

GPR 002	
Privacy and Confidentiality Procedure	
Scope (Staff):	All Team Members
Scope (Area):	Organisation Wide

Aim

The Privacy and Confidentiality Procedure describes the steps that must be followed to ensure compliance with the Privacy Act 1988 (amended 2018) and the Australian Privacy Principles (2014). This procedure aims to ensure clients' rights to privacy are met, and that they are advised about the purpose for which personal and sensitive information is requested, collected and how it may be used.

Definitions

APP: Australian Privacy Principles

Client: In the context of this policy, includes consumers, participants and carers. This includes students who are enrolled to study at the WARCA.

DCPFS: Department of Child Protection and Family Support

Informed Consent: Informed consent is permission granted in full knowledge of the possible consequences, risks and benefits and the client has had the opportunity to ask questions. Informed Signed Consent means the individual has signed their autograph indicating they are giving their informed consent, or their parent/guardian has signed on their behalf.

Letter from a Solicitor: From time to time HelpingMinds may receive requests from solicitors for copies of documents. A request in a simple letter from a solicitor is **not** a subpoena or a court summons.

NDIS: National Disability Insurance Scheme

Personal Information: Any information that identifies or could identify a person, whether it is true or not. For example, a person's name, date of birth, gender and contact details.

Sensitive Information: Going beyond personal information, this could include things such as a person's employment history, or their health record.

Subpoena: Australian Psychological Society defines a subpoena/witness summons as a court order to:

1. appear in court to give evidence; or
2. produce documents; or
3. appear in court to give evidence and produce documents.

A valid subpoena is dated, clearly states the name of the court and is authenticated by the court, either by displaying a court seal or including the signature of a court officer. A valid subpoena must be served (delivered) prior to the last date for delivery written on the subpoena.

Team Member: all volunteers and staff employed by HelpingMinds, including full-time, part-time, contracted and casual employees, students and volunteers as well as Board Directors. This includes educators, tutors and managers employed by the WARCA.

WARCA: Western Australian Recovery College Alliance

Procedures

General

1. All team members must sign a Confidentiality Agreement prior to engaging in service delivery and have a duty to maintain confidentiality regarding all aspects of client information and contact with HelpingMinds.
2. Fully inform clients and obtain informed consent before confidential information is communicated to health professionals, family members, carers, other team members, or other agencies.
3. Discuss all confidential matters in an environment where others cannot overhear information unintentionally.
4. Under no circumstances should team members disclose whether or not an individual is a client or in receipt of HelpingMinds services/programs to outside callers or visitors. Discuss requests for this type of information with the Executive of Service. Team members should state to the caller that they “**cannot confirm or deny**” whether an individual is a client of HelpingMinds or engaging with HelpingMinds services/programs.
5. HelpingMinds team member contact details should not be provided to clients/members of the community by another team member. Should a client/member of the community wish to contact a team member, refer them to ring Perth Reception on (08) 9427 7100 where their call can be directed.
 - a. Individual team members can give their own HelpingMinds contact details to their clients at their own discretion.
6. Never leave documentation unattended for others to inadvertently view.
 - a. Do not leave client information unattended in the office or on a desk.
 - b. Client documentation is not to be left in vehicles.
 - c. All documentation concerning clients should be securely stored at all times.
 - d. Never leave a computer unattended when client information and notes are visible on the screen.

Disclosure of Client Information:

1. Inform clients of HelpingMinds’ reporting requirements to provide de-identified statistical data and general program descriptions to the funding agency, in compliance with the service contract.
2. Inform clients their information may be used for audit and accreditation purposes, but they can choose for their information not to be included.

Client Access to their own records:

1. In the event that clients request to view or change their client notes, explain to them that:
 - a. They will be asked to complete a written request which will be directed to the HelpingMinds Privacy Officer who will respond to the request; and
 - b. If the request is approved, they will be given access to the relevant information in the presence of a team member(s).
2. Discuss all requests received from clients to review or correct their client notes with the relevant Executive of Service.
3. The Executive of Service, in discussion with the Privacy Officer, will:
 - a. Request that the client completes the Request for Access to Client Records form;

- b. Decide if the request will be approved and advise the client within 15 working days of the written request;
- c. Arrange access to the client notes/file in the presence of a team member(s).

Involvement of the Law:

1. Advise clients where appropriate if their records are subpoenaed for legal reasons in a Court of Law.
2. Be aware that HelpingMinds is not required to give access to personal information if:
 - a. Giving access would pose a serious threat to the life, health or safety of any individual, or to public health and safety;
 - b. Giving access would have an unreasonable impact on the privacy of other individuals;
 - c. The request is frivolous or vexatious; or
 - d. There are legal reasons for denying access.
3. For more information, please see APPENDIX 1.

Past Client becoming a Team Member:

1. In the event that a client becomes a team member, all information stored on the shared drives about that client should be removed and stored securely in a folder accessible only by the relevant Executive of Service. Any hard copy documents should be scanned and stored within the same electronic folder. A note should be made in the relevant folder where the information was previously held, directing team members to the Executive of Service should any information be required at a future date.
2. There should be a time frame of approximately 3 years between the client becoming a team member of HelpingMinds. For more information please refer to the *Conflict of Interest Policy and Procedure*.

Breaches of Privacy and Confidentiality

1. Where breaches of privacy and confidentiality are considered necessary in the provision of client information (e.g. if a crime has been committed, a subpoena issued, a current arrest warrant is in place, or as a duty of care to the client and/or their children) discuss these with your Team Facilitator and Executive of Service.
2. This could also be discussed with the client before taking action, **unless doing so would compromise the safety of the client and/or children**. Where an exception arises and a team member is compelled to disclose information, this must be discussed first with the Executive of Service and CEO before disclosing the client information.
3. Should a breach of privacy and confidentiality occur, team members must complete a 'Breach of Privacy and Confidentiality Form' and submit to their relevant Executive. The breach will then be recorded on the incident register.
 - a. Breaches relating to client personal and sensitive information may also involve the Open Disclosure Process.

Act immediately if breaches of privacy or confidentiality are identified by reporting them to the relevant Executive of Service according to the escalation process. Serious breaches will then be reported to the CEO if considered necessary. If clients feel concerned about any privacy issues, encourage them to report their concerns to the Privacy Officer.

Compliance and Evaluation

Compliance against this procedure will be monitored by Team Facilitators, Executives of Service and the Privacy Officer in relation to any breach of privacy and confidentiality through the number of Breach forms submitted on a monthly basis.

Compliance with this policy is also required by all students, educators and tutors that are involved in the WARCA.

Related internal policies, procedures and guidelines
<ul style="list-style-type: none"> • Privacy Policy • Code of Conduct • Conflict of Interest Policy • Conflict of Interest Procedure • Informed Consent Policy • Incident and Injury Reporting Policy • Open Disclosure Policy • Client Notes • Request for Access to Client Records Form • Confidentiality Agreement • NDIS Code of Conduct

References
<ul style="list-style-type: none"> • Australian Privacy Principles 2014 • Privacy Act 1988 (WA) • Information Act 2002 (NT) • NDIS Legislation, Rules and Policies

Useful resources (including related forms)
<ul style="list-style-type: none"> • NMHS 2010 • NQSHS Standards 2017 (2nd Ed.) • NDIS Practice Standards and Quality Indicators • NDIS Code of Conduct

This document can be made available in alternative formats on request for a person with a disability.

Policy Sponsor	Board				
Policy Contact	CEO				
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15.06.2017	4	CEO	Scheduled for Review. Insertion into new template.
23.06.2020	5	Executive Assistant	Scheduled for review – incorporate WARCA requirements

APPENDIX 1

1. Government Authority Demands

There are prescribed Government Authorities, such as the Department for Child Protection and Family Support or the Police which are able to compel the sharing of information. The form of the request will vary, and the authenticity of the request should always be confirmed.

A request must always be in writing and:

- Addressed to HelpingMinds, to the attention of the CEO or Executive of Service;
- Clearly identify the client involved;
- List the information details required;
- Specify the legislation under which the request is made; and
- Specify a response date.

Any request should be approved by the CEO prior to being finalised.

2. Responding to a subpoena

Whether the delivered subpoena is a summons to appear in court and/or to produce documents, it is a direction from the court and should be read carefully and discussed with the Executive of Service and/or CEO. Many courts will include explanatory notes in the subpoena document. Non-compliance with a subpoena can result in a penalty.

In responding to a subpoena:

- Ensure that the subpoena is valid.
- The Executive of Service/CEO should discuss the subpoena with the team member(s) involved in supporting the client. All relevant team members should read the subpoena and case notes, discuss the case and make a decision on how the subpoena should be handled.
- In writing to the court, incorporate any suggestion which may minimise adverse consequences of disclosure, such as limiting the use of client records or the persons permitted to review them.
- Where third party names are stated in the information held by HelpingMinds, delete identifying data and give due consideration to the need for third party information unless it is requested and necessary for the court's deliberations. The same consideration should be given to information about the client that is not directly related to the subpoena.
- When complying with a subpoena, make every reasonable effort to inform the client, acknowledging that compliance with a subpoena is a legal requirement. It may not always be possible to ensure that the client is informed prior to the return date of the subpoena; this does not excuse non-compliance with the subpoena.
- When informing the client, be clear that the notification is by way of courtesy, and not for the purpose of seeking comment or permission. The client has the right to seek advice and to lodge an objection with the court against the request for their information.

3. Dealing with objections to the subpoena

Subpoenas are frequently served with only a short time frame for compliance. If there is insufficient time and the Executive of Service has concerns about producing the requested documents after discussions with the team member, the Executive of Service may contact the solicitor who prepared the subpoena in order to understand its purpose and to outline the concerns. Together, they may negotiate an alteration to the terms of the subpoena, taking into account the objections.

An objection can also be lodged directly with the Court seeking determination. If a variation is not able to be negotiated or an objection upheld, the subpoena must be complied with

and the documents must be produced for the court. If an objection is lodged, note that it needs to be with the court normally 10 days before the court date and to hear the verdict of the objection an Executive team member of HelpingMinds needs to attend court.

4. Letter from a Solicitor

A letter from a solicitor may not be enforceable, so Executives of Service need to properly consider the circumstances before responding. Non-compliance with a request contained in a letter from a solicitor is unlikely to have any penalty attached.

5. Responding to a letter from a solicitor

If the request comes from the solicitor of a client and is stated as being authorised by the client, then an original, current written release signed by the client should accompany that letter, releasing HelpingMinds from their obligations of privacy and confidentiality to the client.

In responding to such a request, the Executive of Service should always discern what documents the client has agreed to release or not release and should not automatically agree to provide complete records.

It is a professional courtesy to respond to a solicitor's letter and the most basic response should express privacy concerns and include a request for the solicitor to provide:

- Informed written consent from the client to obtain information from HelpingMinds;
- An indication of the reason for, or purpose of, the request; and
- Details of who will be accessing the information provided.

If a solicitor's request is stated as being supported by legislation, for example, workers' compensation legislation, then the Executive of Service should discuss the request with the CEO/HR before responding.