

Survivor Confidentiality and Privacy: Releases and Waivers At-A-Glance

The Fundamentals

- A survivor should be notified of what is happening with his/her information and who has access to the information. This includes any legal duty to share information or any other limits on confidentiality.
 - It is her/his information – it is her/his choice: It is her/his choice of what information is shared and with whom the information is shared.
 - This includes what information may be included about the survivor in a database.
- A written release is required any time personal information is shared outside of a confidential relationship.
- Before obtaining a release, determine whether there is another way to meet the survivor's needs without revealing her confidential information
- The *who* (who are you/who are the partners) and *what* (what is your role and obligation for confidentiality to the victim) will guide you in whether or not you need a release.

Innovative Partnerships

- The fact that you have created a partnership does **not** eliminate nor lessen the confidentiality or privilege obligations of each partner agency.
 - Protect the confidentiality of victim information.
 - Recognize that even apparently innocuous information can be very revealing.
 - The most protective standard should be the guide.
- Although these guidelines for confidentiality waivers and releases are primarily for nonprofit advocates, as a partner in an innovative partnership, it is important to know that the information you have received was properly obtained.

Federal & State Laws

- **VAWA 2005 § 3:** Grantees and subgrantees cannot disclose personally identifying information about persons served without the informed, written, reasonably time-limited consent of the person.
- **State:** Most states have victim/advocate confidentiality for sexual assault and domestic violence survivors and advocates. Check with an attorney in your jurisdiction to see what confidentiality laws apply.
- **Reminders:** If statute or court mandate demands release of information, the person releasing the information must notify the victim of the disclosure and take steps to continue to protect the privacy and safety of the victim. For reporting, evaluation, or data collection requirements purposes, only nonpersonally identifying aggregate data (e.g., 5 women, 1 man, 10 children) may be released.

Consent must be informed, written, and reasonably time-limited

- **Informed:** Survivors must know what they are agreeing to when signing a release and the consequences of signing the release. They should be aware of how their information will be used and how and when it will be shared. Consider language and other communication barriers.
- **Written:** Releases must be written. If a release is given orally in the very rare emergency situation, the survivor's identity must be verified and she must sign the written release as soon as possible.
- **Reasonably time-limited:** "Reasonably time-limited" is determined by the circumstances, based on the survivor's needs. The shorter the better. Releases can always be signed later for additional time or other purposes. Weigh the importance between minor inconvenience (an advocate having to ask the survivor to sign releases more than once) and the survivor's right to her or his information, confidentiality, and privacy.
- **Reminder:** A waiver or release cannot be a condition of service. Nor can consent be presumed because the survivor chooses to use your services.

Who can authorize a release?

- An adult survivor who wants to release information.
- An emancipated minor.
- Typically, a teen who can consent to release of information under state law without the need of parental or guardian permission.
- The non-abusive parent/guardian of an unemancipated minor **and** the unemancipated minor.
- The non-abusive, court-appointed guardian of a person who has been adjudicated to have a cognitive disability.

Best Practices

- Use a uniform detailed release form with survivors.
- Encourage your partners to use similar detailed forms.
- Try to NEVER use an oral release.
- Use written releases even if you have an MOU or confidentiality agreement with a partner agency.
- Have a release for each community partner that gets information. A release that checks off a list of community partners and is not specific as to what information is going to be shared or the consequences of sharing, is not fully informed consent.
- Keep in mind that disparate information, when taken together, can be identifying.
- Don't rely on releases provided by another agency.
- Nonpersonally identifying aggregate data should be sufficient for data reporting purposes.
- Contact your program manager if a funding authority requests identifying information.

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