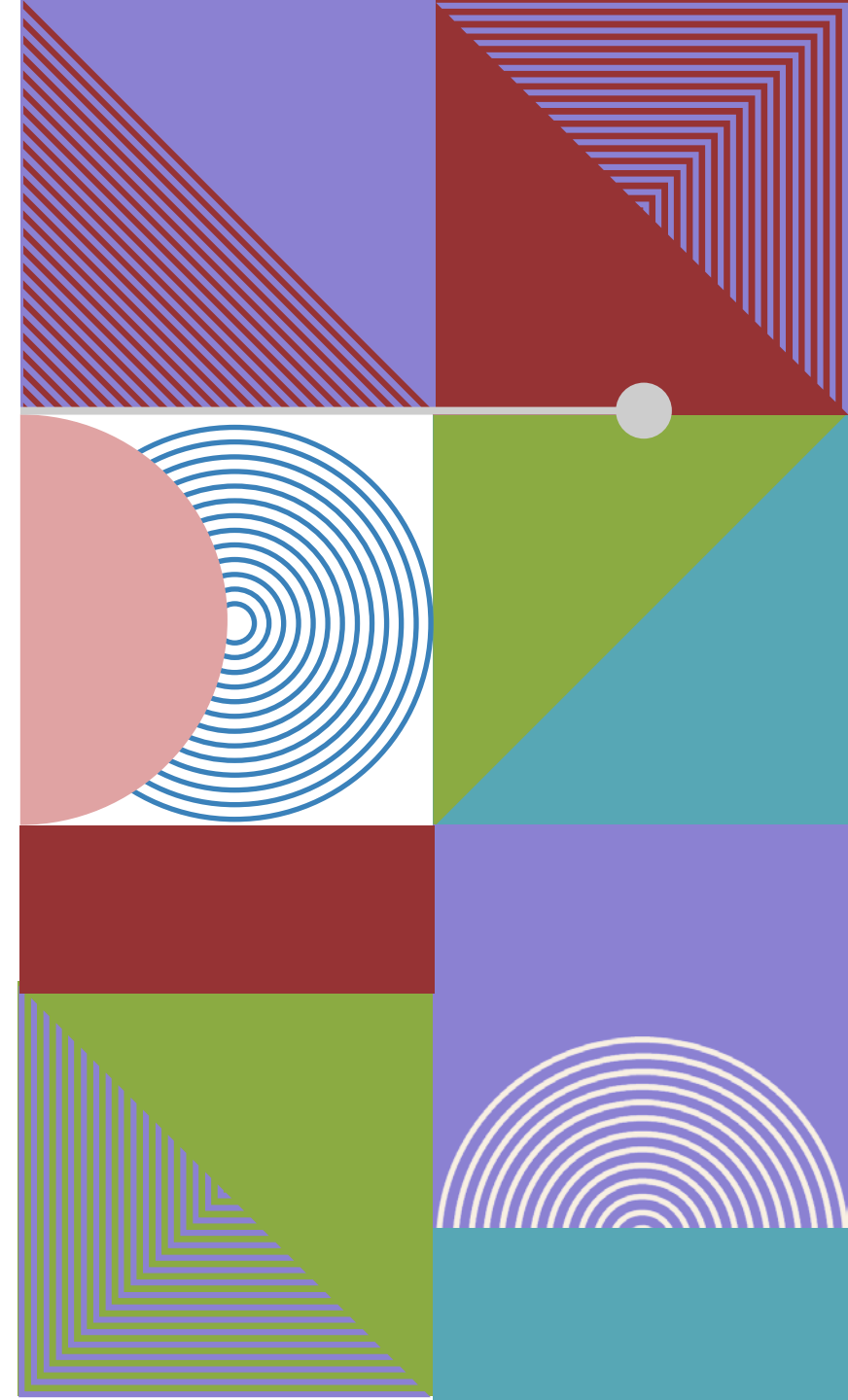
DOES HIPAA APPLY TO CASA PROGRAMS?

NO! **unless they offer a health care/counseling component (e.g. combined with a Child Advocacy Center).*

But ...Where HIPAA leaves off, state law steps in.

TMRPA, Fam Code, CASA standards, agreements with CPS, VOCA grant requirements- **ALL protect PHI...**

Everyone's PHI, not just your client's.

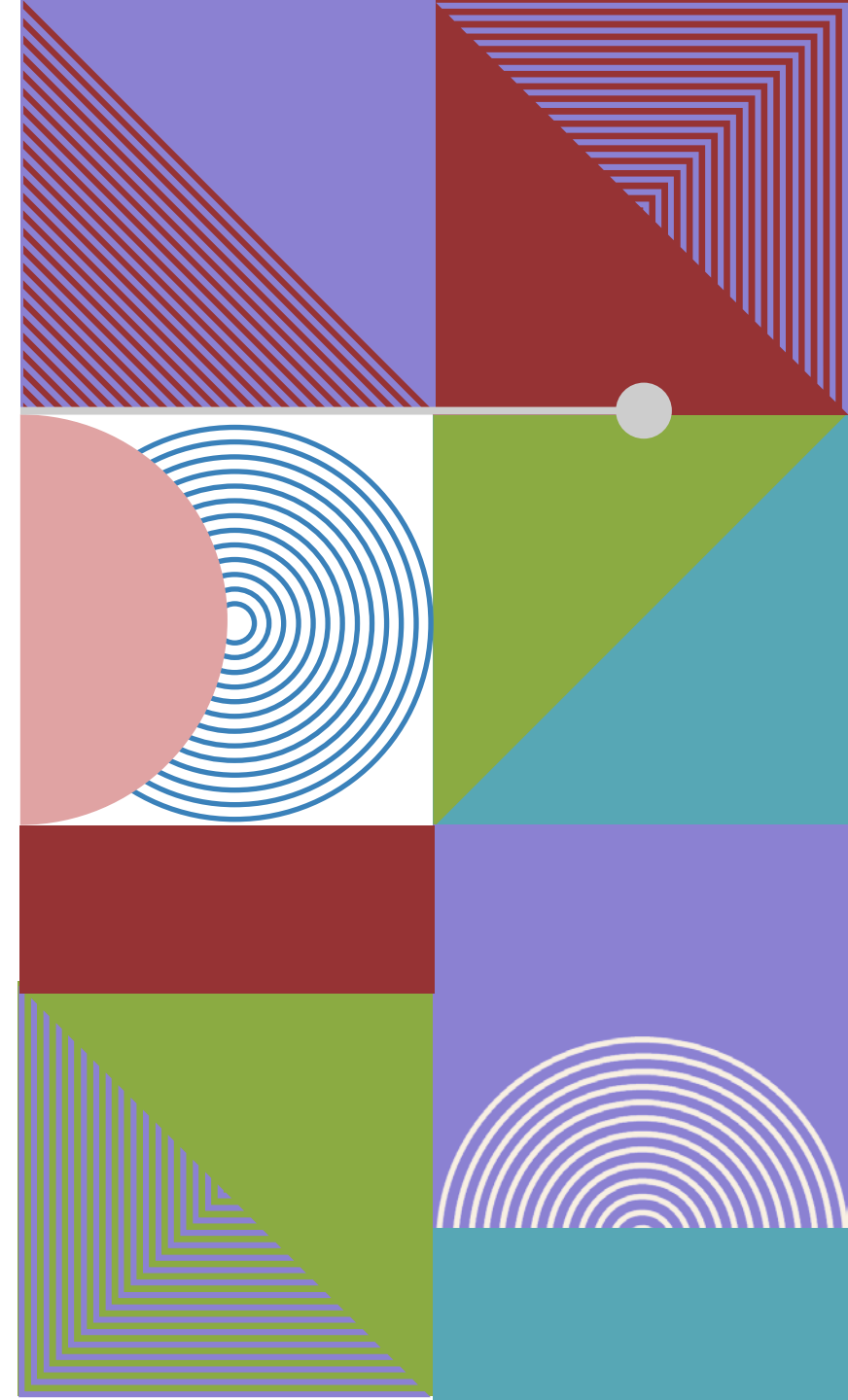


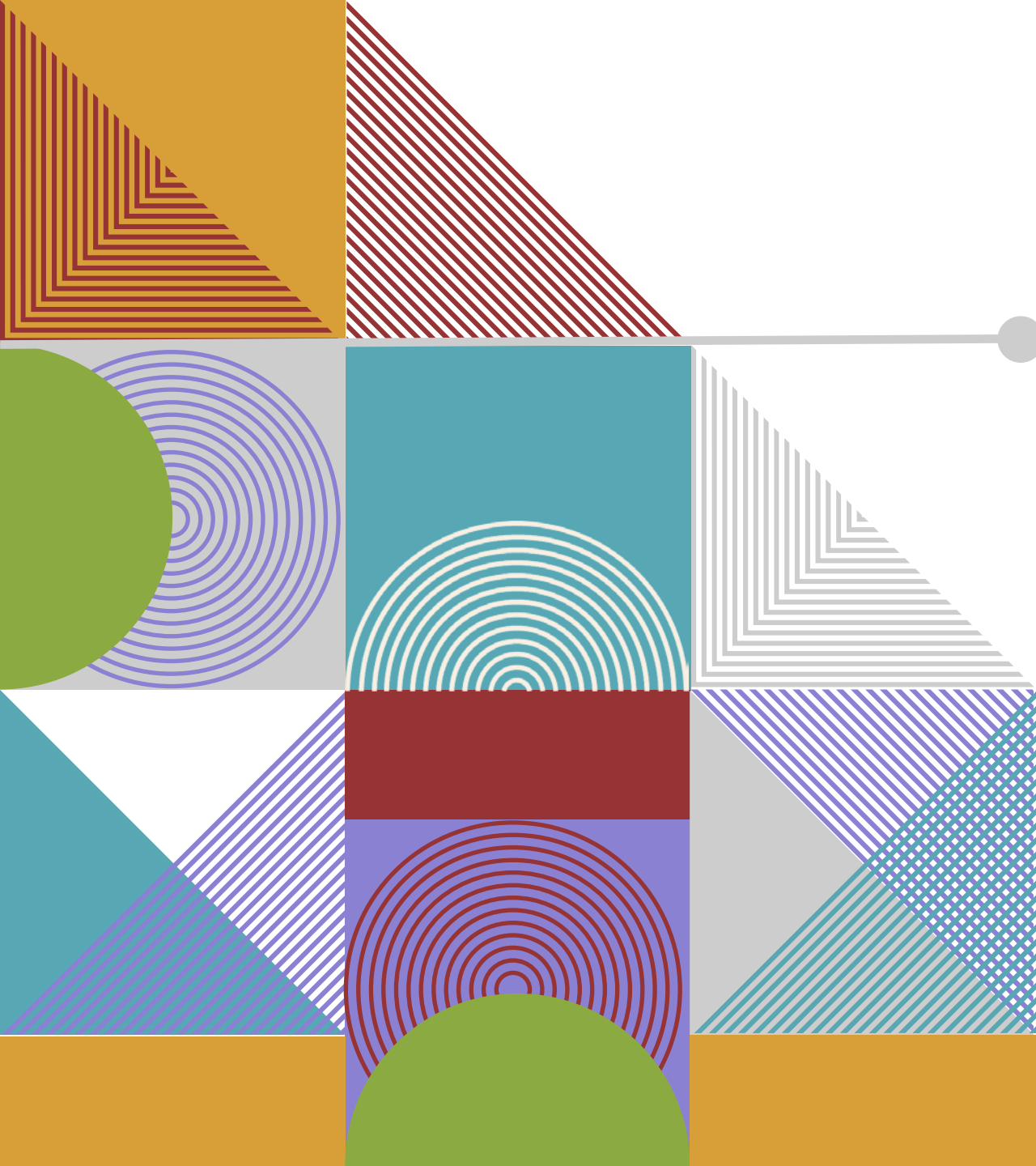
PHI – the Bottom Line

Texas laws apply to ALL people in the child welfare system regardless of whether they are the subject of a case to which you've been appointed.

Chapter 181, Tx. Health & Safety Code (Texas Medical Records Privacy Act, eff. 9-1-12)

Chapter 611, Tx. Health & Safety Code (disclosure of mental health info, eff. 9-1-12)





SHARING IN COURT CASES



DISCOVERY

You can inadvertently violate confidentiality by providing too much information.

Ask: Who's seeking for the information and why?

- Only parties can request discovery.
- As a nonparty, CASA cannot propound discovery, but they can be served with a request.
- A subpoena is a court order. Must be personally served with subpoena. TRCP Rule 176



TRIAL

Hearsay – out of court statement/ made by someone other than the witness/ offered to prove the truth of the matter asserted.

Example:

Witness at trial = CASA

Matter asserted = that child was hit by father.

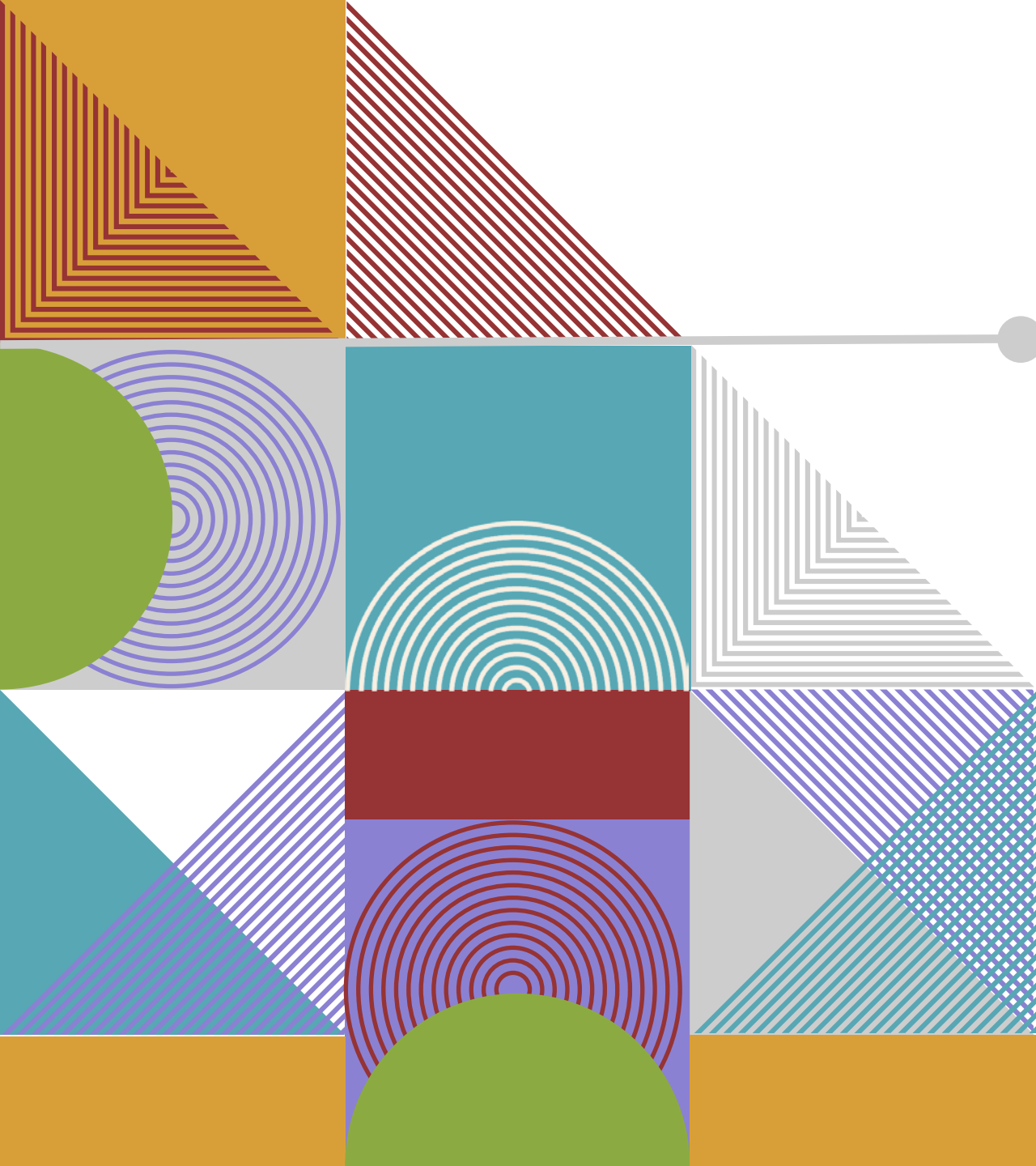
Statement made by someone other than the witness =
Aunt told CASA she saw father hit child.



TRIAL

THIS IS HEARSAY. But there are tons of exceptions.

- Not up to you to decide if it's hearsay, that's up to the lawyers to raise and the judge to rule.
- In court you just need to answer questions truthfully and based on first hand knowledge.
- What does this have to do with confidentiality?
- If you said the child was hit, may open the door to disclosure of PHI



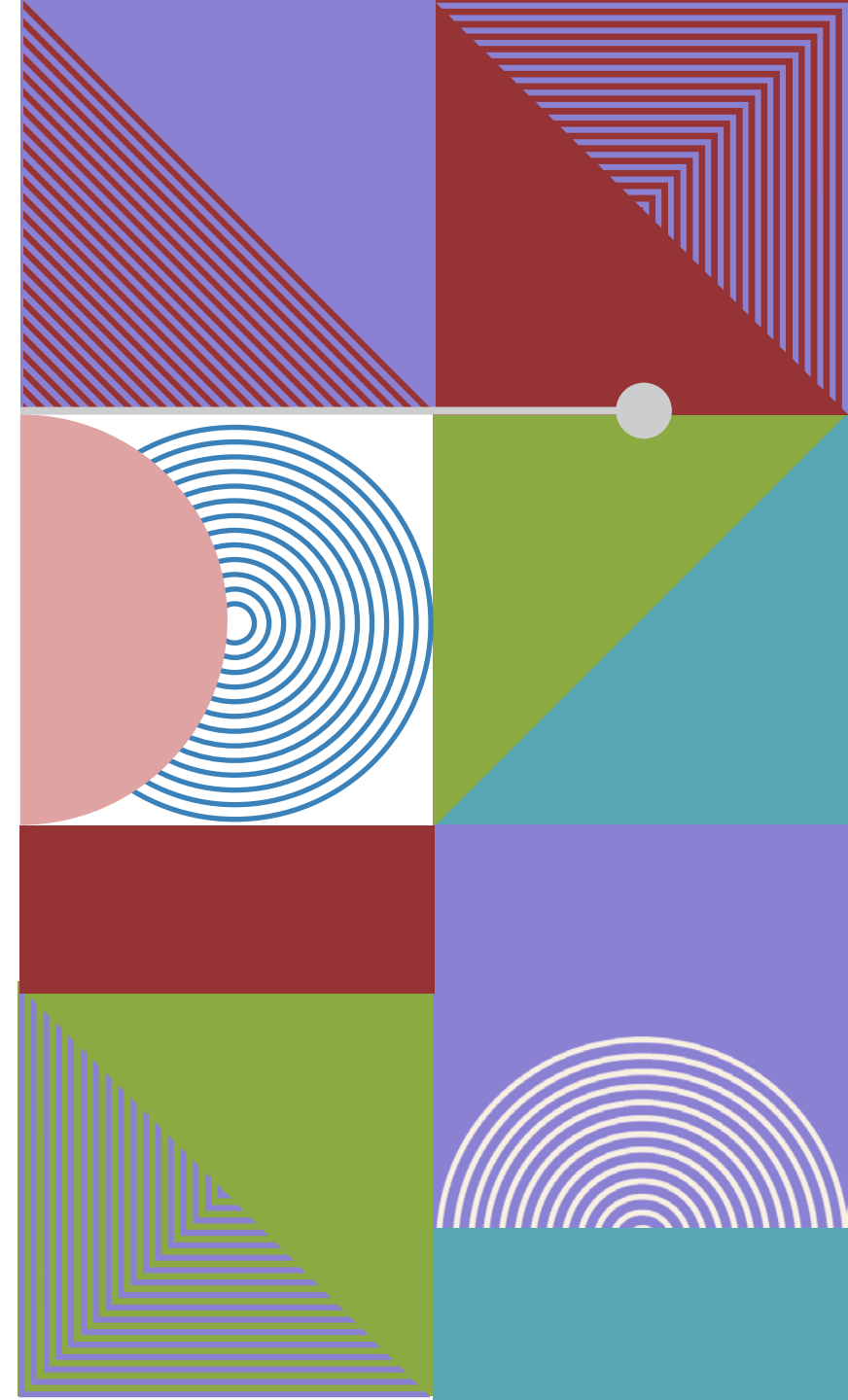
SHARING WITH THIRD PARTIES

TEXAS PUBLIC INFORMATION ACT

Texas Public Information Act – Law allows public to inspect or copy government records. Government records can also include entities that receive federal or state funds – “public money”. is in Chapter 552, Government Code

All information relating to child abuse or services for abused children are specifically excepted from Texas PIA

Therefore, CASA programs are not subject to Texas PIA requests.

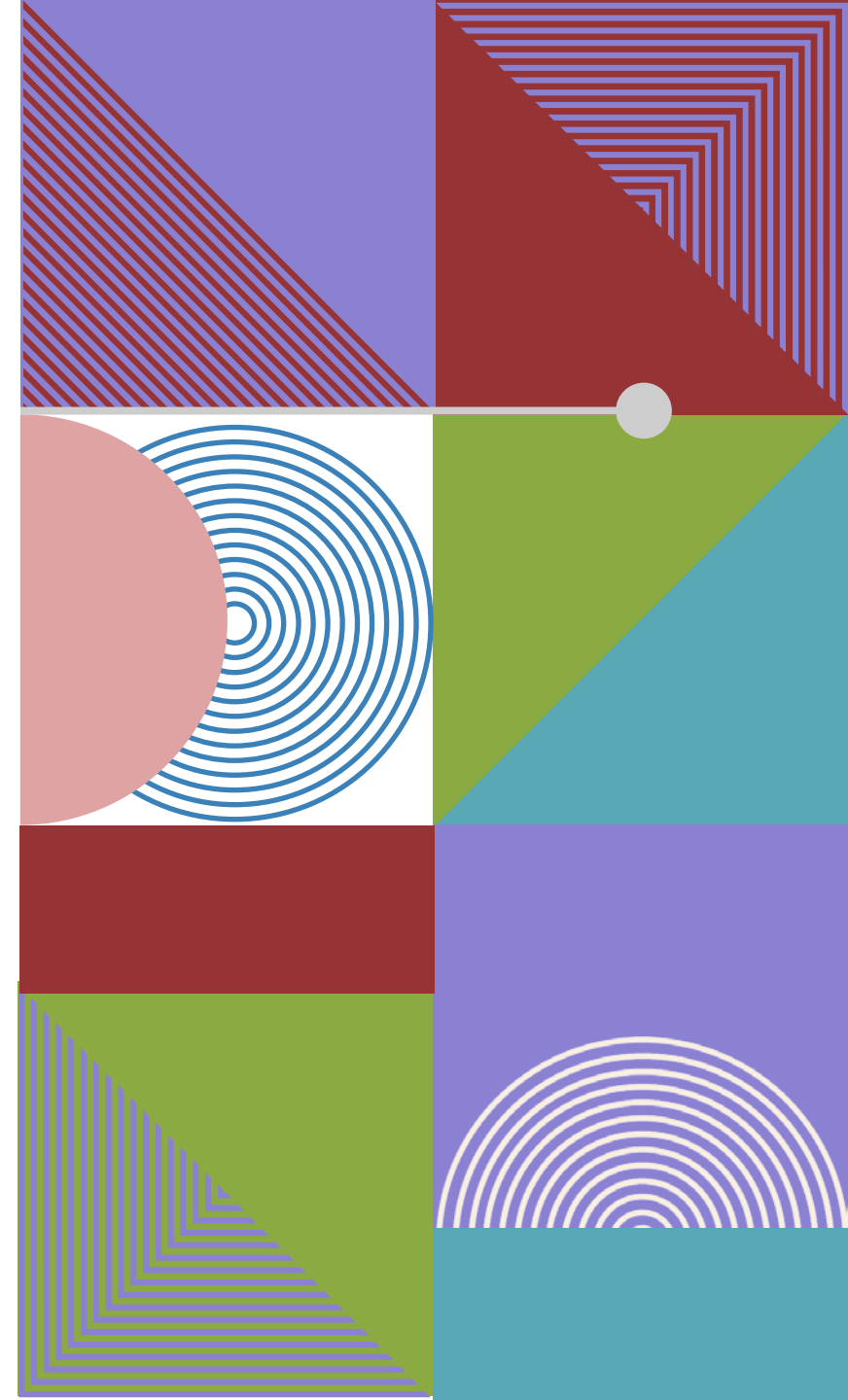


OTHER THIRD PARTIES

Scenario: Free Resources

Your program is invited to join a free community resource database/network that links information about social services and programs specifically tailored to the individual needs of your clients.

Other area nonprofits love the idea, and at least one other CASA program is jumping on the bandwagon.

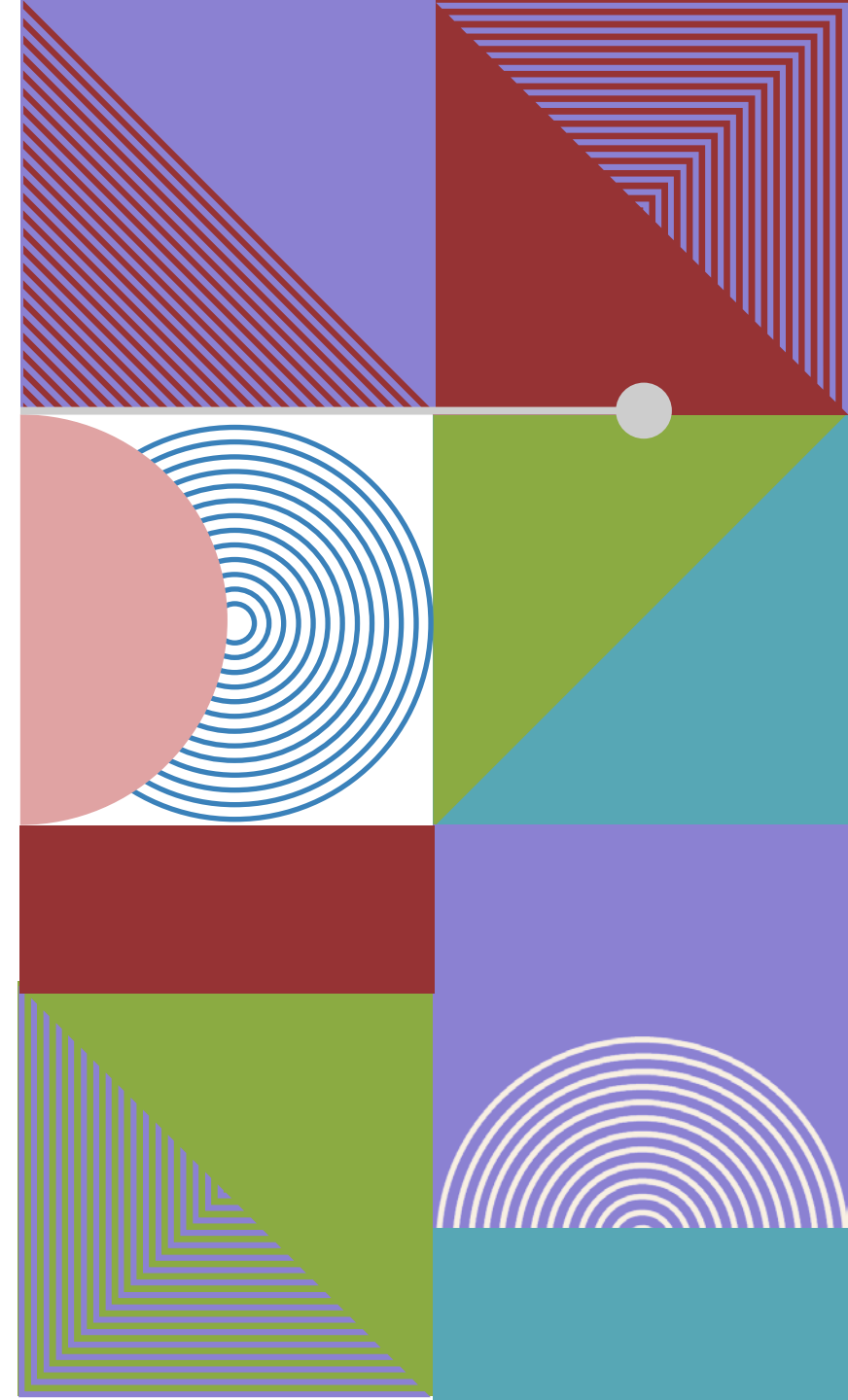


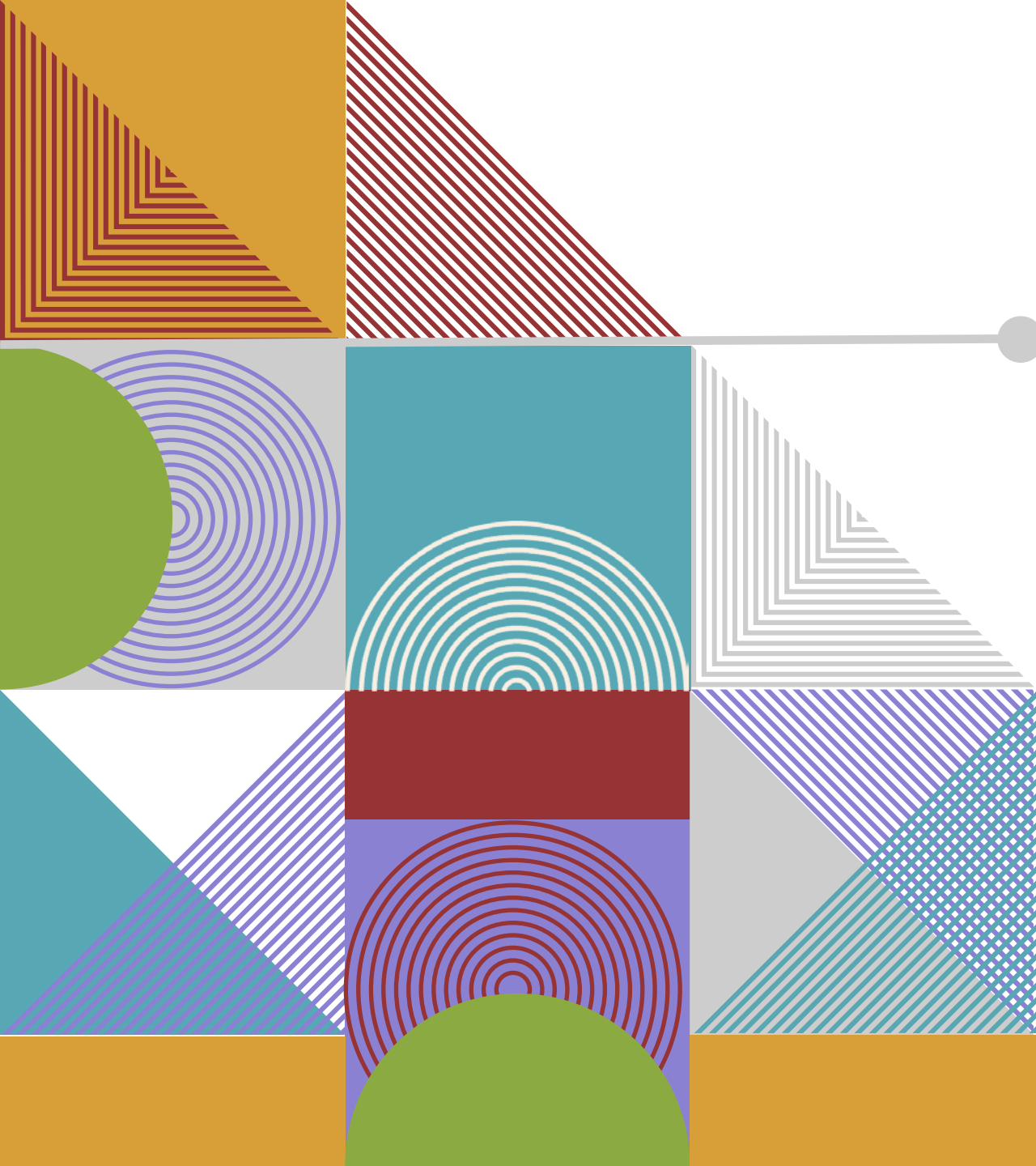
OTHER THIRD PARTIES

Scenario: Academic Study

As part of a nationwide research project, a university approaches your program seeking aggregate data (no names or SSNs) on your clients. The results of the study may influence policymakers and benefit all programs.

The program is voluntary. They show you examples of other CASA programs that have already joined the study.



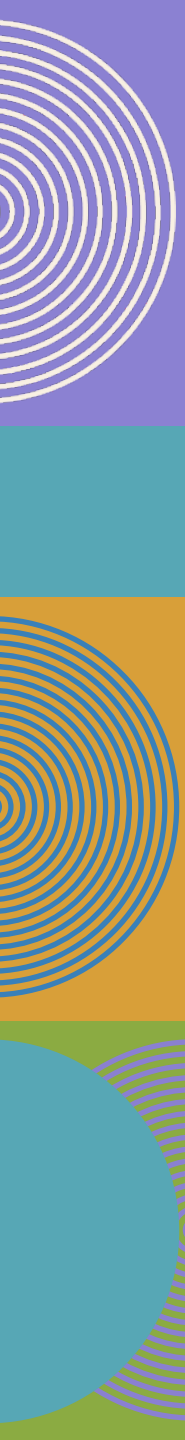


SHARING BY SLIP-UP

Scenario - Lorraine

Lorraine is a newly hired CASA staff member.

- She overheard other employees discussing a case in which a 4-year-old girl was to be placed for adoption.
- Her best friend Martina is eager to adopt. Lorraine told her the 4 year old might be up for adoption soon. A win-win! The child would have a home and her friend would be a mother at last.
- Martina immediately called CPS and asked to be considered for adoption of the 4-year-old.



Scenario - Eula

Eula is a CASA volunteer.

Her case involves 7-year-old twins Derek and Diana currently placed in foster care.

With the foster's permission, Eula took them to a family picnic.

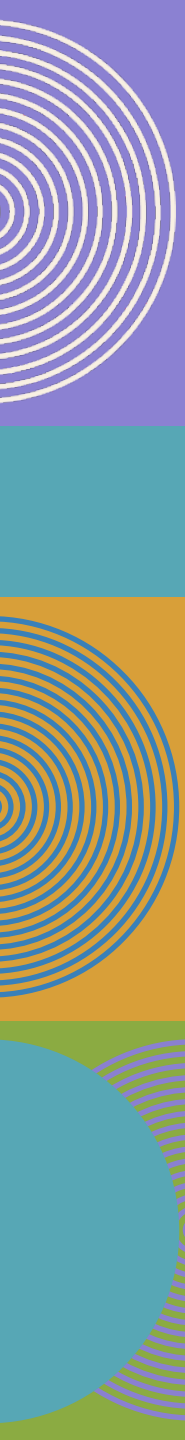
The twins had a great time playing with Eula's grandkids. Without Eula's knowledge, her son in law posted photos of the kids playing together to his Facebook account.



Scenario - Mattias

Mattias is CASA staff in rural Texas.

- Mattias started talking about his day while dining with his husband at his favorite restaurant.
- As he told his husband what was going on in the case and what he intended to include in the court report, he was careful not to name names or otherwise identify the children.
- One table over, Trudy recognized the similarities to an open CPS case involving her cousin. She texted her cousin immediately with what she heard.



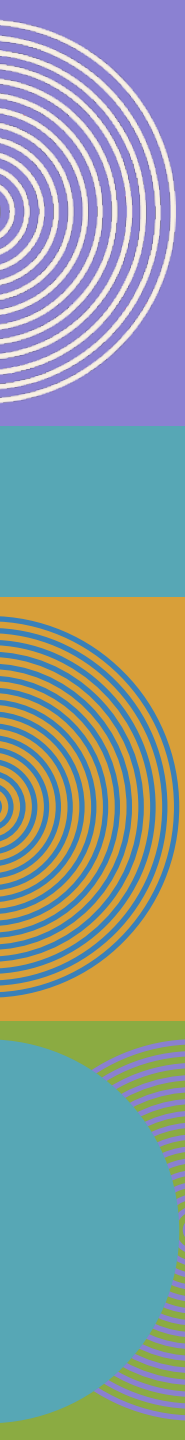
Scenario - Janine

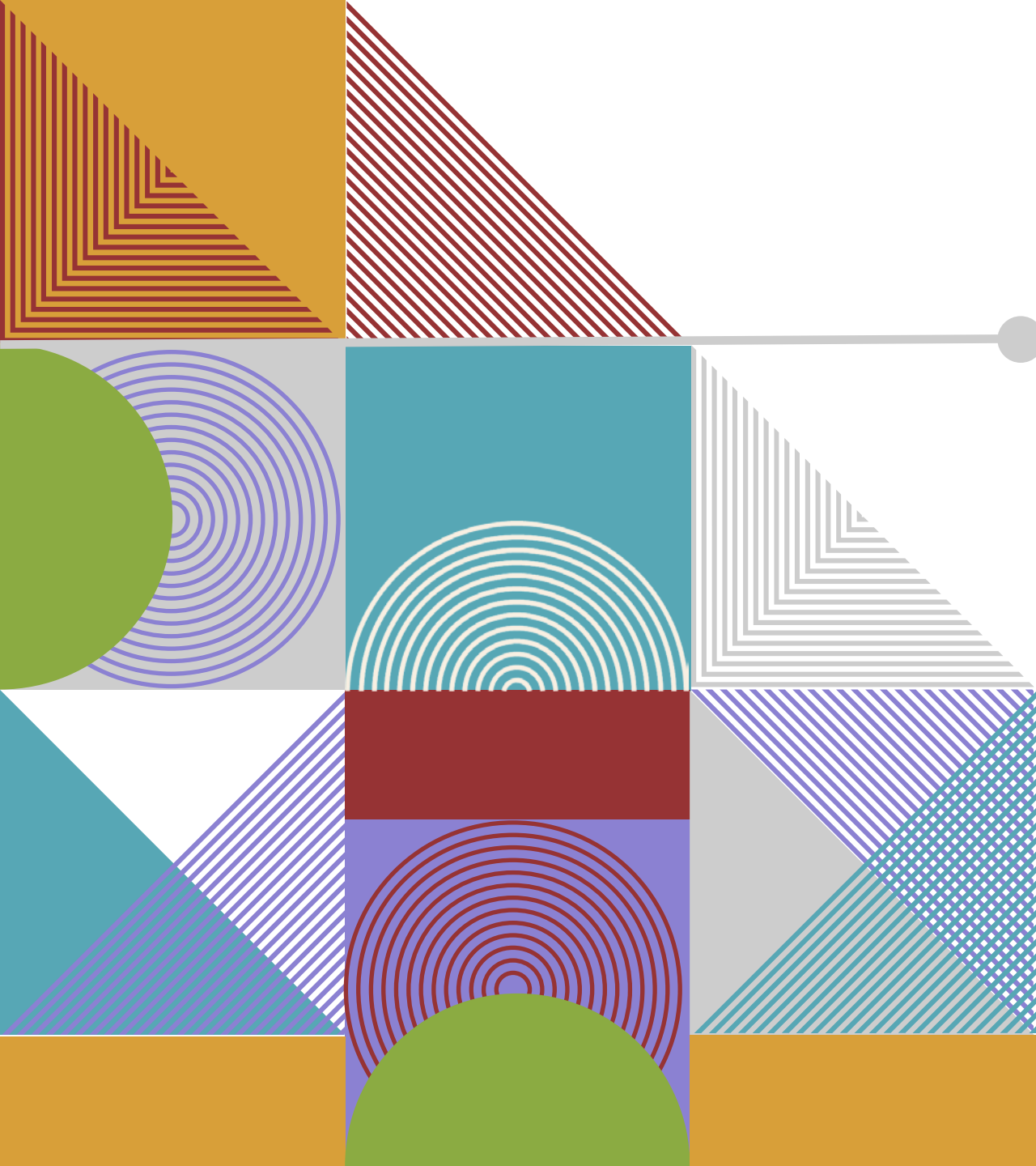
Janine is a longtime CASA volunteer.

Her case involved 8 year old Watts. He was supposed to receive a full medical and mental health evaluation to be referred for services.

Janine's grandchild has Asperger's syndrome and, based on similar behaviors, she was convinced Watts also had Asperger's. She raised her concerns to the foster and CPS, but nothing happened.

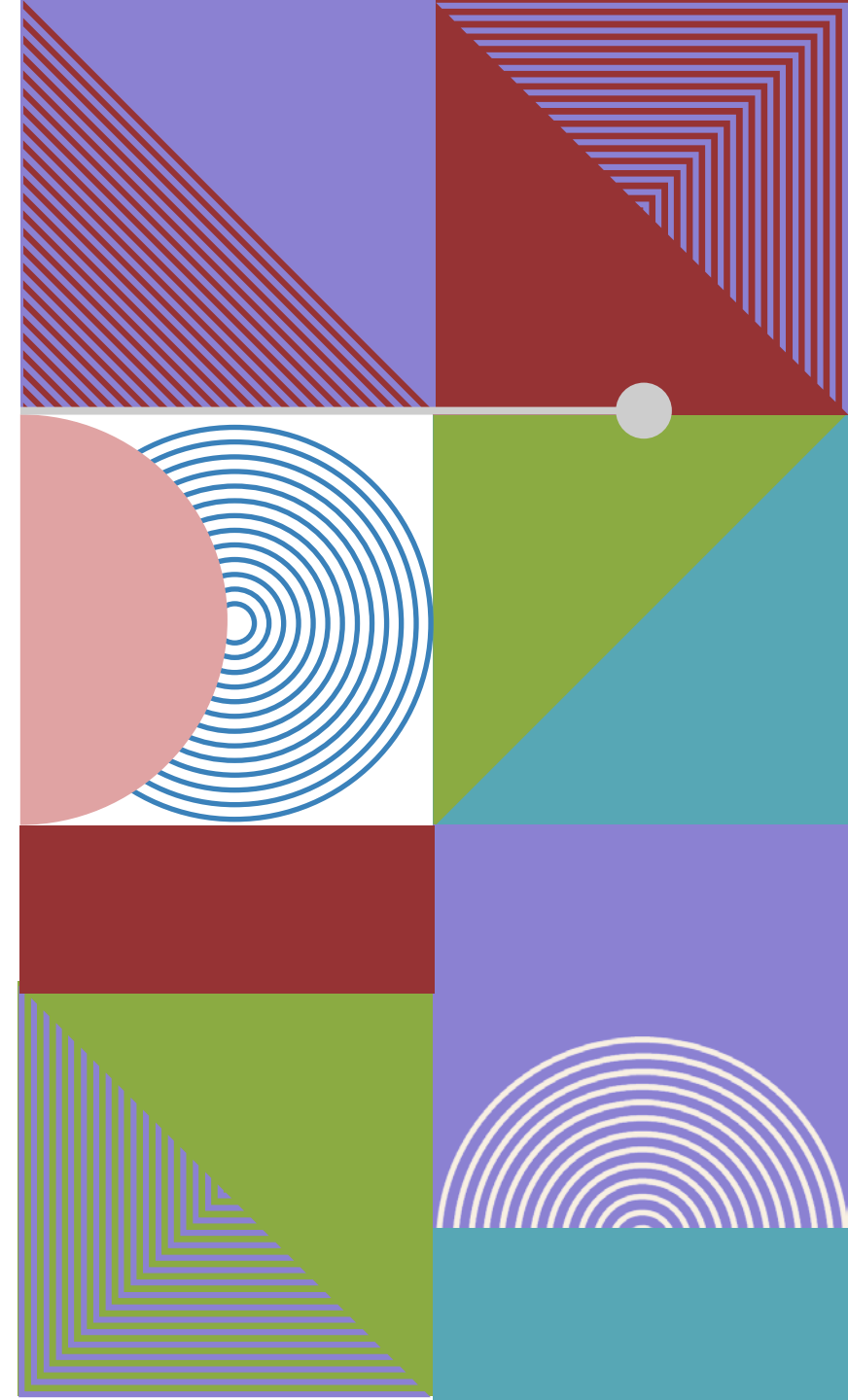
Frustrated, Janine called her grandchildren's pediatrician to discuss Watt's specific cognitive issues.





CAN I SHARE
ANYTHING?

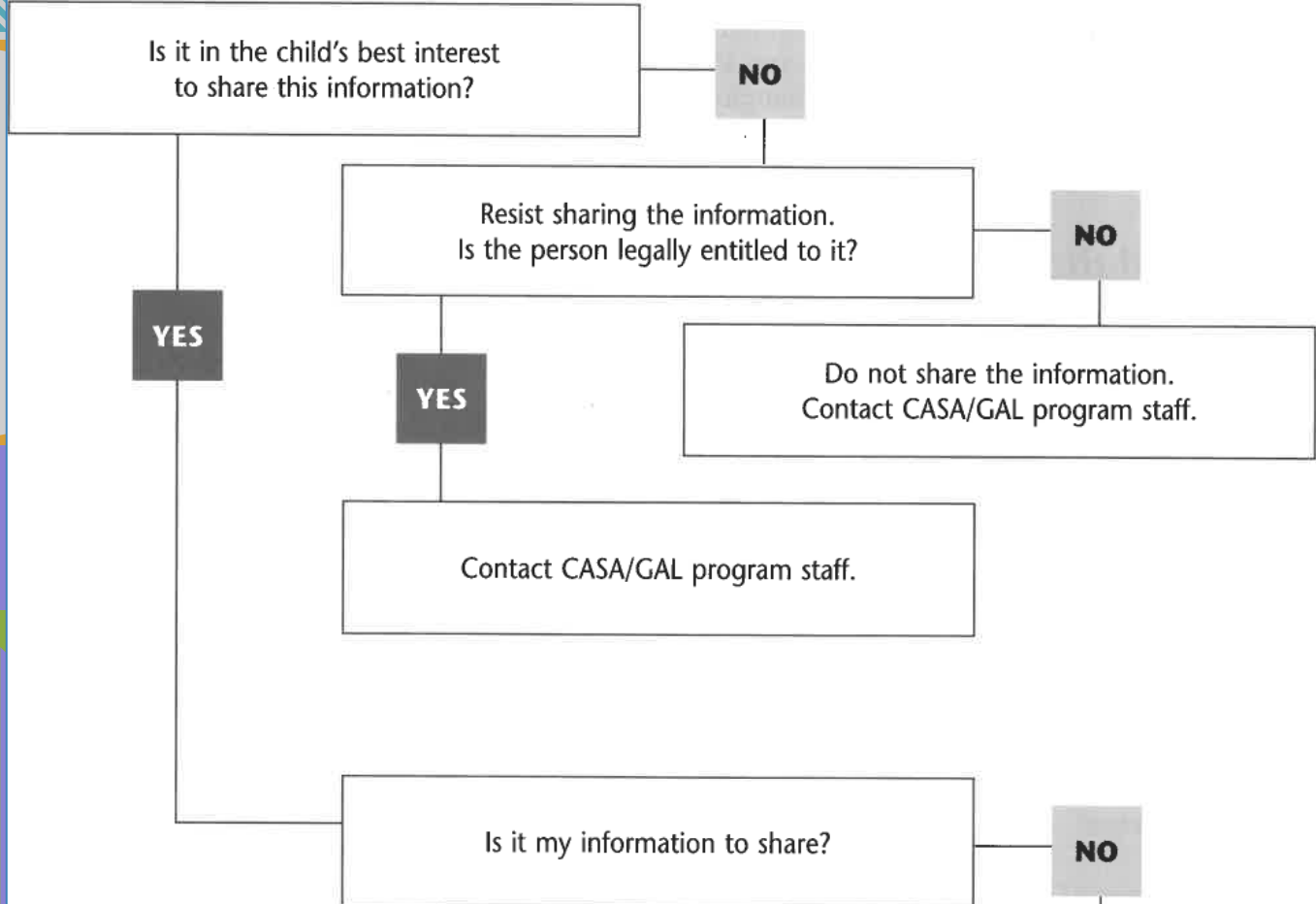
- CASAs are **GATHERERS** of factual information based on first-hand observations
- CASAs are **CONNECTORS** who **FACILITATE** information sharing between the parties.
- The place to share? Put it in the **COURT REPORT**



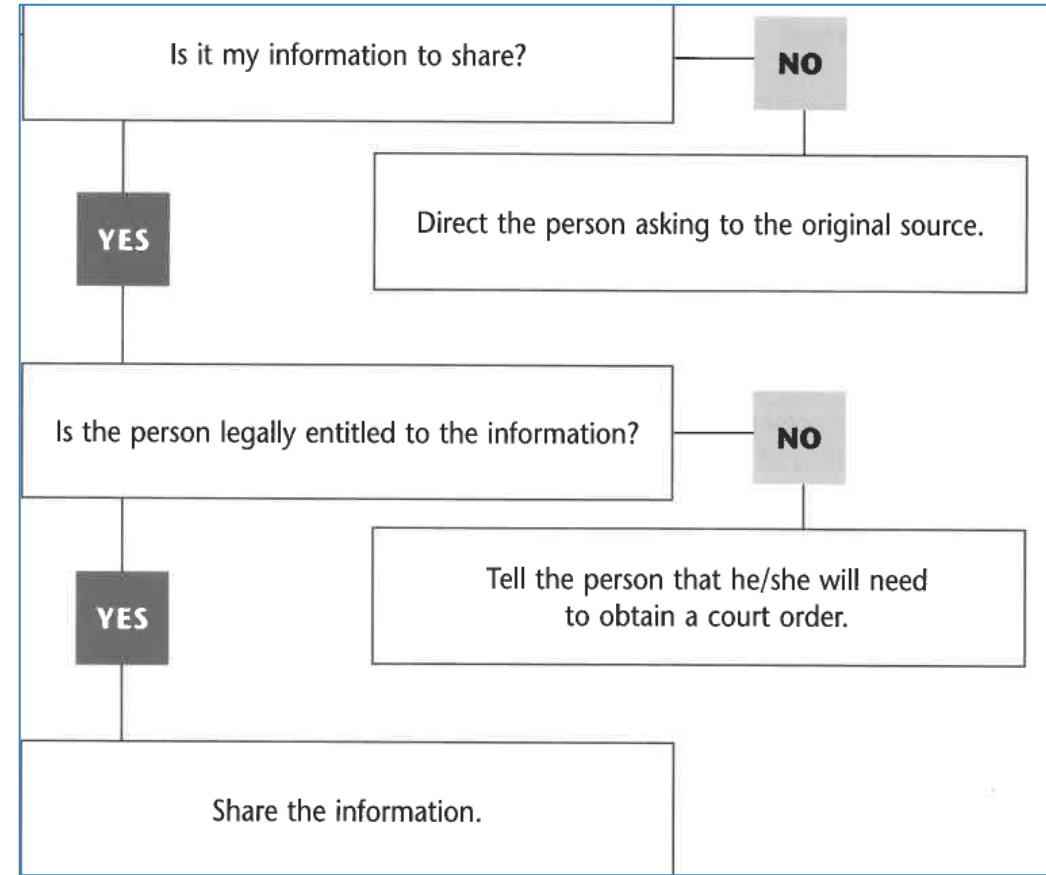
GO WITH THE FLOW

Confidentiality Flowchart

Should I share information with someone else about this child or this case?



Continued





Thank You!

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