

Release of Confidential Information Best Practices

Background

According to the Revised Code of Washington ([RCW](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.123.076)) [70.123.076](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.123.076) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=70.123.076>): A program participant of shelter, advocacy, or counseling services may authorize a domestic violence program to disclose information about the participant. The authorization must be in writing, signed by the participant and must contain a reasonable time limit on the duration of the participant's authorization. If the authorization does not contain a date upon which the authorization to disclose information expires, the participant's authorization expires ninety days after the date it was signed. Definitions of confidentiality and requirements for maintaining and disclosing confidential information are detailed in Washington Administrative Code (WAC) 388-61A. Specific provisions relating to confidentiality were adopted on March 9, 2007.

According to [WAC 388-61A-0148](http://apps.leg.wa.gov/wac/default.aspx?cite=388-61A-0148) (<http://apps.leg.wa.gov/wac/default.aspx?cite=388-61A-0148>), for a waiver of confidentiality to be valid, it must:

- Be voluntary;
- Relate only to the participant or the participant's dependents;
- Clearly describe the scope and any limitations of the information to be released;
- Include an expiration date; and
- Inform the participant that consent can be withdrawn at any time, orally or in writing (please note that programs should have their own procedures on how you do this - whether you do it over the phone or not, etc.).

Best practices and how this form may impact your rules, policies, and procedures

Providing context

Advocates may wish to paraphrase the following paragraph from the Notice of Participant Rights to Confidentiality to explain the importance of confidentiality in general. *“Reaching out for support and assistance in dealing with domestic violence is an important and courageous step in the healing process. We are glad that you are here. Our services are confidential which means that your identity and the information you choose to share with us are handled in a manner to ensure privacy.”* Advocates should once again highlight what legal exceptions exist to maintaining confidentiality. Legally, a domestic violence program is obligated to release confidential information if they are required by a court order; or to contact CPS or law enforcement if they suspect the participant's child has been abused or neglected; or when there is potential suicidal behavior or threat of harm to others that is likely to result in a clear, imminent risk of serious physical injury or death to the program participant or another person.

Sharing information with outside agencies

Advocates must have a conversation about what information, if any, the participant would like shared with outside agencies. This must be briefly mentioned on the release form itself. Advocates should then read the form aloud with the participant and ask if they understand or have any questions. Remember that this form may be shared with outside agencies and will go in the participant's file so think through the scope of information to be released and if there are any limitations on what things are listed. (For example: will it be beneficial to have parenting issues written down, or could that somehow be misconstrued?)

Clear parameters regarding the scope of information to be released are important. Language that may not be helpful might include, “all information about me”; “anything”, “my case file” since these are not clear descriptions of the scope. Instead, language that narrows the scope such as, “information relating to my housing status” or “description of my barriers to employment” are more specific and in line with the

spirit of best practice and [WAC 388-61A-0147](http://apps.leg.wa.gov/WAC/default.aspx?cite=388-61A-0147) (<http://apps.leg.wa.gov/WAC/default.aspx?cite=388-61A-0147>).

Note that you should have only one release for each outside agency. It is best if there can be a specific contact person at each agency identified.

In most instances releases should not last longer than 90 days. In some circumstances, however, it may be helpful to have the release last longer than 90 days so that once a participant has stopped receiving services, you can verify that she was in fact a program participant or provide other information that will be helpful in the long run. (For example: this may be especially important for housing lists or other programs in which there are long wait lists). Advocates should discuss the length of each release with participants for each outside agency they are working with.

Participants should be offered copies of their releases so they can be reminded of who they have authorized the program to talk to.

WSCADV has Model Protocols on confidentiality and record keeping that you may want to reference. You can download electronic copies for free at <http://www.wscadv.org/Resources/#mp>.

Practice regarding revocation of release

Note that on the bottom of the model Release of Confidential Information form there is a box to indicate that the release was revoked. Best practice indicates that programs should keep the form in the file with revocation highlighted rather than shredding the form. It is very important to have the date and client signature for revocation.

"In the event of my death" clause

Some programs have chosen to talk with participants about the lethality of domestic violence and ask if they would like the program to share information with police, prosecutors, the WSCADV fatality review, or others in the event that the participant dies (due or not due to DV). Because participants may have to sign multiple releases, best practice indicates that programs should have the "in the event of my death" exception on a different form. For more information on best practices and a model form regarding the "in the event of my death" clause, contact Jake Fawcett of the Fatality Review Project at WSCADV at 206.389.2515 ext. 211 or jake@wscadv.org.

Ensuring comprehension

As with all forms, best practice suggests taking the time to adequately explain each form with the participant. If the participant is non-English or limited-English speaking it is important to have this form along with the Notice of Rights form translated. To address literacy issues, best practice is to read the form aloud along with the program participant to make sure they understand it.

Participants who are physically unable to sign

It is possible for people who are physically unable to sign to still give permission. For ideas on how to do this, check out the appendix of the Model Protocol on Screening Practices for Domestic Violence Victims with Disabilities on pages 10-12 at http://www.wscadv.org/Resources/protocol_disability_screening.pdf.