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

The Fundamentals

- A survivor should be notified of what is happening with their information, and who has access to it. This includes any legal duty to share information or any other limits on confidentiality.
  - It is their information – it is their choice. It is their 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 survivor can instruct a provider to share personal information outside of the confidential relationship by completing a written release.
- Don’t assume a release to share is the solution. Discuss other ways to meet the survivor’s needs without you having to reveal personal information.

Innovative Partnerships

- The fact that you have created a partnership does not eliminate or lessen the confidentiality or privilege obligations of each partner agency.
  - Protect the confidentiality of victim information.
  - Recognize that even innocuous information can be very identifying.
  - Remember that survivors decide which information can be safely shared with partners.
  - The most protective standard should be the guide.
- These guidelines for best practices are for nonprofit advocates and confidential professionals. Collaborative partners should also understand the guidelines.

Federal & State laws

- **VAWA 2013, VAWA 28 CFR 90.4, FVPSA & VOCA 28 CFR 94.115**: Grantees and subgrantees cannot disclose personally identifying information about survivors served without the informed, written, reasonably time-limited consent of the person.
  *VAWA & VOCA regulations also prohibit disclosure of individual information collected from survivors.*
- **State**: Most states have victim/advocate confidentiality for sexual assault and domestic violence advocates. Check with an attorney in your jurisdiction to see what confidentiality laws apply and see NNEDV’s [Summary of State Confidentiality Laws](#).
- **Reminders**: If statute or court mandate requires a disclosure of information, the person releasing the information must make reasonable efforts to safely 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 is informed, written, and reasonably time-limited

- **Informed:** Survivors must know (1) what they are agreeing to in a release and (2) what are the risks and benefits of signing the release. They should be aware of how their information will be used and how and when it will be shared. Address language and other communication barriers to ensure understanding.

- **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. Weigh the importance between minor inconvenience (survivor signing another release later) vs. the survivor’s right to control their information.

- **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
- A teen who can receive your services under state law without needing parental or guardian permission
- The non-abusive parent/guardian of a minor and the minor (however, see below about young children)
- Only the non-abusive parent/guardian of the minor if the minor is too young to knowingly consent (and you must attempt to notify the minor as appropriate.)
- A person with a guardian who can receive your services under state law without needing guardian permission
- The non-abusive, court-appointed guardian of a person who has been adjudicated to have a cognitive disability.

Best Practices

- Use a uniform release template that can be tailored to meet each survivor’s situation, wishes, and needs.
- Train your team members on how to discuss options around information sharing with survivors.
- Encourage your partners to use similar templates.
- Use written releases even if you have an MOU or confidentiality agreement with a partner agency.
- Avoid releases that list multiple agencies. A release that checks off a list of community partners and is not specific about the information sharing is not helpful in ensuring actual informed consent.
- Keep in mind that disparate pieces of information, when taken together, can be identifying and unsafe.
- Don’t rely on releases provided by another agency if you have not confirmed survivor’s wishes & intentions
- Nonpersonally identifying aggregate data should be sufficient for data reporting purposes.