

Model policies
on
working with young people
for
non-residential youth services in NSW

by Nick Manning

Youth Action & Policy Association (NSW)

2004

Part 5
Privacy and
confidentiality

Model policies on working with young people for non-residential youth services in NSW

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The model policies are available from <http://www.yapa.org.au/youthwork/modelpolicies>, as:

- PDF files for easy printing and reading
- web pages for quick viewing of particular policies
- Word files for easy copying + pasting into your own policy documents.

Warning!

These are model policies for agencies to adapt to suit their circumstances. We have done the best we can within our resources, but it is not possible to write a single policy which meets the requirements of the wide range of youth services in NSW. You should not rely solely on the information here, but should refer to other publications and authorities and if necessary get qualified advice for your specific situation.

We have attempted to include all the relevant legal requirements as at 2004. However the law is sometimes complex and open to interpretation, and applies to different youth agencies in different ways. If necessary you should get legal advice about your own policies. The information here is not legal advice. If there is a real possibility of legal action, you should talk to a lawyer before you decide what to do.

These policies reflect law which applies in NSW, which may be quite different to law in other states and territories of Australia. Using these policies outside NSW without checking the law, may put your agency, staff and volunteers at risk of breaking the law.

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**The other parts of this publication (below) are available from
www.yapa.org.au/youthwork/modelpolicies**

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How to use these policies

Activities and services

- Drop-in & use of centre facilities
- Young people's use of computers
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Part 2: Casework

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copy + paste the text, at www.yapa.org.au/youthwork/modelpolicies

5. Privacy and confidentiality:
Privacy essentials

Privacy essentials

This is the first policy in the set of related policies on privacy and personal information:

- Privacy Essentials
- Privacy: Collecting Personal Information
- Privacy Statement and Privacy Consent Form
- Privacy: Using Personal Information within the Team
- Privacy: Security of Personal Information
- Privacy: Disclosing Personal Information with Consent
- Privacy: Disclosing Personal Information without Consent.

Aims of the privacy policies

These policies aim to balance these needs:

- The agency needs to comply with laws which require privacy and laws which require disclosure.
- The agency needs to provide services in ways which best meet the needs of young people, including a high and predictable level of confidentiality, and a team, inter-agency or family approach to service delivery where appropriate.
- The agency needs to take steps to maintain the safety of young people and others, which sometimes requires us to maintain confidentiality and sometimes requires us to breach confidentiality.

Who must comply with these policies?

The following people must comply with these policies:

- Paid employees
- Volunteers
- Management committee members
- Students on placement
- Contractors (eg. external supervisors, consultants, IT support, cleaners etc).

It must be a condition in each of these people's contracts or agreements that they comply with these policies (attach a copy of these policies for them to sign).

Whose privacy is protected?

These policies apply to personal information about young people as clients or agency users (and as potential clients and ex-clients).

5. Privacy and confidentiality: Privacy essentials

These policies do not apply to information about employees. They do not apply to information about volunteers, management committee members or association members unless they are also clients or agency users.

Minimum age and informed consent

There is no minimum age at which people become entitled to privacy. The agency must protect the privacy of children, young people and adults when it has personal information about them.

Generally you must have a legally valid consent before you collect, use or disclose personal information. You can disclose personal information without informed consent only in specific situations (see Privacy: Disclosing Personal Information without Consent).

Generally, you need the consent of the young person, rather than their parent or guardian, regardless of their age.

What information is confidential?

Personal information

The Privacy policies protect *personal information*: information about an individual who is identified, or whose identity could be reasonably worked out, from the information. Personal information does not include de-identified information or statistical data which does not allow individuals to be identified.

What is personal information?

We sometimes think of confidential information as "a secret that someone doesn't want passed on", but *personal information* has a wider definition where virtually all information about a young person must be kept private. Personal information about a young person includes:

- their name, address, date of birth, sex etc
- things the young person tells you about themselves
- things other people tell you about the young person
- the mere fact that the young person is or was a client or user of the agency
- things that happen involving the young person at your agency
- things you observe about the young person
- your professional judgements or opinions about the young person
- physical information like photos of the young person, or drawings done in counselling.

In practice, you must treat all information as private and confidential until the young person tells you otherwise.

Personal information is protected whether it is:

- on paper: in a client file, a contact list, a letter or any other document, even on a yellow sticky note
- in a computer file, including an email
- something you hear or see, and therefore "only stored in your head".

5. Privacy and confidentiality: Privacy essentials

HIV AIDS information

A person's HIV AIDS information has special legal protection in section 17 (2) of the NSW *Public Health Act*. "HIV AIDS information" includes information that a person:

- has been, or will be, tested for HIV or AIDS
- is, or has been, infected with HIV or AIDS.

Staff must not:

- record in any document, or
- disclose to anyone else **including your own team members**,

a person's HIV AIDS information, unless that information is strictly necessary in order to provide care, treatment or counselling to that person. (You must not record or disclose HIV AIDS information to protect other people from infection eg. in accommodation or recreation programs).

Staff must not disclose a person's HIV AIDS information to the person's sexual partner, or to anyone else in relation to the person's sexual activity, without the explicit written consent of the person.

Staff may disclose HIV AIDS information in a report to the Director-General of NSW Health if they reasonably believe that the person is putting other people's health at risk, eg. by having unsafe sex. (Contact the Public Health section of NSW Health for more information).

Criminal convictions

Only ask about, record, use, or disclose information about the young person's criminal convictions if:

- it is strictly necessary in order to provide the service they are seeking, and
- the convictions in question are not "spent convictions" (see below).

Never publish (eg. in an annual report or a brochure), or broadcast (eg. in a media interview) anything which may identify any young person in connection to past, present or possible future court proceedings (eg. as a defendant, victim or witness). In some cases this would be illegal. If necessary, get legal advice.

5. Privacy and confidentiality: Privacy essentials

Criminal records and past involvement in the justice system

Certain criminal convictions have special legal protection in the NSW *Criminal Records Act 1991*. After a set crime-free period, certain convictions are "spent", which means that the person does not have to reveal those convictions to any person for any purpose. They also do not have to reveal any police cautions or youth justice conferences.

You should not record or disclose information about the young person's spent convictions. You should not record or disclose information about a young person's police cautions or youth justice conferences unless it is strictly necessary for the service you are providing.

You should not take into account spent convictions, police cautions or youth justice conferences when you make a decision which disadvantages the young person, such as a decision that you will not provide a service to them or you will not let them participate in an activity.

You should not disclose a person's spent convictions, police cautions or youth justice conferences to eg:

- an accommodation service
- an employer
- any other service provider who might disadvantage the young person as a result.

What about safety?

"Occupational health and safety", "duty of care", and "serious and imminent threat to life and health" are **not** usually justifications for asking for, recording, using or disclosing a young person's spent convictions, police cautions or youth justice conferences.

Which convictions are spent?

The young person probably will not know whether a conviction is spent or not. The law is complex, but as a rough guide:

- all Childrens Court matters when the person was under 16 are spent immediately
- many Childrens Court matters when the person was 16 or over are spent after 3 crime-free years
- some matters when the person was over 18 are spent after 10 crime-free years.

If you do not know whether a conviction is spent or not, you should not record or disclose it.

To find out whether a conviction is spent or not, the young person needs to speak to a lawyer, eg. the Legal Aid Hotline for Under 18s on 1800 101810.

There is more information in *Youth justice: Your guide to cops and court in NSW* (2003) by Jane Sanders & Ragnii Grainger. Published by Macquarie Legal Centre and Federation Press (02) 9552 2200 or info@federationpress.com.au .

5. Privacy and confidentiality: Privacy essentials

Background to the privacy policies

These policies reflect the main privacy requirements of:

1. Commonwealth *Privacy Act 1988*, which applies to:

- organisations with income over \$3 million
- DoCS CSGP-funded services as a condition of their funding agreement (see below)
- FACS-funded services as a condition of their funding agreement (see below)
- non-government health services. (*Health services* is interpreted widely to also include agencies providing such services as counselling).

(More information Federal Privacy Commissioner <http://www.privacy.gov.au> or 1300 363 992)

2. NSW *Privacy & Personal Information Protection Act 1998* which applies to:

- local councils, and
- DoCS CSGP-funded services as a condition of their funding agreement (see below).

(More information NSW Privacy Commissioner <http://www.lawlink.nsw.gov.au/privacynsw>)

Youth work funding agreement requirements

NSW Department of Community Services Service Agreement 2004-2005

Section 18 Confidentiality:

"18.2 You agree you are subject to section 76 of the Community Welfare Act 1987 and that as a result a breach of confidentiality under this Agreement may be an offence under that section.

18.4 You will comply with the Privacy and Personal Information Protection Act 1998 (as if you were a State government agency) and the Commonwealth Privacy Act 1988."

Commonwealth Department of Family & Community Services draft Youth Program Guidelines for JPET, Reconnect and YAS/FLW Services (June 2004):

"Service Providers are required to comply with the National Privacy Principles in the Privacy Act 1988."

Health agencies

Health agencies (government and non-government) must comply with the NSW *Health Records and Information Privacy Act 2002*. The Privacy model policies are reasonably consistent with that Act, but see the NSW Privacy Commissioner's resources and NSW Health internal policies for more information. (Non-government health agencies must also comply with the Commonwealth *Privacy Act 1988*).

Privacy: Collecting personal information

See the policy Privacy Essentials for background to this policy.

What is *collecting personal information*

Collecting personal information means:

- observing, hearing or reading personal information
- asking for personal information (spoken or written)
- receiving or recording personal information in any written form, on paper, on a computer, photocopying, receiving a fax or email, etc.

Procedure

Accuracy of personal information

Take reasonable steps to ensure the personal information the agency collects, uses and discloses is relevant, accurate, complete, up-to-date and not misleading.

Anonymous and "first names only" activities

Give young people the option of interacting with the agency anonymously, or with given names (first names) or nicknames only, for all activities where the agency does not need to be able to identify or contact a young person, for example:

- street work activities
- drop-in and use of centre facilities
- large events including dances, gigs, festivals
- youth forums, surveys and needs assessment activities.

You do not have to show young people the agency's privacy statement if you do not have full names and identifying information about them.

When you first record young people's names

Explain the agency's privacy statement whenever you become aware of or record a young person's name and address details, eg:

- the start of a casework relationship
- on a consent form for an activity or program
- any time young people provide their full name or address.

5. Privacy and confidentiality: Privacy: Collecting personal information

You should ensure that the young person understands the privacy statement, including, where necessary:

- reading it out to the young person
- explaining it in a way they understand
- having an interpreter read it in their language.
- giving them time to read it and go away and think about it.

When you are also in contact with parents or other family, you should let them know about the agency's legal responsibilities regarding privacy, as outlined in the privacy statement.

When you collect personal information

Every time you collect personal information, make sure that:

- you actually need the information to provide the service the young person wants
- the young person knows why you are collecting the information
- the young person knows whether it is compulsory or voluntary to give you the information, and what will happen if they don't
- the young person understands the contents of the privacy statement including their right to access and correct the information
- you record the information accurately and completely
- you collect the information from the young person concerned, or from someone else only if the young person concerned has consented to this.

Do not collect or record:

- HIV AIDS information unless this complies with the NSW *Public Health Act 1991*
- spent criminal convictions.

See the policy Privacy Essentials for more details.

Young people's access to, and alteration of, personal information

If a young person asks, the agency must:

- generally give them access to the personal information the agency holds about them
- correct, delete or add to the information to keep it relevant, accurate, complete, up-to-date and not misleading.

There is more information in the policy Young People's Rights to their Personal Information.

Privacy statement & privacy consent form

See the policy Privacy Essentials for background to this policy.

Procedure

Privacy statement

The team's privacy statement is called *Your privacy at this agency* and it sets out how the agency manages personal information. Make it available to anyone who asks for it. Include in it:

- generally, what sort of personal information you hold
- what purposes you hold it for
- how you collect, use and disclose that information
- who can access that information, and how.

Include the team's privacy statement (or how to get a copy) in all documents you show, display or give to young people, families or others about the agency, eg:

- *Privacy Consent Form* (below)
- rules and consequences
- consent form for excursions and camps
- agency pamphlet
- flyer/poster about a program.

Privacy Consent Form

In most situations do not disclose personal information about a young person without their consent (see other Privacy policies). Use the *Privacy consent form* (below) to record the young person's consent.

You must ensure that the young person understands the privacy statement *Your privacy at this agency* before they sign the *Privacy consent form*.

5. Privacy and confidentiality:
Privacy statement and privacy consent form

Your privacy at this agency

We record information about the young people we work with, including:

- your name, age, contact details and who to contact in an emergency
- information for our statistics such as ethnic group and language spoken
- medical and disability information if we need it for some services and activities
- information about your life, health, welfare, problems, goals, thoughts and feelings, but only if you ask us to help with this sort of stuff.

Our team and your privacy

Our team includes:

INSERT

"THE TEAM INCLUDES ALL AGENCY STAFF"

OR

"THE TEAM INCLUDES AAA WORKER, BBB WORKER ETC"

Usually when you tell something about yourself to one member of our team, or when one of us observes something about you, we tell the other members of the team, so that we can all work together to assist you.

Usually it stays within the team. This means we don't tell things about you to anyone outside the team without your permission, except:

- we report abuse of under 16 year olds (this can include underage sex with adults)
- if you or someone else is in serious danger (eg. suicide, violence, drug overdose, medical emergency etc), we tell people who can help
- we might tell the police about a serious crime you or someone else did
- if you commit any crime at the agency or refuse to leave if we ask you to, we might call the police
- if you are reported to the police as a missing person, we will tell the police that you are OK, **but we will not tell the police or your family where you are.**

As well, it is possible (but rare) that the police could get a search warrant to read our files, or a judge could make us hand over our files in a court case.

You can see the information we record about you

We will let you see the information we have about you (on paper and on computer), if you ask. If you think that any of that information is wrong, then:

- if we agree that it is wrong, we will correct it
- if we don't agree that it is wrong, you can write out what you think the truth is, and we will add your version to our version of the information.

5. Privacy and confidentiality:
Privacy statement and privacy consent form

Privacy consent form

Name _____ Date of birth _____

Address _____

Email _____

Phone _____

Any restrictions when contacting me (eg. don't leave messages, don't text etc):

Do not contact: Regardless of the situation (including emergencies), do not contact or disclose personal information about me to:

(We may still disclose personal information in the situations listed in *Your privacy at this agency*).

Emergency contact: In an emergency or if I can't communicate please contact:

and tell them whatever personal information about me you need to.

(We also might tell health workers or the police in serious emergencies, depending on the situation).

Consent to disclose personal information: Staff of this team can disclose personal information about me to:

when needed to:

Be specific, eg: "*to: Centrelink when needed to: help me get benefits*". Don't use general consents eg: "*to: other agencies when necessary to: provide services that might help me.*" (More space on the back).

Your privacy at this agency: *I have a copy of Your privacy at this agency and I understand it.*

Signed _____ **Date** _____

Name of staff member who explained *Your privacy at this agency* and collected this information:

5. Privacy and confidentiality:
Privacy statement and privacy consent form

Privacy consent form continued
(Consent to disclose personal information)

Staff of this team can disclose personal information about me to:

when needed to:

Signed _____ **Date** _____

Staff of this team can disclose personal information about me to:

when needed to:

Signed _____ **Date** _____

Staff of this team can disclose personal information about me to:

when needed to:

Signed _____ **Date** _____

Staff of this team can disclose personal information about me to:

when needed to:

Signed _____ **Date** _____

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Privacy: Using personal information within the team

See the policy Privacy Essentials for background to this policy.

Procedure

Team confidentiality

The privacy statement as explained to young people must give a broad outline of who is on this team. Staff can reveal personal information to other staff on this team, but only on a "need-to-know" basis. Do not reveal or access personal information within the team unnecessarily. Do not gossip about or pry into young people's personal information.

Team confidentiality

"The team" in this policy means a group of staff who may do different things but share the same aims and the same clients. So for example a counsellor and a crisis support worker who work towards the same goals for the same clients are a "team", but the recreation workers at the same agency may be another "team" because they have different aims and different clients. (This is true even when some clients are common to both teams).

In many agencies each funded project is a different team. In some agencies the funds from several funding sources are pooled to form one project with one set of aims, ie. one team.

The team includes any administrative workers, external supervisors, consultants, casuals, volunteers and students who are working with that team. It also would include a representative of the funding body if they ever required you to make personal information (not just statistics) available to them (this is rare).

Conflict of interest

Where the agency collects information from one young person, which identifies another young person who is also a client of the team, put special procedures in place to ensure that the team members working with one client do not become aware of any personal information about the other young person.

This is especially important when the two young people are in conflict, legally or interpersonally. However you should put the procedures in place in all situations as the conflict may not be apparent, or existent, at the start of the youth work relationship.

Ensure that both young people understand that these procedures are in place.

5. Privacy and confidentiality: Privacy: Using personal information within the team

If possible, refer one of the young people to another agency.

Disclosing to other teams in this agency

Staff can only disclose personal information to staff from other teams within the agency:

- with consent, or
- as outlined below under *Disclosing personal information without identifying the young person*, or
- in the situations listed in the policy Privacy: Disclosing Personal Information without Consent.

Disclosing personal information without identifying the young person

Staff can disclose certain personal information if they don't reveal a young person's name or anything which might identify them. Use this approach so as to include statistics and case studies in:

- reports to and discussions with management
- reports to funding bodies
- media releases and interviews to publicise the agency's work.

It is essential in these situations that you avoid revealing any detail which might identify a young person to someone else (eg. in some cases merely mentioning a young person's ethnic group in connection to a suburb or town may effectively identify them).

Within the team

While not required under privacy law, staff might choose to try, where possible, to avoid unnecessarily identifying a young person in discussions **within the team**, such as:

- debriefings
- team meetings
- professional supervision or other discussions.

Privacy: Security of personal information

See the policy Privacy Essentials for background to this policy.

Procedure

Avoid accidental and intentional disclosure

Take all reasonable steps to ensure that personal information is not accidentally or intentionally disclosed to other clients, staff on other teams, management or anyone else. Some recommended strategies:

- ensure that phone and face-to-face conversations are not overheard
- keep files and other personal information in a locked filing cabinet when not in use
- limit access to filing cabinets to those staff with a genuine need
- put files inside plain manila folders which do not identify clients, before you take them out of the building
- never leave files unattended in a car
- keep computer files (including emails) protected with passwords or stored on removable storage (eg. disks) which are locked away
- never leave computer records on a laptop computer without taking extra precautions against theft and misuse.

Faxing personal information

Take care when sending or receiving personal information by fax. Ensure that:

- the fax number is correct
- wherever possible the intended recipient is present and aware the fax is coming
- the cover sheet clearly identifies the information as confidential.

Emailing personal information

Email is an insecure way to communicate and store personal information. Avoid sending or receiving personal information via email whenever possible. When there is no practical alternative, ensure that:

- wherever possible, staff on other teams do not have access to the sending or receiving email address
- delete sent and received emails (first, print a file copy or paste the text into another format eg. a word document or a database)
- the agency and people it emails to/from use up-to-date virus protection on computers and servers.

5. Privacy and confidentiality: Privacy: Security of personal information

Contacting young people

Whenever you record a young person's contact details, ask them about any necessary limitations on contacting them in order to protect their privacy, eg:

- not phoning/texting them at home or on their mobile
- not leaving phone messages
- not sending mail to their home
- not emailing them.

Record any limitations next to the relevant contact details eg. on the privacy Consent Form. Comply with all limitations on contact, except where policies require staff to breach privacy (See Privacy: Disclosing personal information without consent).

All agency landline and mobile phones should have permanent Line Blocking so that the phone number is not transmitted and identified by someone else who has access to the young person's phone. A staff member calling a young person from their home phone or personal mobile should use either permanent Line Blocking, or Call Blocking for that call.

Destroying records

Records which the agency no longer needs to keep must be destroyed in a secure way. See the policy Keeping and destroying records.

Privacy: Disclosing personal information with consent

See the policy Privacy Essentials for background to this policy.

Disclosing

Disclosing personal information means disclosing the information outside your team.

Consent

For consent to be legally valid, it must be:

- 1. freely given:** the person freely consents without threat or pressure, and
- 2. informed consent:** you provide sufficient information so that they genuinely understand what they are consenting to, and
- 3. specific:** about who you can disclose to and for what purpose.

Consent includes:

- Explicit consent (written or spoken)
- Implied consent.

Explicit consent (written or spoken): Eg. another agency needs information about a young person. You can disclose personal information if the young person says or writes that they consent (and this consent meets the 3 legal requirements above).

Implied consent: Disclosure is necessary to provide a service the young person has requested, and the young person expects you to disclose this information. Eg. a young person asks you to help them deal with another agency (eg. school/court/health). If the young person expects that you will disclose relevant details to that agency if necessary, then you have their implied consent (if you meet the 3 legal requirements above).

However be very careful that you do not disclose information which the young person does not expect you to disclose. It is often safer to get explicit consent (spoken or written).

Written or spoken?

Consent does not have to be in writing to be legally valid. Spoken consent is just as valid as written consent.

Written consent might seem more real or substantial, and less likely to be disputed later, but in fact even a written signed consent can be disputed if it doesn't meet the 3 requirements above.

5. Privacy and confidentiality:
Privacy: Disclosing personal information with consent

Procedure

Only disclose personal information when you have the young person's consent (explicit or implied). (You can disclose personal information without consent, but only in the situations in the policy Privacy: Disclosing Personal Information without consent).

How to get a valid consent

Spoken consent

Disclose personal information using the spoken consent of the young person only if it is unreasonable to have to get written consent. As soon as possible, record that consent by getting a written consent, or by making a file note yourself recording that the young person gave verbal consent.

Written consent

Use the *Consent to disclose personal information* section of the Privacy Consent Form to record written consent.

The other agency holds the consent

Where another agency holds the written consent of the young person allowing you to disclose personal information to that other agency, that consent is sufficient if:

- the consent is written, and
- you have a copy (file it), and
- the consent is specific about the purpose of the disclosure, and
- you are satisfied that the young person freely consented, and
- you are satisfied that the young person understood what they consenting to.

If necessary, consult the young person to satisfy yourself about these points.

Make a note in the file recording these points.

Special types of personal information

Do not disclose, even with the young person's written consent:

- HIV AIDS information, unless this complies with the NSW *Public Health Act 1991*
- spent criminal convictions, unless the young person understands that under the NSW *Criminal Records Act 1991* they are not required to disclose these.

See the policy Privacy Essentials for more details.

5. Privacy and confidentiality: Privacy: Disclosing personal information with consent

Family or friends ask: "Where are they?"

Youth workers are often asked if they know where a young person is, eg. by a parent or a friend. In general, you must not answer these questions without consent unless there is a serious and imminent threat to the life or health of any person and answering this question is likely to reduce that risk. Examples might include:

- imminent suicide or self harm
- the young person is having a psychotic episode
- the young person is missing and you fear for their safety
- the young person is likely to harm someone else.

(See the policy Privacy: Disclosing Personal Information without Consent).

But what if someone asks you where a young person is, and there **isn't** any "serious and imminent threat to life or health"? You have 2 options acceptable under privacy laws:

Option 1:

When asked, say: *"Sorry, agency policy means I can't give you any information about any young person."*

You can add: *"However if you leave your details, then if I see the young person, I will let them know you want to see them."*, but only if the person already knows that the young person uses the agency.

Option 2: Have a policy to answer "Where are they?" questions from family and young people

If the team wants to have a policy to answer "Where are they" questions in most situations (not just the serious situations above), staff must inform young people in advance. Include this statement in the rules/responsibilities, flyers, privacy statement and other documents for young people:

If family or young people ask us where you are or when we last saw you, we normally answer these questions. If at any time you don't want us to give out this info about you to family or other young people, let us know.

If the young person knows that this is your policy, and does not say that you shouldn't give out this information, then you have their (implied) consent to disclose this information. However if a young person asks you not to give out information to their family, friends or other young people, you must not (regardless of your policy), except in the "serious and imminent threat" circumstances above.

What if the police ask where a young person is or when you last saw them?

In general, you must not answer these questions from police without consent unless:

- there is a serious and imminent threat to the life or health of any person and answering this question is likely to reduce that threat, or
- the young person has committed a serious crime, and the agency believes that the risk to the community if you don't disclose outweighs the risk to the work of the agency if you do.

(See the policy: Privacy: Disclosing Personal Information without Consent).

Privacy: Disclosing personal information without consent

See the policy Privacy Essentials for background to this policy.

Disclosing

Disclosing personal information means disclosing the information outside your team.

Non-discrimination

This policy requires you to make judgements which may have major impacts on people. You may have to make judgements quickly and without all the facts. It is essential that these judgements are based on:

- facts and reasonable beliefs, not superficial assumptions, unsubstantiated allegations or rumours
- information about individuals, not generalisations about a "group" they belong to.

For example, do not make ill-informed or prejudiced assumptions about the impact of a person's ethnicity, or their mental illness, on the level of risk in a situation.

Procedure

General procedure for disclosing personal information

If you don't have the young person's consent or expectation to disclose, only disclose personal information in one of the situations listed in this policy (below).

Consult with the Manager before you take action, or decide not to take action, in any of these situations (except in emergencies).

If possible, contact the young person whose privacy you are breaching, before or soon after you breach it, to let them know that you are doing this and why. However do not contact them if this would defeat the purpose of the disclosure or if it would create a serious safety risk.

Make a record of your decisions, reasons and actions.

Missing person

If a young person who uses the agency is reported to the police as a missing person, you should contact the police to say that they are OK, but do not tell the police or the person's family where the young person is.

5. Privacy and confidentiality: Privacy: Disclosing personal information without consent

Child protection

Disclose personal information if the child protection laws require you to. See the Child Protection policies.

Crime at the agency

If a crime occurs on agency premises or during activities and services, report it to the Manager.

- For violence see the Non-violence policy.
- If the victim or the offender is a young person who uses the agency, see the policy Crime and Police for the issues involved in the decision whether to report to police or not.
- If neither the victim or the offender is a young person who uses the agency, there is probably no breach of privacy in reporting the crime to police.

Serious and imminent threat to life or health

You should usually disclose personal information to prevent or reduce a serious and imminent threat to the life or health of any person (the young person or someone else). This means:

- there is an immediate serious risk to a particular person or particular people, **and**
- disclosure to a particular person or agency is likely to reduce that risk.

What is a "serious and imminent threat"?

A 'serious' threat must reflect significant danger, and could include a potentially life threatening situation or one that might reasonably result in other serious injury or illness. A threat could also relate to an emergency, following an accident, when an individual's life or health would be in danger without timely decision and action.

A threat is 'imminent' if it is about to occur, or may result in harm within a few days or weeks.

As a guide, these situations might justify a disclosure:

- serious suicidal intent (see Suicide policy)
- a drug overdose (see Alcohol and illegal drugs policy).
- a serious threat to kill or seriously injure someone
- contacting the police or someone else during a violent incident

However, you should consult with your Manager if possible and judge each situation individually.

Depending on the circumstances, you might disclose to:

- the police
- health workers
- other service providers
- family or friends of a perpetrator or a person at risk, or
- the person at risk.

You can only disclose information to a person **where disclosure is likely to reduce the risk** - you must maintain normal privacy with all other people.

5. Privacy and confidentiality:
Privacy: Disclosing personal information without consent

Serious offences (disclosure in limited circumstances)

If you know or believe that a serious crime has been committed and you have information which may assist the police to arrest or prosecute the offender, then **in limited circumstances** you should consider whether or not to breach client confidentiality to disclose personal information to the police.

The issues to consider in deciding whether to disclose crime to police include:

- is the offender a client
- the nature and seriousness of the crime (eg. did it involve serious violence?)
- is the crime related to the work you are doing with the client (eg. if you work mainly with offenders, you probably cannot report all their serious crimes)
- the likelihood of the crime being repeated
- the value of the work you are doing with the client and the likely effect on that work if you disclose
- the likely effect on your work with other young people if you disclose (eg. Will they find out? Will they lose trust in you?).

You should consult with the Manager and judge each situation individually.

See also *Crime at the agency* above.

Concealing a serious offence

It is an offence to fail, without a reasonable excuse, to give information to the police which would help them to arrest, prosecute or convict someone guilty of a serious crime (Section 316 of the *NSW Crimes Act 1900*).

However this law is not used against youth workers and other welfare workers in NSW. In most situations youth workers have a "reasonable excuse" for not reporting: the need to protect client confidentiality so that you can continue working with the person to achieve positive outcomes.

In exceptional circumstances, such as the worst crimes and where there is a likelihood of further serious offending, the safety of the community would outweigh the importance of continuing to work with that client. In such situations you should consider disclosing to police.

Unsuitability to possess guns

Tell the Manager if you believe that a person (a young person using the agency, or someone else) should not be in possession of a gun.

The Manager will decide whether to inform the police under Section 79 of the *NSW Firearms Act 1996*.

5. Privacy and confidentiality: Privacy: Disclosing personal information without consent

Reporting unsuitability to possess guns

You may inform the police if you believe that a person is unsuitable to be in possession of a firearm (a gun):

- because of the person's mental condition, or
- because you think that the person might attempt to commit suicide, or
- because you think that the person would be a threat to public safety.

You do not need to know whether the person already has a gun or not. The purpose of informing the police is so that the police can decide whether to issue or revoke a gun licence.

Reporting this information to police is acceptable under the Privacy policies (Section 79, NSW *Firearms Act 1996*).

Subpoenas

A subpoena is a document requiring you to go to court to be a witness and/or to produce certain documents to the court. If you receive a subpoena:

- tell the Manager immediately
- attempt to contact any young person whose privacy might be breached by the subpoena, to find out if they consent to disclosure or not
- seek legal advice (eg. from a community legal centre or a private solicitor) about how to negotiate about the subpoena to protect privacy.

Other police situations

See the policy Crime and Police for:

- police questions
- police searches
- reporting breaches & offences

when the situations in this policy do not apply.

Other laws requiring disclosure?

There may be other laws (eg. about social security or immigration) which require disclosure by certain agencies in specific situations. Get advice from a lawyer if necessary (eg. a community legal centre).

Special types of personal information

Occupational health and safety, duty of care, and serious and imminent threat to life and health are not grounds for disclosing:

- HIV AIDS information, except as allowed under the NSW *Public Health Act 1991*
- spent criminal convictions.

See the policy Privacy Essentials for more details about restrictions on disclosing these types of information.