



Confidentiality in Policy & Practice

Confidentiality is fundamental to providing sexual assault advocacy services and effectively managing sexual assault advocacy programs. This is something that all of us in the survivor advocacy community can all agree on. Confidentiality helps us build trust with the survivors we work with so that we can help create conditions for empowerment and promote safety. Confidentiality laws and practices allow us to prevent disclosure of information a survivor chooses to share with us.

Confidentiality is a value that is so ingrained in our work that when someone starts to talk to us about it, we almost tune it out. "Of course confidentiality is important, I know that already." But what does confidentiality look like in practice? How is this value reflected in our policies? Do our practices and policies match?

Nothing in our work is static. Over the past few years, WCSAP has consulted with state and national legal experts in an effort to ensure that our recommendations for confidentiality policies and practices in Washington are the most protective of survivors' privacy interests, and we want to share what we have learned with you. We began talking with you about this at our annual conference, and we have also developed other resources on specific confidentiality topics, which are all listed in the resource section of this paper.

This paper is designed to help sexual assault advocacy programs take a fresh look at confidentiality. Formatted as a checklist for easy use, it provides applicable confidentiality policy issues alongside examples of related confidential service provision practices. This checklist can be used by a manager, the whole staff, or the board to assess an agency's policies and practices. WCSAP is also available to work through the checklist with you, whether that's talking through a few issues over the phone or coming to visit your agency to review your policies and practices together.

Confidentiality Policies & Forms

	<p><u>Policy</u>: Our agency has a confidentiality policy.</p>
	<p><u>Practice</u>: When a new person seeks services from our program, an advocate explains our confidentiality policy to them in detail, including providing information about exceptions to confidentiality and allowing an opportunity for the person to ask questions. This is an ongoing conversation. If a client is in crisis during the initial appointment, the advocate will review the policy again during a subsequent appointment. The policy is also posted in our office in a place where clients can see it, and clients may have a copy if they wish.</p>
	<p><u>Policy</u>: All new clients sign a "consent to receive services" form. The form does not contain a release of information.</p>
	<p><u>Practice</u>: We go over our "consent to receive services" form with all new clients and explain that their information will be kept confidential unless an exception applies or the client makes the choice to release information to a third party. Clients understand that they make this choice, not the advocate, and that they are not obligated to sign a release of information for any third parties in order to receive services from our agency.</p>
	<p><u>Policy</u>: Our release of information is a written form that allows for a customized time frame, names individual parties, and specifies the information to be released. A separate form is used for each request and each individual.</p>
	<p><u>Practice</u>: The choice to sign a release of information is led by the client. When the client expresses a desire to release information, an advocate engages the client in a conversation about why a release is desired by the person seeking the information. The advocate makes sure the client understands that after the information is released, they will not have control over what happens to it (for example, if released to the prosecutor, the information will be discoverable by the defense attorney and it is likely that the perpetrator will have access to it). Advocates do not ask or tell a client to sign a release OR discourage a client from signing a release. They provide information and options. The client makes the ultimate decision about signing a release, and it is an informed decision. If a release is signed, it is limited to the shortest period of time necessary to accomplish the purpose of the release.</p>

Mandated Reporting & Serving Multiple Members of a Family

Policy: Advocates follow their mandatory reporting obligations when they suspect a child or vulnerable adult is being abused or neglected and they inform all clients that they have these obligations.

Practice: We have a thoughtful, victim-centered conversation with all clients about our mandatory reporting obligations at the beginning of our working relationship. We tell clients what information we would need to have in order to make a report; we tell them what making a report looks like, how they can be involved, and what the process will be after a report is made. During the conversation, we provide examples about situations that would necessitate making a report (for example, telling a young teen survivor that if she tells her advocate she is having a sexual relationship with a significantly older person, the advocate could be obligated to report).

Policy: When multiple members of the same family seek advocacy services, we offer the option of each member having a different advocate when possible.

Practice: If multiple staff members are working with the same family (for example, one advocate with the teen and one advocate with the caregiver) and information about the clients is shared during internal staffing, the advocates take care to make sure that confidential information is not provided to or discussed with the other family member the agency is serving. Advocates should explain their internal information sharing practices to clients at the outset of services and then be intentional about what information is shared internally.

*In smaller agencies where it is not possible to have a different advocate work with each family member, advocates should ensure that they do not share confidential information about one family member with the other, and should seek support from their supervisor regarding effective strategies for ensuring confidential information is protected in this complex situation. They should also be transparent with clients about this arrangement, so that each knows what to expect.

Confidentiality in Special Settings

Policy: Our confidentiality obligations and how we handle release of information forms and practices do not change just because we are in a multidisciplinary team setting (MDT).

Practice: Although we may sign a Memorandum of Understanding (MOU) and/or a group confidentiality agreement with our team, we do not treat this as a group release of information. We explain our confidentiality obligations to any MDT of which we are a member. When we participate on an MDT, we share general information about sexual assault dynamics, trauma response, and the needs of sexual assault survivors. We do not get releases of information prior to MDT meetings unless prompted by the survivor. If the MDT wants us to share confidential information about a specific client, an advocate discusses this request with the client. The advocate discusses best practice alternatives with the client, such as having the client (rather than the advocate) share the information or releasing the information to an individual member of the team rather than to the team as a whole. The client makes the decision about what to release and to whom.

Policy: Clients receiving support group services from our agency must sign our "consent to receive services" form.

Practice: Advocates explain the agency's confidentiality policy at the outset of group. Additionally, advocates explain the difference between confidentiality in the support group setting and confidentiality in the individual advocacy setting to new support group participants. In the support group setting, conversations are not privileged because third parties are present. The conversations are still confidential per agency policy and funding requirements, but a conversation between an individual client and their advocate has a greater degree of protection because of privilege. Explaining this difference allows clients to make an informed, empowered choice about what setting is appropriate for them to share certain information.

Agency Records

	<p><u>Policy</u>: Therapy and advocacy files are kept separately.</p>
	<p><u>Practice</u>: If an advocate and a therapist from our agency are working with the same client, they do not have access to each other's confidential files. Information sharing about the client should be kept to a minimum. Advocacy records are kept sparsely, while therapy records are kept as needed for the therapist to provide effective therapy with the client, in compliance with state law and professional ethics.</p>
	<p><u>Policy</u>: Advocacy files are kept securely.</p>
	<p><u>Practice</u>: Advocacy files are kept in a locked file cabinet, and access to the cabinet key is limited to necessary people who have signed an agency confidentiality agreement. Our electronic files and client information database are password protected and the password is not posted in the office. We have policies and procedures regarding the use of personal electronic equipment to access, share, or store client information.</p>
	<p><u>Policy</u>: Our agency has a policy regarding responding to subpoenas.</p>
	<p><u>Practice</u>: All staff members are aware of our policy regarding responding to subpoenas and know what to do and who to talk to if they receive a subpoena. When we receive a subpoena, we talk with the client whose information or file is the subject of the subpoena about what is requested, tell the client what the agency's options are for responding, and hear what action the client wants the agency to take. Our agency does not release information in response to a subpoena unless the client wants this.</p>

Reading, Resources, & Tools

Accreditation Toolkit (Revised August 2013)

WCSAP

<http://www.wcsap.org/accreditation-toolkit>

Confidentiality and Sexual Violence Survivors: A Toolkit for State Coalitions

National Crime Victim Law Institute

<http://law.lclark.edu/live/files/6471-confidentiality-and-sexual-violence-survivors-a>

Confidentiality Considerations When Providing Sexual Assault Advocacy Services to Minors

WCSAP

<http://www.wcsap.org/confidentiality-considerations-when-providing-sexual-assault-advocacy-services-minors>

Confidentiality of Sexual Assault Program Records

RCW 70.125.065

<http://apps.leg.wa.gov/rcw/default.aspx?cite=5.60.060>

FAQ's on Survivor Confidentiality Releases

National Network to End Domestic Violence

<http://nnedv.org/resources/safetynetdocs/208--faqs-on-survivors-confidentiality-releases.html>

Providing Care to Sexual Assault Victims Who Are Minors: A Consent & Confidentiality Tool for SANEs, Advocates and Other Victim Service Providers

Victim Rights Law Center

<http://www.victimrights.org/sites/default/files/library/Chart%20on%20Sexual%20Assault%20and%20What%20Age%20a%20Minor%20May%20Consent%20to%20Services.pdf>

Releases of Information and Privilege and Mandated Reporting, Oh My!: Confidentiality in Policy and Practice

WCSAP Conference Workshop May 2013

Slides available upon request

Sexual Assault Advocate Privilege

RCW 5.60.060(7)

<http://apps.leg.wa.gov/rcw/default.aspx?cite=5.60.060>

Sexual Assault Forensic Exams in Your Community and Special Considerations for Youth Survivors

WCSAP

<http://www.wcsap.org/sexual-assault-forensic-exams-your-community-and-special-considerations-youth-survivors>

Technology and Confidentiality Resources Toolkit

National Network to End Domestic Violence

<http://nnedv.org/projects/safetynet/1330-tech-conf-toolkit-announcement.html>