



FAQ's on Survivor Confidentiality Releases

Answers developed by Julie Field & Safety Net of NNEDV

NNEDV

What this is:

This document addresses commonly asked questions that came following the *Survivor Confidentiality and Privacy: Releases and Waivers* teleconference training. It also takes into account the confidentiality and privacy provisions in the recent reauthorization of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005).

In analyzing the meaning and application of the confidentiality and privacy provisions of VAWA 2005, the purpose of the statute (to protect adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking and their families) must be kept at the forefront.

What this is not:

Confidentiality and privilege laws vary from state to state, as do other laws that may be impacted by this legislation. The National Network to End Domestic Violence Fund (NNEDV) is not an expert on individual state laws and does not provide legal advice to VAWA grantees. The analysis below is not intended to be a substitute for local, legal advice from an attorney who is familiar with a particular jurisdiction's laws related to confidentiality and privilege of victim/victim advocate relationships. If you have any questions, please feel free to contact the Safety Net team at 202-543-5566 or tcip@nnedv.org.

The questions below were asked by participants following the *Survivor Confidentiality* conference call presented by NNEDV on February 7, 2008. In general, these answers are intended for advocates employed by nonprofit agencies. Nevertheless, these answers are important for other partner agencies and professionals to understand as well. As a partner of a nonprofit agency, when requesting information from another agency, you want to be sure that the information you're getting has been obtained properly. Furthermore, it is important for partners to understand that nonprofit advocates must abide by certain legal limitations when releasing information.

Most significantly, the users of this document should keep in mind that many situations are unique and state laws vary. These questions and answers are not to be taken as definitive answers to every circumstance that might arise within a domestic violence or sexual assault agency in regard to confidentiality and privacy. They are general guidance in how to think about the issues. If you have specific questions or situations that you wish to discuss further, please feel free to contact the Safety Net team at 202-543-5566 or tcip@nnedv.org.

This project was supported by Grant No. 2007-TA-AX-K012 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

General Principles To Keep In Mind:

- A. **State and federal laws and regulations apply.** Laws may apply differently to different partners who work with survivors.
- B. **An agency cannot require a survivor to provide a release of information in order to receive services.** Agencies do not need a release of information form from a survivor in order to provide him or her with services.
- C. **Survivors should be notified** of what information a program has about them, and how their information will be used.
- D. **Releases of information should be client-centered** to enhance services provided to the survivor and not for the sole purpose of easing the program's administration.
- E. **Always consider the most protective privacy option.** Before obtaining a release of information, determine whether there is another way to accomplish the purpose without the advocate or agency releasing the survivor's personally identifying information.
- F. Releases of information must be **written, informed, and reasonably time-limited.**
- G. **A release of information is required if** an agency or advocate is asked by the survivor to release specific pieces of their individual personally identifying information outside of the advocate's own agency or program.
- H. **A release of information may not be required if** there is a court mandate or statutory obligation to report, such as suspected child abuse or neglect.
- I. **Survivors should be notified** when a report is made under a court mandate or statutory obligation.
- J. **Whenever releasing information about a survivor, programs and advocates should keep in mind the "minimum necessary concept,"** meaning that even with a release or mandatory report, share only the information necessary to accomplish the survivor's purpose or to meet the requirements of the reporting obligation, and only have that release open for the amount of time necessary to meet the survivor's needs.

Questions and Answers

Release Template

1. **Q:** *What is the difference between a waiver and a release?*
A: These terms can be used interchangeably to mean the same thing. Your organization may prefer one term over the other, or the language of your state statute might indicate a preference for one term over the other. 'Waiver' implies waiving the right (to maintain privilege) and 'release' implies that confidential information is released (despite confidentiality or privilege protection).
2. **Q:** *Can we use the "Model Release Form" that was sent out? Can we share it with other programs?*
A: Yes. The form was updated in August of 2008. If you need the form sent to you, please email tcip@nnev.org.
3. **Q:** *Is the release template available in other languages?*
A: The model release form is also available in Spanish. Please email tcip@nnev.org to receive a copy if you do not have one. If your organization translates the form into other languages, we would love to receive a copy so that we can share it with other organizations.

4. **Q:** *Do we have permission to alter the form (e.g., increase the font size) for those who may have difficulty seeing the information?*
A: Yes, the form can be altered to increase accessibility. Please do not make any adaptations that change the intent of the form. If your organization adapts the form for a lower literacy level or in another beneficial way, we would love to receive a copy so that we can share it with others. If you have any additional questions about the form, we'd be happy to provide individual assistance.
5. **Q:** *How would Julie like to be cited in the footer of the document?*
A: If you adapt the form, please indicate "adapted from Julie Field, J.D. Consultant" on the form (e.g., change the language in footer from 'created by' to 'adapted from...').
6. **Q:** *The model release seems to be very precise, lending to a very limited scope of information that could be shared. Is this necessary?*
A: Yes. The release is what we recommend as best practice and is consistent with the requirements of VAWA. It helps to ensure that there is informed consent and that the client knows what pieces of information are being released and to whom.
It is important for survivors to have control of what specific information they would like shared, so the more specific the release, the better.
7. **Q:** *Is it necessary to complete a new release any time a different person needs to be contacted at one agency or anytime a new piece of information needs to be exchanged?*
A: Yes. This is what we recommend as best practice and is consistent with the requirements of VAWA. If the person or agency to whom the information is being released or the specific information to be shared was not included in the original release of information form that the survivor signed, a new release of information form is needed. While we understand that this could add some additional steps for advocates, these steps are designed to protect clients' personal information.
In addition, advocates can only share the specific information noted in the release form and cannot share information the survivor later reveals to the advocate. For example, a survivor cannot provide informed consent to release information which s/he has not yet disclosed (i.e., future information).
9. **Q:** *Is it necessary to have an expiration date on the release of information?*
A: Yes. VAWA requires a release to be time-limited and this is best practice. The length of time that a release is effective for should be the minimum length of time necessary under the circumstances, and should be tied to the service the survivor is requesting. (For example, the survivor is leaving the state in 5 days and asks you to call another shelter in her new state – the release should be for 5 days). If circumstances change, a new release can always be signed.
10. **Q:** *What is a proper length of time for a release to be valid?*
A: It's extremely important that a release be reasonably time-limited. VAWA requires this, and the circumstances of a survivor's situation may change radically from day to day. Whether a time limit is reasonable should be determined by the purpose of the release and the circumstances of the survivor's situation. It should be as short as necessary to meet the client's purpose (for example, a release could be for a few minutes, or a few hours, or a few days). In general, there is no reason a waiver should ever be more than 15 days or 30 days at the outside since the release can be reaffirmed and extended if the survivor confirms that the release is still valid and authorizes a new expiration date.
11. **Q:** *Why should we specify the form of communication that a release will take?*
A: It is important to discuss with survivors what form of communication will be used when sharing the information in the release because this ensures that survivors are fully informed of the ways that the information will be communicated and understand the various confidentiality risks associated with different types of communication.

The actual form of communication may be a concern for the survivor. For example, there may be a greater confidentiality risk if documents are faxed to another agency (such as mis-dialing a fax number), than if, for example, a phone call is made to that agency. In another example, email is not a secure form of communication, and the survivor may be specifically concerned about email. The client should be made aware of these risks.

It is important to specify what form of communication is being used, because if you don't, you may not be giving the survivor the information s/he needs to provide true informed consent. Specifying the form of communication is part of ensuring fully informed consent.

12. **Q:** *Although our agency absolutely wants to protect our clients' privacy, it seems that some of the language in the release could make us more vulnerable to law suits than our present, more general release. Is there anyway to mitigate our exposure?*

A: Generally speaking, the more specific and informed a release is, the more likely it is that you are protecting client information and properly informing the client about her/his rights – and the more likely it is that you are following the law.

- An analogy: A limited waiver at the hospital ensures that the doctor only operates on your appendix on the day in question. A more general waiver may give the doctor free rein to also operate on other internal organs on that day, to operate on your appendix on other days, or to allow the doctor to perform any surgeries he or she feels like performing on you at any time. In this analogy, a limited waiver provides the patient with more control over what happens to him/her.

13. **Q:** *What is best practice: having a separate release for each agency the survivor's information is being released to or having several agencies listed on one form?*

A: Best practice is to have a separate form for each agency that the survivor's information is being released to. This helps ensure that the survivor is fully informed, both of who is receiving her/his information and of the particular consequences associated with that agency getting the information. If your advocates consistently work with a few particular agencies, individual forms could be developed that lists each agency (e.g., one form for Section 8 housing, one form for the prosecutor, one form for the food bank). The benefits and consequences of the release can then be identified on the form for each agency, in addition to being discussed with the survivor before s/he signs the release.

14. **Q:** *What if I only see a client in person once a month but do phone counseling on a regular basis? Some of the survivors we work with are from a rural area and cannot come in personally that often, and it can be difficult to get a release signed every time we need one, especially when we sometimes play phone tag with other agencies. In those cases, is it appropriate for the release to be for longer than a few days?*

A: Releases are to share specific information for a specific reason and should not be open-ended. VAWA states that releases have to be "reasonably time-limited," and that means under the circumstances for individual cases and situations. It may be that a 30-day release could be reasonable and appropriate in a situation like this, especially since you have regular phone contact with the survivor.

In addition, it is always good practice to ensure that you regularly check in with survivors to determine whether their circumstances have changed and remind them that they have the right to withdraw that release at any point. This is to ensure that the informed consent is based on up-to-date information.

Confidentiality & Partnerships

15. **Q:** *If a community pulls together a team of representatives from law enforcement, victims services, prosecution, and courts, are the victim services representatives prohibited from speaking about the victim without a release? What happens if some of the representatives have privilege and some do not? Can information about the victim be released during the meeting if there is a cooperative agreement form signed by all professionals present stating any information shared during the meeting will not be shared outside of the meeting?*

A: Different partners in a multi-disciplinary team may have different confidentiality requirements, and each partner needs to understand his/her own respective obligations. For example, police and prosecutors do not need a release to speak about the case, but an advocate from a non-profit agency can only speak about a survivor if the survivor signed a release of information allowing that disclosure.

However, the non-profit DV/SA agency or its representatives can talk generally about many things that are useful to the group, such as domestic violence and sexual assault dynamics, services that are available, aggregate information, and general information that is not personally identifying. Some agencies have a community educator attend these meetings and they can talk generally about domestic violence dynamics. If this person does not provide direct services and never acknowledges whether or not the agency is providing services to any individual victim (without a release of information), the community educator could discuss general safety concerns raised by a police report, for example.

Regardless of any cooperative or confidentiality agreements, non-profit victim services cannot share personally identifying information with partners of a team (multi-disciplinary team, SART) without a release from the survivor. The survivor needs to request and approve that the non-profit advocate can talk with the team about his/her case. Survivors also have the right to choose which aspects of their case are discussed.

Each participant in the team needs to be aware of his/her particular obligations and need to obtain his/her own releases to discuss individual information. Survivors need to be informed of every agency that is part of the team and be updated if additional people are added to the team. It can be helpful to have a staff person that is not involved with any specific cases to be the contact for the team to avoid accidental disclosure of details.

- An analogy: If your primary care doctor, your lawyer, and your therapist/counselor were to sit on a community health task force together, they could not discuss your private information, the details of your medical or psychological history, or anything else that might be identifying without getting your permission to do so because of their confidentiality obligations.

16. **Q:** *If a police officer drives a survivor to a non-profit DV/SV program, and later calls to ask how the survivor is doing, can the advocate share survivor information without a release? What about if the officer calls and would like to leave a message for the survivor?*

A: Even if the officer knows that the survivor is or was at a non-profit advocacy office, the non-profit advocate cannot share survivor information without a release. The advocate can generally thank the officer for caring about victims and explain that the advocate can neither confirm nor deny if the survivor is receiving services, but offer to post a message on a bulletin board. The non-profit advocacy program should have a consistent response so as to not inadvertently provide information about the survivor's location if the answer differs depending on the victim.

- An analogy: If you drive a friend to meet with a psychologist or dentist and wait for your friend in the lobby during your friend's appointment, the dentist or psychologist cannot provide information to you about your friend without a signed release form.

17. **Q:** *What information can our task force partners share without a release?*

A: Quite a bit, actually. You can discuss general trends in cases. You can address things like, “I’m hearing that young women on the university campus are having challenges with law enforcement trying to figure out who has jurisdiction – campus police or the municipal police?” You can create hypothetical cases to discuss. You can discuss how your agency would respond in a variety of situations. You can discuss general cases together, but you cannot talk about them on any level that would identify individual cases or people. Remember, things like the number of children the survivor has, the faith the survivor practices, or the survivor’s ethnic heritage might be personally identifying, particularly in small communities.

If your agency has an advocate who never works on direct cases, that person may be the best person to sit on the taskforce because he or she can provide feedback in these partnerships without accidentally sharing identifying information. It’s important to remember that you need a signed release of information to even share that a particular person has received services from your agency.

18. **Q:** *Can collaborative agencies with an MOU containing confidentiality language share victim information for funder reporting reasons without getting a release?*

A: Regardless of the language within a MOU, releases are always necessary to share personally identifying individual client information. However, you can share aggregate information for reporting to funders. Aggregate information means totals, so it’s acceptable to report that your program referred 7 people in a particular month but not to provide any identifying details.

It is important to remember that what is identifying varies from community to community. It is always inappropriate to share names, dates of birth, and social security numbers. For some communities it may also be identifying to report, for example, that you served a 42 year-old white women with 4 children, ages 11, 9, 8, and 6 or a 32 year-old Asian woman with a 2 year-old. Communities and agencies should consider what information is identifiable for individuals receiving services and should always provide the least amount of information possible.

The three major federal funding sources (OVC, OVW, and HHS) **do not** require you to unduplicate victims between agencies, so there is no need to share personally identifying individual client information to meet federal reporting requirements.

19. **Q:** *What if it is discovered that a client staying in shelter has an outstanding warrant for his/her arrest? Does this fit under any “exemption”? What are the requirements for cooperating with authorities?*

A: There is no “arrest warrant” exemption in VAWA. There is no obligation or law that requires non-profit advocates to pro-actively inform the police or to keep a survivor in a program. If a program becomes aware of a warrant, they can and should notify the victim and help him/her self-report to the police, get legal assistance, or ask the person to leave the program if there is a need to do so.

20. **Q:** *Can a non-profit DV/SA program share personally identifying information about a survivor with law enforcement without a release?*

A: No. The general rule and best practice is that a non-profit advocate should never communicate with law enforcement about individual people or cases without the explicit written consent of the survivor.

21. **Q:** *What if our state has a duty to warn law (if survivor is suicidal or homicidal)?*

A: First, check and be absolutely sure that you understand your state’s law. Some agencies assume that they have a “duty to warn” but the state law does not actually support that assumption. If you reveal confidential survivor information without a specific state law mandate or without having a signed release of information, it may be a violation of VAWA or state law. Some states require reporting to police or to the intended victim of the threat if a survivor is in imminent danger of harming herself or others, and in that case the report would be an exemption to the confidentiality requirements. In other words, if you are legally mandated to report this situation, then you may do so without a release.

Check with your state coalition if you are unsure if your state has a duty to warn law that applies to you.

22. **Q:** *What if law enforcement asks if a person is in shelter because there is a missing person's report for them? Do we need a release to tell them whether the person is in shelter?*

A: It is absolutely necessary to get a release from a survivor before informing law enforcement of the survivor's location. Many times, abusers will file missing person reports to try to identify the victim's location.

23. **Q:** *Does the prosecutor victim witness agency need to have procedures in place to secure the victim's confidentiality and privacy and use the "Model Release" form when sharing or storing information?*

A: Survivors should be informed of the confidentiality limitations that pertain to victim assistants (victim/witness advocates) employed by a prosecutor's office. This doesn't necessarily require a release of information form, but it does require notice. It is best practice to provide written information to survivors about what happens with their information and get signatures from survivors indicating that they have read and understand your data collection/information sharing practices. If any or all of the information s/he provides to you could possibly be released to other parties, inform the victim of this before s/he chooses to begin working with you.

24. **Q:** *We are victim witness coordinators employed by the prosecutor's office and provide various services to survivors, including sexual assault and domestic violence victims. When we first meet with clients they are advised and sign a release which indicates that our brief notes MAY have to be released to the prosecutor handling the criminal matter and may thereafter be released to the defense attorney should the matter go forward to trial (to comply with state discovery requirements). If and when the notes are subsequently released to the prosecutor does the victim need to be notified at that point?*

A: As long as survivors are fully notified that their information may be shared with the prosecutor (before they receive services), it is not necessary to inform survivors when the information is shared.

Staff should be as transparent as possible with what could happen to the information and should be careful in what information they take and keep in records.

25. **Q:** *Can releases be for mutual exchange (meaning that the advocate can talk to police and the police can talk to me, for example)?*

A: Some organizations may not need a release form signed to be able to share limited information (for example, police may be able to share a report or discuss a case), but the partnering non-profit program would need a release to have a mutual conversation.

For two agencies that are both required to have releases, they may be written to allow for mutual exchange of information, although this is not best practice. It is best for each agency to have its own release. This ensures that survivors are fully informed by each agency of their respective obligations and to identify the information to be released. It is also possible that a release may be set up for mutual exchange, but that the other agency refuses to accept it since it is best practice for each agency to do the informed consent analysis with the survivor and to have the survivor sign the agency's own release of information form.

26. **Q:** *We are advocates employed by a non-profit domestic and sexual violence program and housed within the courthouse. Are we able to share information with the prosecutor?*

A: While it is common for non-profit advocates to be housed at a courthouse or other location, your physical location does not change your confidentiality obligations. Since you are employed by the non-profit organization, the VAWA confidentiality protections still apply. Because of this, you are not able to share information with the prosecutor without a specific, time-limited, signed release of information. Co-locating has many benefits and some challenges and non-profit advocates must prevent accidental disclosure of confidential client information outside of the personnel within your agency.

Age, Consent, & Guardians

27. **Q:** *Does VAWA prohibit an abusive parent (abusive to child and/or other parent) from signing a release for an unemancipated child's records?*

A: Yes. Section 3 of VAWA 2005 states that “consent for release may not be given by the abuser of the minor, person with a disability, or the abuser of the other parent of the minor.”

28. **Q:** *If parents have shared custody of a minor child, do both the non-abusive and abusive parent need to sign a release?*

A: No. Only the non-abusive parent must sign the release. Remember: a release is only necessary when the survivor wants to allow the release of specific information, and cannot be a condition of services.

29. **Q:** *What about unemancipated teenagers without a parent or guardian? Is there a certain age where a young adult no longer needs a parent or guardian's signature on a release?*

A: “Emancipation” is determined by state law, and teens can be “emancipated” for different purposes (e.g., a 14 year old may be able to consent to receive health care services but not to marry). There is no language in the federal law that identifies a specific age where a parent or guardian’s consent is no longer needed. If your state allows programs to provide services to a teenager without a parent or guardian’s consent, then the teenager may be allowed to sign her or his own release without a parent or guardian’s approval. If you are unsure of your state law, contact your state coalition. Remember that the release of information is not to provide services but to share the survivor’s information with other agencies in the community.

30. **Q:** *If you are providing services for a child, at what age does the child need to sign a release of information?*

A: VAWA requires that the unemancipated minor *and* the non-abusive parent sign the release of information. VAWA does not specify an age with children, although if they are not physically able to sign, they should be informed in an age-appropriate way that the parent/guardian is signing papers that allow you to talk to others in the community. If the child is unable to sign the form, in place of the child’s signature, the advocate should note that the age of the child, the fact that the release was explained to the child, and the date.

As stated in the previous answer, it is important to recognize that if you are already able to provide services to a minor without the consent of the parent or guardian, then the minor may be able to sign a release. Both the minor and parent or guardian would sign when services can only be provided with the parent or guardian’s consent, or if both the minor and the parent or guardian are receiving services.

31. **Q:** *It was stated on the call that in the case of minors or adults with a guardian, the signatures need to be of the non-abusive parent or guardian. How does one determine the non-abusive parent or guardian?*

A: If you are working with a minor or a person who has a disability, ask all the questions you would normally to identify who the abusive person is. Typically programs have a policy or practice to determine the abusive party. This usually begins with asking the survivor to identify the abuser. It’s always important to be careful in this assessment, to follow your agencies policies, and to use your professional training and best judgment.

32. **Q:** *If the victim has a cognitive disability and the caregiver is not appropriate to sign the release due to either being the abuser or having obvious bias to the abuser, who can authorize a release?*

A: The most important thing is to figure out if the person even needs someone else to sign the release of information on his or her behalf, or if they can sign it themselves. Regardless of disability, the only time a guardian is allowed to sign a release for specific information is if the person with a disability has been legally adjudicated as unable to sign legal documents and the guardian has been court appointed.

The best practice is to ensure involvement of the person with disability in all aspects, ensure that they are fully informed, and obtain proof of court-appointed guardianship. A person with a disability may have a

caregiver and still be able to give consent themselves if there has not been a guardian appointed by the court. If the person has been found by a court to need a legal guardian and the guardian is a threat, then a new guardian needs to be appointed.

*** Remember, the release is not to provide services, but to share the survivor's information with other agencies in the community. ***

Emergencies, Hotlines, and Written Consent

Because VAWA requires a written release, we cannot recommend oral releases, and oral releases are not best practice. It is understood that agencies may sometime advocate for or assist survivors over the phone, and it is encouraged that agencies develop policies and protocols for assessing each situation individually to determine how best to serve a survivor requesting services.

The first question that should be asked before any release of information is obtained (written or oral) is whether there is another way to meet the survivor's immediate advocacy needs without the agency releasing personally identifying information about the survivor without a written release. A survivor can choose to share any information about him- or herself with any agency. However if a survivor would like a non-profit advocacy program to share identifying information about the survivor, then VAWA requires a written release. Often advocates can make calls on behalf of a survivor without releasing any identifying information (for example: inquiring about bed space or available services).

One of the challenges of phone contact is verifying the identity of the caller. If the caller is a survivor you've been working with for some time, it may be easier to identify him/her by voice. If this is not the case, it may be difficult to determine if the caller is someone else attempting to impersonate the survivor or to know if the survivor is being forced into requesting assistance.

It's important that a release is signed, either over fax or in person on a later date. If neither of these options is possible, or if the situation requires timely assistance, an advocate should read through the release on the phone with the survivor, ensure that the survivor fully understands each aspect, and write on the release that the release was read and oral consent was given. It is best practice to have the survivor sign it in person at a later date if possible.

33. **Q:** *Do you have any suggestions for a situation where a client is accessing services via a hotline or over the phone and they need timely assistance and we are unable to get a written release? For example, a client is calling at the last minute looking for details on an offender's court case or status of an arrest. Is it OK to proceed on a client's oral permission until we can get a written release signed? Do you know of any method to record a oral release? I'm not referring to releasing personal/confidential information about the survivor, but more so acknowledging receipt of services by us because we're asking about the status of a perpetrator.*

A: It is important to distinguish the difference between gathering information for a survivor and sharing information about a survivor. If an agency is only gathering information about the abuser or perpetrator without giving out any of the survivor's information, a release is not necessary. Although, depending on the situation and community, merely obtaining information about a perpetrator may confirm that the victim is seeking your services. This should be acknowledged and the survivor notified.

In addition, it may be possible and effective to use three-way calling so that the survivor can speak directly to the agencies from which s/he is seeking information or assistance. The advocate can place the call and connect the survivor to the services.

34. **Q:** *Do state coalitions fall under the requirements of needing written consent to share identifying survivor information (since we only provide occasional assistance and advocacy over the phone)? If so, have other state coalitions developed policies and practices for meeting these requirements? Some statewide organizations talk with survivors by phone and in most situations the survivor does not have access to a fax machine.*

A: The requirements apply to all VAWA grantees and sub-grantees that are serving victims with VAWA funding. All agencies should develop policies and protocols for determining on an individual basis how to obtain consent when talking with a survivor by phone. State coalitions may be able to make calls to inquire about services and resources without giving out any identifiable information about the survivor. In addition, it may be possible to use three-way calling so that the survivor can speak directly to the agencies from which s/he is seeking information or assistance.

***Releases are only needed when you're sharing a survivor's personally identifying or confidential information with someone else. If you're providing information to a survivor, no release is needed. ***

35. **Q:** *Most of our communication with survivors is over the phone, making it difficult to obtain written releases. How do we effectively advocate for our clients with other service providers/systems in these situations?*

A: The first question that should be asked before any release of information is obtained (written or oral) is whether there is another way to meet the survivor's immediate advocacy needs without the agency releasing personally identifying information about the survivor. For example, could the advocate support the survivor and help her/him make the call and talk to the other agency or professional herself/himself?

It's perfectly reasonable to call another service provider and say "I spoke with a woman today and she really needs xxx, can I give her your number and have her call you?" In cases where you must share personally identifying client information, a release is essential. Because VAWA requires a written release, we cannot recommend a oral release, and oral releases are never best practice.

36. **Q:** *Can the signed release be faxed or emailed? I have faced the situation where a signed release was needed urgently, and the person was unable to come in to the office.*

A: Yes, although the best practice is to have a signed release in your file that is signed in person. Organizations should decide on an individual basis when to accept a faxed or emailed release to ensure that an abuser isn't impersonating a victim. Since it is easy to access another person's email account and/or make an email (or fax) appear to be from someone else, always confirm a faxed or emailed release with the survivor by phone prior to sharing survivor information.

37. **Q:** *When, in an emergency, we get an oral release for a particular piece of information, should we still fill out a form? What do other programs do?*

A: Because VAWA requires a written release, we cannot recommend a oral release, and oral releases are never best practice. However, programs that do, on rare occasion, use oral releases generally go through the full release form, reading it aloud over the phone, and then note on the signature line that oral consent was given with the date. The advocate should verify the person's identity before reading the form and signing it, and ensure that the survivor signs the form at the next possible opportunity.

38. **Q:** *For court advocates who are advocating in court (often the client is right there) are releases needed?*

A: Non-profit based court advocates who are allowed by state law to speak in court on behalf of a survivor should have a release of information from the survivor and consent to appear in court. Before the hearing, the advocate should review with the survivor what will happen at the hearing, the role of the advocate, and what information s/he would like you to release. If appearing in court to support the survivor, but not actually speaking on behalf of a survivor, it's important to notify the survivor that your presence can signal to observers that she is receiving your agency's services.

39. **Q:** *What about releasing information to Emergency Medical Services?*

A: You can contact emergency medical services and tell them the nature of the emergency without telling them identifying information. In many cases, the survivor will be conscious and able to inform EMT staff and decide how much they want to share. Although, it is important to remember that even if it is appropriate to call 911, it is never appropriate to share her/his whole case history or file. Identifying information is not necessary for 911 to respond. What some advocates do is to respond "I don't know" or give non-identifying

information (she's around 45 years old instead of her actual birth date) when asked these questions by the 911 operator. In addition, it is not appropriate to specifically comment on why s/he was receiving assistance from your organization.

40. **Q:** *What are your thoughts about including in release forms instructions from the survivor about to whom and what information, if any, can be released in the event she/he is missing or deceased?*

A: Advocates may have this discussion, in a delicate way, with a survivor if the survivor is fearful for his/her life. It is a best practice to ask the survivor what he/she would want the advocate and program to do with his/her information in the case that something happens to him/her. It would be important to discuss how the advocate would know if the survivor is missing or deceased or if he/she fled and just didn't tell anyone. Not knowing and releasing his/her information could be dangerous to the missing person or surviving family members of a deceased victim.

Because the VAWA confidentiality provision does not address the issue of deceased victims, a nonprofit DV/SA program should look to their state law for guidance regarding the survivability of any confidentiality or privilege between a victim and the program.

41. **Q:** *On the teleconference it was noted that oral granting of consent was not best practice but oral withdrawal of consent is OK. Couldn't someone impersonate the victim when withdrawing consent, too? Why the difference?*

A: Oral withdrawal of consent is best practice. The reason for the difference is it ensures that the withdrawal of the release is immediate, while, when giving consent, a written consent ensures that nothing is released before s/he can put the agreement in writing. In essence, less harm (and program liability) can come with withdrawing consent (and waiting to verify the survivor's identity) than might result from releasing information without proper consent.

Consent for release of personal information or withdrawal of consent should usually ONLY be given by the victim, so it's important to ensure, as always, that no one is impersonating the victim. Best practice is to get the withdrawal in writing as soon as possible.

Databases & Confidentiality

Waivers are signed for a very specific purpose. They are not to make our lives as advocates easier or to allow us to collect more personally identifying data to analyze or share with others. Each time a victim signs a release of information, s/he is entrusting you with his/her personal information, and it is extremely important to avoid using this data in other forms or in other ways. Some organizations use an internal database to keep track of services provided and a release is not needed when limited information is collected, protected, and not shared with parties outside of the agency.

42. **Q:** *We are a government agency, and we have developed a database that identifies DV offenders. This information is drawn only from public records, gathered only through the courts. This database can only be accessed with an ID and Password, which are given to trained police, prosecutors, and law-enforcement-based advocates. We believe that it is very helpful to have victim information in the database, so my questions follow:*

Since the victim information that might be used is of public record, is it permissible to have it in this database without a release or waiver? If a victim advocate gathers and enters the court data - can they be a non-profit victim advocate and/or a system based advocate through the DA's office or courts?

A: Although the information may be helpful for you to have, whether it is helpful to an agency is not the standard for determining whether confidentiality requires a release of information from or notice to an individual whose information is being used, compiled or shared.

In the example posed in the question, if the information is only from public records and you are a government agency, it may be possible to enter survivor's personally identifying information without a

release of information. However, as a best practice, it is important that survivors are notified that their information will be entered into this database. In addition, provisions should be made for cases where the record is sealed or where the abuser works in the system (courts, law enforcement, etc.) and, if possible, a survivor should be allowed to opt out of having her information collected and maintained in this way.

If you are a government entity and a survivor's information is entered erroneously into a database or that database is breached, you could be liable. It is also important to consider that the information in the database could be subject to a request under the state's sunshine laws from the media or any citizen.

Survivors should be informed of all uses of their information, as well as the consequences of that data collection – and should be able to decline. Agencies using survivor information should have policies and procedures to protect the information from intentional or unintentional disclosure. Victims may assume that going to court has some level of public disclosure – but they may not have the same assumption about the compilation of the information made by your government office. Therefore, s/he should be given notice about the information that is being compiled, and you and s/he should both recognize that, depending on what is collected and how it is maintained, it could be even more damaging if it were released or used in ways that were unintended.

It also is important to ensure that the information going into the database is only the information that is of public record and nothing additional. Whenever contemplating the creation of a database you should weigh the benefits of collecting and storing the information with the consequences of having the information being used and accessed in ways that are unanticipated.

43. **Q:** *Please speak to the issue of time limits of releases with regard to third-party state reporting databases.*

A: Under VAWA, the only information a program can release to third-party state reporting databases is non-personally identifying information in aggregate form (totals). For example, “We served 15 women and 22 children today.” Since aggregate information is not identifying, a waiver from the survivor is not necessary.

Inherently, databases are not time limited. Once information is entered into a database, it is there to stay. Databases offer multiple opportunities for exporting data, creating many backup copies in multiple locations, and merging or rebundling data. Even if a survivor's information is later deleted, chances are that a backup of the database has been created at some point and the information will be stored for as long as that backup is retained by the agency administering the databases. For this reason, a release to input personally identifying information into a shared database cannot be time-limited, and therefore it is not a valid release under VAWA. State confidentiality laws may have additional requirements as well.

44. **Q:** *Do we need a release from the client to put her personal information in our organization's database? The database can only be accessed by the organization's employees.*

A: Best practice is to always get consent by a survivor (or at least provide notice, if a release of information is not required) for all the ways their personal information may be used. Survivors should be fully informed of the agency's data collection processes and of the risks and the uses of databases.

Organizations should analyze what information is being collected and for what purposes. Some organizations do a periodic assessment of their forms and database to ensure that they are only collecting the minimal information required to provide the requested services. This both minimizes the work for advocates and respects the privacy of survivors.

It is also important for agencies to think through all data collection and maintenance processes. Databases should be maintained by and within individual agencies. It is important to safeguard computers to protect victims' personally identifiable information. For example, many local programs keep sensitive client-level information on computers that are not connected to the Internet.

45. **Q:** *Our state has developed a central database program and requires personally identifying information about our clients such as name, birthdate, addresses, types of violence committed, etc. We have a really hard time understanding how we are being confidential while we are transmitting all of this identifying data to people outside of our office. Does this fit with VAWA?*

A: No, this does not fit with VAWA. Entering client information into this database would probably violate VAWA as well as state law provisions in many states. You should contact your OVW program manager to discuss this.

Mandated Reporters, Confidentiality, and VAWA

NOTE: If you are a mandated reporter, you should tell the victim up front the scope and limits of your ability to provide confidentiality.

46. **Q:** *We work in a state in which advocates are NOT mandated by law to report child abuse. If an advocate observes a mother in shelter physically abusing her child or placing her child at risk of bodily harm and the mother refuses to provide a release, under VAWA, we can't do anything to protect the child?*

A: If you are not a mandated reporter, you need a release to call the CPS hotline. The only advocacy thing you can't do is to call CPS or some other outside agency without the victim's permission. In terms of advocacy and services however, there are many other things that can be done to address what is happening and to protect the child.

If you are a mandated reporter under your state's law, you may make a report to CPS without a release. This is an exception to VAWA. However, you may only disclose the minimum information required under state law.

47. **Q:** *Do I need to notify a survivor if I make a report to CPS and I am a mandated reporter?*

A: Best practice is to notify the survivor and protect their privacy as much as possible. VAWA requires that agencies make "reasonable attempts" to notify the survivor of the report. If it would be dangerous to do so, it could be reasonable to not specifically inform him/her. Best practice would also be to give the survivor an opportunity to self-report and use other services. A few state laws require follow-up with CPS and in these rare instances, you would not need a release for future conversations; although you would be obligated to notify the survivor of your mandate.

48. **Q:** *What about a domestic violence advocate who works with a victim and his/her child and must report to Child Protective Services regarding harm to a child from a victim or the batterer. Is a release required for ongoing communication with CPS for follow-up services during the investigation?*

A: In most states, yes. If you are a mandated reporter, you may make a report to CPS without a release. However, you may only disclose the minimum information necessary under state law. Any information beyond what is required under state law will require a release.

A few state laws require follow-up with CPS and in these rare instances, you would not need a release for future conversations; although you would be obligated to notify the survivor of your mandate. If your state does not specifically mandate follow-up with CPS, you would need a release of information in order to provide any information beyond what is required by the report of suspected child abuse or neglect. It is important to know your state laws and whether your professional role has specific confidentiality requirements. Check with your state coalition if you are not sure.

49. **Q:** *Are former clients still protected under confidentiality laws? What if we hear that she or her children are in danger – is it a breach of confidentiality to call law enforcement if she's no longer a client?*

A: Yes, former clients are still protected by confidentiality laws. Yes, it would be considered a breach of confidentiality to contact law enforcement or anyone else without a release. Calling law enforcement would reveal that the person previously received services from your organization. Without consent from the former client, you would be violating his/her confidentiality. This also applies if law enforcement or another agency calls to confirm if someone used your services in the past.

In addition, we know that it is important to respect a survivor's self-determination in deciding when it is safe and when it is not safe to reach out for assistance, contact a program, or call the police. Doing this without the person's consent could undermine that self-determination and safety.

It is also important to recognize that even if you are a mandated reporter, that a report is only required when there is suspected abuse under the statute. A rumor that abuse is occurring is not a basis for a report.

50. **Q:** *When a client enters our shelter, she completes an emergency contact information sheet. If she does not return after curfew, we will contact the emergency contact to find out if she is okay or in danger. Is this okay, even though there is no release signed but just her consent when she completes the emergency contact upon entering our shelter?*

A: Is it explained to her when filling out the emergency contact sheet that her not returning by curfew is considered an emergency and the person she writes down will be contacted at that point, therefore informing them that she is or was in your shelter? What the emergency contact form is used for and what defines an emergency should be clear, as it may change the person listed on the form.

A best practice would be to have an informed, written, reasonably time-limited "Emergency Contact Release" that is the same as a release of information. The form should be along these lines: "In the event that I do not return by curfew, I will call the program, or the program is allowed to contact the following person. This emergency contact will be valid for the next ___ days." The advocate should have a conversation with the survivor about the risks and benefits of signing the release, its time limits, and how the advocate would know whether the survivor has purposely left shelter and is ok so that the advocate does not assume an emergency when there is no emergency. In addition, the advocate and survivor should discuss what the program should do if the victim's identified emergency contact does not know where the victim is and what actions the program will take.

Additional Questions

51. **Q:** *If a speaker comes to a survivor support group, will each client attending need to sign a release of information waiver?*

A: No, unless the agency is going to be sharing any individually identifying information with the speaker (like a list of people who are attending the group). If clients are informed when they arrive that a guest speaker will be there that day and are told the name of the speaker and the speaker's affiliation, the clients can choose whether or not to attend that group. The speaker should sign a confidentiality agreement. If the clients choose to share their personal information to the speaker during or after that session, that is a choice they make and therefore no release is required.

52. **Q:** *If a survivor talks to the advocate and then talks to someone else (mother, friend, sister) would that be considered a waiver of her privilege?*

A: A release from the survivor is always needed when the advocate s/he has spoken to is sharing the survivor's information with another advocate or another organization. Survivors can tell their personal story to whomever they want. However, if they share specifics of conversations they had with an advocate or the particulars of what an advocate told them, this could be seen as a waiver under state law of confidentiality or privilege between the survivor and the advocate in some circumstances. Regardless, advocates and programs should continue to obtain releases to ensure compliance to VAWA and respect the survivor's privacy.

53. **Q:** *Do the VAWA protections apply only to clients of VAWA-funded staff or to all clients of a VAWA-funded domestic violence program?*

A: The protections apply to every survivor/client who requests, receives, or has received services from a domestic violence, sexual assault, dating violence or stalking program that receives VAWA funds. If the program is part of a larger agency that has many different types of service programs, it would only apply

within the victim services program, not the whole agency. All survivors who use the program's services should have the same confidentiality protections.

54. **Q:** *We are not a domestic violence program, but a homelessness service program that receives funding from the Office on Violence Against Women. Do the VAWA laws regarding confidentiality apply to us?*

A: The confidentiality requirements of VAWA apply to all grantees or sub-grantees of VAWA funds. If your organization is an umbrella organization that operates multiple programs (Salvation Army, YWCA, etc.), VAWA laws apply to your victim services or violence against women programs. Even if VAWA only funds a portion of your victim services or violence against women program, you should provide the same confidentiality protection to all victims who use your services.

55. **Q:** *On occasion, we may feel that we need consent to contact a third party to determine the type of services that we can provide (e.g., contact a victim's psychiatrist in order to determine the depth of her suicidal ideations or contact a physician to determine if a child's rash is German measles) before placing the family in shelter and exposing other residents, etc. Is this violating VAWA?*

A: As long as you get consent from the victim, you may contact a third party. Remember, services should not be contingent on obtaining a release of information. It is best practice to provide all the services that you can and discuss these issues with the survivor.

56. **Q:** *Does the obligation to hold confidentiality with survivors extend to the entire staff of our non-profit sexual assault and domestic violence program? For instance, does our data entry person have to abide by the same confidentiality requirements of VAWA?*

A: Yes. Every employee or anyone who has access (or potential access) to client information (including volunteers, interns, board members, temporary staff, or contracting staff) must follow the VAWA confidentiality provisions. It is the agency that is under the requirements of VAWA, not the individual people within the agency.

57. **Q:** *What about information that is emailed? Sometimes organizations have IT personnel or auditors read email, which would not protect the confidentiality of the victim. What is your opinion?*

A: First, it is not a common practice for auditors to read organizational email, and this raises many concerns. Email is absolutely not a confidential way to communicate information, and best practice is to keep all personally identifiable information out of email. If a victim asks you to share information via email, you should inform her/him about the security limitations of email. Regardless of any footer you place in your email stating that it is privileged or confidential communication, email can be breached at multiple points during its transmission. Confidential information about clients should never be emailed.

However, since you may have information about a client stored on a computer for other reasons (such as a letter of reference for a new apartment), your concern about IT personnel is very real. If IT personnel are contractors or employees of the domestic violence or sexual assault organization, they are bound by the same confidentiality provisions stated in VAWA and should sign the agency's contractor confidentiality agreement acknowledging that they understand and will abide by those confidentiality provisions.

58. **Q:** *What agencies can receive information through a release of information from a survivor?*

A: As long as the survivor has signed a release and has been informed of the benefits and risks associated with releasing the information, it is up to the survivor to determine which agency receives his/her information.

59. **Q:** *Can one advocate who has received information from a client share it with a supervisor in the same agency or share it with a non-profit based advocate in another agency (because a client is moving to another jurisdiction, for example?)*

A: You can share information with your supervisor or team; although it is best practice that information be shared on a "need-to-know" basis. Agencies should have a policy in place about internal information

sharing. For example, it may be appropriate to inform a supervisor or colleague of the status of an individual's court case or if they are possibly suicidal. It may not be necessary or appropriate, however, to share with a supervisor or co-worker that an individual told you s/he is an incest survivor.

To share information with an advocate at another agency, you will always need a release.

60. **Q:** *Can you please discuss when it is and is not appropriate to share information talked about by clients in a domestic violence support group session with other staff. In other words, when you are facilitating a support group, when is it appropriate to release information received during a support group session from a client to another staff member (who does not participate in support group)?*

A: Your agency should have policies about sharing information internally. In general, information should be shared when it is relevant to providing requested services to a survivor or when an advocate needs support from a supervisor or colleague. Sharing limited information to help a client is permissible within your agency. For example, for grant purposes, the bookkeeper may need to know if the client is receiving services for domestic violence or sexual assault; however, the bookkeeper does not need to know the details of the attack.

It is important to respect the trust that is built between advocates and survivors and within support groups. Survivors may share details and information about their situation with certain advocates or people within certain settings and still expect a level of discretion.

61. **Q:** *What should our DV/SA program do if we get a subpoena?*

A: First, have a plan, including an attorney to call in the event that a subpoena is received. Most importantly, get legal advice and assess the best means to resist the subpoena, which could include: contacting the attorney who issued it and asking them to rescind it, challenging service, filing a motion to quash the subpoena with the court, seeking other types of orders to protect the information, working with the survivor whose information is sought to determine her position and whether she will also be resisting the request for information, among other actions. Whatever you do, please do not ignore the subpoena and hope it will go away on its own, and certainly don't destroy documents that may be subject to a subpoena once it has been served on your agency.

62. **Q:** *What about organizations or government entities that use surveillance cameras. Is there anything that can protect victims/survivors from tapes being held without their permission or would require that they not be taped?*

A: In general, video surveillance laws are very broad. Anytime a person is in a public place, consent to be recorded is not needed. For example, the street outside of your building is a public place where there may be a security camera that shows who comes and goes.

However, if the cameras are being used by a non-profit agency for security, survivors receiving your services should be notified of their existence and the use of the videotapes. Signs can be posted informing that video surveillance is in use, and agencies should have policies developed that specify the storage and retention processes of videos, which are focused on maintaining survivor confidentiality. Releases would be needed if the videos were to be shared outside of the agency.

63. **Q:** *Do state confidentiality and privilege laws supersede Federal laws, such as VAWA?*

A: In terms of confidentiality, the strongest and most protective law is what should be followed. So, if you are in a state with strong confidentiality or privilege laws that are more protective than VAWA, then your state laws should be followed. If you are in a state that has weak or not as strong confidentiality provisions as VAWA, then VAWA protections should be followed. Either way, state and federal laws can inform best practices about protection of confidential, survivor information, such as the use of written, informed, and reasonably time-limited releases of information.

This project was supported by Grant No. 2007-TA-AX-K012 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/ exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.