

Guidelines on confidentiality

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1. Duty of confidentiality

Refer to the *APS Code of Ethics* (2007), standard A.5. Confidentiality.

A.5.1. *Psychologists* safeguard the confidentiality of information obtained during their provision of *psychological services*. Considering their legal and organisational requirements, *psychologists*:

- (a) make provisions for maintaining confidentiality in the collection, recording, accessing, storage, dissemination and disposal of information; and
- (b) take reasonable steps to protect the confidentiality of information after they leave a specific work setting or cease to provide *psychological services*.

- 1.1. The establishment and maintenance of confidentiality between a *psychologist* and a *client* is a fundamental aspect of professional practice, and is considered a cornerstone of the profession. Confidentiality refers to *psychologists*' obligations to protect the privacy of *clients*' personal information. The assurance of confidentiality helps to establish a relationship of trust (a 'fiduciary' relationship) between a *psychologist* and a *client*.
- 1.2. Any response to an enquiry about whether a *psychologist* is consulting with a *client* may impact on the *client*'s confidentiality. A response such as, "I cannot comment either way", is benign and does not reveal anything about the *client*.

2. Contractual obligations and confidentiality

- 2.1. *Psychologists* are reminded that the Commonwealth Privacy Act (1988), some state Health Records Acts and the Higher Education Support Act (2003) contain legally binding provisions regarding confidentiality of people's personal information. For example, the Victorian Health Records Act (2001) enunciates the responsibilities for health service providers in the event of the transfer or closure of a practice, or death of the health service provider.
- 2.2. *Psychologists* are aware of their contractual obligations to each of the parties involved, particularly when conducting fee-for-service work for third party payers.

3. Informed consent

Refer to the *Code*, standard A.3. Informed Consent.

A.3.1. *Psychologists* fully inform *clients* regarding the *psychological services* they intend to provide, unless an explicit exception has been agreed upon in advance, or it is not reasonably possible to obtain informed consent.

A.3.2. *Psychologists* provide information using plain language.

A.3.3. *Psychologists* ensure consent is informed by:

- (a) explaining the nature and purpose of the procedures they intend using;
- (b) clarifying the reasonably foreseeable risks, adverse effects, and possible disadvantages of the procedures they intend using;
- (c) explaining how information will be collected and recorded;
- (d) explaining how, where, and for how long, information will be stored, and who will have access to the stored information;
- (e) advising *clients* that they may participate, may decline to participate, or may withdraw from methods or procedures proposed to them;
- (f) explaining to *clients* what the reasonably foreseeable consequences would be if they decline to participate or withdraw from the proposed procedures;
- (g) clarifying the frequency, expected duration, financial and administrative basis of any *psychological services* that will be provided;
- (h) explaining confidentiality and limits to confidentiality (see standard A.5.);
- (i) making clear, where necessary, the conditions under which the *psychological services* may be terminated; and
- (j) providing any other relevant information.

- 3.1. The process of informed consent includes clarifying for the *client* or his/her representative, the nature of the provision of *psychological services*, and the extent of potential disclosure of the *client's* information. Refer also to Section 4 "Limits to confidentiality".
- 3.2. As part of the informed consent process, *psychologists* explain to their *clients* the limits to confidentiality. It is preferable to obtain written consent from a *client* that indicates what personal information may be released, under what circumstances, and to whom it may be disclosed. When working with involuntary *clients*, *psychologists* are particularly mindful of the need to clarify the above issues.

A.3.6. *Psychologists* who work with *clients* whose capacity to give consent is, or may be, impaired or limited, obtain the consent of people with legal authority to act on behalf of the *client*, and attempt to obtain the *client's* consent as far as practically possible.

A.3.7. *Psychologists* who work with *clients* whose consent is not required by law still comply, as far as practically possible, with the processes described in A.3.1., A.3.2., and A.3.3.

- 3.3. When working with *clients* who are young people, *psychologists* determine the capacity of the *client* to provide informed consent. A young person is considered capable of giving informed consent when he or she "achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed" (*Secretary, Department of Health and Community Services v JWB and SMB*, (1992) FLC 92-293, at page 79,174). The process of deciding if a young person can provide informed consent includes assessing whether he or she:
- can understand the nature of the proposed *psychological service*;
 - can understand the benefits and risks of the proposed *psychological service*;
 - can understand the consequences of receiving or not receiving the proposed *psychological service*;
 - has the capacity to make an informed choice; and
 - can understand the limits to confidentiality.
- 3.4. In circumstances where a third party is paying for the provision of a *psychological service* and the client provides consent for the disclosure of their personal information to that third party, *psychologists* review the scope of the consent form and the date when the consent was provided. *Psychologists* establish that the consent provided was specific for the information to be disclosed, and was reasonably contemporaneous with the request for information.

Refer also to templates on informed consent in the "Privacy resources for private practice" section of the APS website.

4. Limits to confidentiality

Refer to the *Code*, standard A.5. Confidentiality.

A.5.2. *Psychologists* disclose confidential information obtained in the course of their provision of *psychological services* only under any one or more of the following circumstances:

- (a) with the consent of the relevant *client* or a person with legal authority to act on behalf of the *client*;
- (b) where there is a legal obligation to do so;
- (c) if there is an immediate and specified risk of harm to an identifiable person or persons that can be averted only by disclosing information; or
- (d) when consulting colleagues, or in the course of supervision or professional training, provided the *psychologist*:
 - (i) conceals the identity of *clients* and *associated parties* involved; or
 - (ii) obtains the *client's* consent, and gives prior notice to the recipients of the information that they are required to preserve the *client's* privacy, and obtains an undertaking from the recipients of the information that they will preserve the *client's* privacy.

- 4.1. Confidentiality is not absolute. There may be occasions when the provision of a *psychological service* to *clients* may require that information to be shared among relevant others including professionals and family members, such as gathering an informant history for a neuropsychological assessment, or giving feedback to next of kin. Such arrangements are conveyed and explained to *clients*.
- 4.2. Young people.
At the outset of working with young people as *clients*, *psychologists* clarify the limits to confidentiality with all relevant parties, including parents when they are involved in the consent process.
- 4.3. Organisational settings.
Clients of agencies, businesses, schools, hospitals, employee assistance programs, or other organisations need to be informed from the outset about how their personal information may be used and disclosed to others. Where *psychologists*' conditions of employment require disclosure of *client* information, they clarify these matters with *clients* at the outset. For example, in the context of correctional services, issues of safety and security may require the disclosure of *client* information within the organisation. In the context of hospitals and health-care settings, it is common to have a team approach to *client* treatment which may require sharing of *client* information.
- 4.4. When *psychologists* are legally obliged to disclose *client* information.

Refer to the *Code*, standard B.1.Competence.

B.1.2. *Psychologists* only provide *psychological services* within the boundaries of their professional competence. This includes, but is not restricted to:
...
(d) complying with the law of the jurisdiction in which they provide *psychological services*.
...

- 4.4.1. There are some situations where *psychologists* are legally required to disclose information obtained from *clients*. For example, some states in Australia mandate psychologists to report child abuse and neglect. *Psychologists* need to be mindful of the legal requirements of their workplace setting, such as reports to Medicare, court directed reports, and the monitoring of conditions of parole. For example, psychologists in the Department of Defence are required to report information that affects the security of the country.
- 4.4.2. *Psychologists* may receive a subpoena which compels them to attend court and/or provide *client* records to the court. It is possible to seek to vary a subpoena, but this should be done in consultation with the court (Davidson, 2002). Legal advice may assist *psychologists* in responding to a subpoena.

Refer to *Guidelines on reporting child abuse and neglect, and criminal activity* (2001).

- 4.5. When *psychologists* are legally allowed to disclose *client* information, but not compelled.

Refer to the *Code*, standard A.5. Confidentiality.

A.5.4. When a standard of this *Code* allows *psychologists* to disclose information obtained in the course of the provision of *psychological services*, they disclose only that information which is necessary to achieve the purpose of the disclosure, and then only to people required to have that information.

- 4.5.1. In such situations *psychologists* make a professional judgement about whether to disclose *client* information or not – refer to standard A.5.2. This judgement frequently involves the determination of risk, harm or danger to the *client* or to others, which is sometimes referred to as the duty to warn or the duty to protect or care for the *client* and for others. Dilemmas emerge when the need to maintain confidentiality competes with the duty to warn or to protect others. Part of the difficulty is associated with the definition and extent of risk or harm and hence who ought to be protected. Some of the issues that need to be considered when making a professional judgement are presented in Section 5 of the *Guidelines for working with people who pose a high risk of harming others* (2005).

- 4.5.2. Where safety permits, *psychologists* inform *clients*:
- (i) if their information is to be disclosed;
 - (ii) about what information is to be disclosed;
 - (iii) of the circumstances and the reasons for the intended disclosure of information; and
 - (iv) to whom and when the disclosure is to be made.
- 4.5.3. When *psychologists* choose to disclose *client* information, a decision needs to be made about who will be informed. For example, with suicidal clients – options might include at a professional level: GP, Crisis and Assessment Treatment team, or police; and for personal support: the client’s parents, partner or close friend.

Refer to *Guidelines relating to suicidal clients* (2004).

Refer to the *Code*, standard A.5. Confidentiality.

A.5.3. *Psychologists* inform *clients* at the outset of the professional relationship, and as regularly thereafter as is reasonably necessary, of the:

- (a) limits to confidentiality; and
- (b) foreseeable uses of the information generated in the course of the relationship.

- 4.5.4. If communication of *client* information between professionals is essential for *client* welfare or services, then the *client* needs to be advised in advance of the limits to confidentiality that have been established between the professionals.
- 4.5.5. Minimal confidential information may also be disclosed if a *psychologist’s* interests require disclosure, for example in pursuit of a bad debt, in defence of a psychologists’ registration board hearing, or a legal action taken by a *client*.

5. Confidentiality of records

Refer to the *Code*, standard A.5. Confidentiality.

A.5.1. *Psychologists* safeguard the confidentiality of information obtained during their provision of *psychological services*. Considering their legal and organisational requirements, *psychologists*:

- (a) make provisions for maintaining confidentiality in the collection, recording, accessing, storage, dissemination, and disposal of information; and
- (b) take reasonable steps to protect the confidentiality of information after they leave a specific work setting, or cease to provide *psychological services*.

- 5.1. *Psychologists* ensure their record-keeping, information and communication systems are adequate to maintain *client* confidentiality both during and after the professional relationship. These communication systems may include messages, emails, diary entries, and appointment arrangements.
- 5.2. *Psychologists* are responsible for the management of the confidentiality of their *client* files in the event that they choose to cease practising or transfer their psychology practice.
- 5.3. *Psychologists* are responsible for planning for the management of the confidentiality of their client files after their death. This is known as a professional will.

Refer to *Guidelines on record keeping* (2004).

Refer to the *Code*, standard B.6. Delegation of professional tasks.

B.6. *Psychologists* who delegate tasks to assistants, employees, junior colleagues or supervisees that involve the provision of *psychological services*:

- (a) take reasonable steps to ensure that delegates are aware of the provisions of this *Code* relevant to the delegated professional task.

...

- 5.4. *Psychologists* are responsible for ensuring the security and management of confidential files by staff whom they supervise in the workplace.
- 5.5. *Psychologists* are alert to inappropriate requests for *client* records made by other professionals, and they decline to comply if doing so would be a breach of confidentiality.

6. Summary

- 6.1. While confidentiality is a cornerstone of psychological practice, it is not absolute. It is important that *clients* are informed of the limits to confidentiality through the informed consent process.
- 6.2. *Psychologists* need to understand the legal context in which they work and be cognisant of relevant organisational requirements.

7. References

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8. Further reading

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