

Chapter 101: Confidentiality

Vermont Division of Vocational Rehabilitation
Policy and Procedures Manual

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Table of Contents

Section I.	Definitions	2
Section II.	General Policy.....	2
Section III.	Use of the Case Record	2
Section IV.	Release Without Written Consent.....	3
Section V.	Person’s Access to Records	3
Section VI.	Access to the Record by Others	4
Section VII.	Subpoena	5

Section I. Definitions

- A. **“Personal information”** means individual case records; the term includes photographs and lists of names.

Section II. General Policy

- A. Use of personal information will normally be limited to purposes directly connected with the administration of the vocational rehabilitation process. Release of personal information shall comply with provisions of this policy and any Federal or State laws governing the source or type of information requested/released.
- B. All applicants for services shall be informed of the purpose of DVR’s request for information, of whether compliance with such request is mandatory, of the possible effects of withholding information, and of situations in which DVR does not need written consent to release information.
- C. All persons seeking services and, as appropriate, service providers and other interested persons shall be informed of the confidentiality of personal information and of the procedures for its release.
- D. Persons who are unable to communicate in English or who rely on special modes of communication shall be informed of DVR’s policy on confidentiality in a manner which assures adequate understanding.

Section III. Use of the Case Record

- A. Only information needed to fulfill the goal of serving the person and meeting administrative or legal obligations shall be collected. Such information will not be released without prior written consent unless in accordance with Section IV below.
- B. Personal information can be used only for the following purposes:
 - 1. Assessing vocational potential;
 - 2. Determining eligibility or ineligibility;
 - 3. Developing and implementing the Individualized Plan for Employment;
 - 4. Processing and delivering specific services;
 - 5. Evaluating progress and the results of services;
 - 6. Determining appropriate referrals to other benefit/services programs (with consent of the person);
 - 7. Counselor or program evaluation, accountability, and supervision;
 - 8. Statistical reporting;
 - 9. Program-related research which does not reveal the identity of the person;
 - 10. Staff training, if the person’s identification is removed from the material.
- C. The fact that an individual has a criminal record does not create an exception to the rule that makes records confidential. DVR may not disclose any information about the

consumer's criminal record to any employer without specific written permission from the consumer. This restriction is in force even when the DVR staff member discovers that the consumer has not disclosed pertinent information to a potential employer.

Section IV. Release Without Written Consent

- A. Access to the case record without the informed written consent of the person is normally limited to those persons directly involved in the administration of the program and for uses listed in Section III above. However, DVR must release sufficient information to comply with mandatory reporting requirements for cases involving the abuse, neglect, or exploitation of children and persons who are elderly or who have disabilities. Information must be released without consent when Vermont law creates a duty to warn identified individuals of potential harm to their person or property, in response to court orders, or to investigate or report criminal activity as required by Federal or State law or regulation. Only information relevant to the situation shall be disclosed. The date, purpose, and content of the report, and the name, address and affiliation of the person to whom the information was released shall be documented in the record; the person shall be notified that the information was disclosed.
- B. Vermont law requires DVR employees, contractors, and grantees who know of, have received information of, or have reason to suspect abuse, neglect, or exploitation of a DVR consumer, to report that information to Adult Protective Services (1-800-564-1612). Anyone who makes a "good faith" report is immune from any liability for making the report.
- C. When a consumer makes a threat to harm a specific person, group of people, or specific property, DVR has a duty to report that threat to the threatened person(s) or property owner. DVR may also release pertinent information to appropriate personnel/ organizations to protect any consumer who poses a threat to him/herself. Before taking any action, staff will consult with the Regional Office Manager and/or the Department's legal staff.

Section V. Person's Access to Records

- A. A counselor must review everything in a file before making it available or sending it to the consumer. Depending upon the nature of the information, the counselor may need to edit records and/or consult with medical/psychological personnel before releasing any information. Consequently, it is not unreasonable to take up to five (5) workdays from receipt of a request for records to making the records available. DVR's goal is to provide the records as quickly as possible while ensuring confidentiality and ensuring that potentially harmful information is not inappropriately shared with the consumer.
- B. A person seeking services will have timely access to his/her record of service subject to the following provisions:

1. A written request is submitted by the person. The request should include the name, address, and telephone number of the person, the date, and, if possible, the specific information of interest.
2. If information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization. Information secured by another source for a purpose other than DVR's will not be released; instead, the person will be referred to the source. It is not necessary to obtain permission from service providers to release information which was arranged for or purchased by DVR for its own purposes.
3. Potentially harmful or sensitive information will be reviewed by the counselor's supervisor with input of a medical/psychological consultant, if necessary.
4. Information considered to be potentially harmful may not be provided directly to the person but must be provided through a third party chosen by the person, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the person, in which case the information must be released to the court-appointed representative.
5. Regarding potentially harmful information in which medical or psychological consultation is sought, the consultant should provide DVR with a written opinion and the reasons for the opinion and with suggested conditions under which the person may review the information, as applicable.
6. Because of financial audit requirements, an individual's case record may include a bill listing several VR service recipients who participated in a group activity such as a VABIR training. This list of names must be either sanitized, i.e., all names and identifying information except the individual's must be cut or blacked out, or the bill must be removed from the file before allowing the individual access to his/her case record. If the information is removed, the individual must be informed of this action.

Section VI. Access to the Record by Others

- A. No individuals, agencies, or organizations not included in or related to Section III or IV of this policy may have access to any information in the case record without the informed written consent of the person. Release forms must be specific with respect to which records/information may be disclosed. However, the records of minors may be disclosed by granting, in the same manner as the person's access (Section V), a parent, guardian, or legal representative of a minor direct access to his/her medical or psychological records, if those records are arranged for and purchased by DVR.
- B. If the information was originally secured by another source for a different purpose, the information will not be released; the request will be referred to the source.
- C. Potentially harmful medical/psychological information released to the person's attorney or other advocate must be accompanied by a letter which fully explains the sensitive nature of the information.

Section VII. Subpoena

- A. A subpoena is required for an employee to testify in court proceedings. If a subpoena requires bringing a case record, the person's written release or a specific written order from the court is required. Records secured by a different agency for another purpose will not be released even under the order of a subpoena.
- B. Any time a DVR employee receives a subpoena, s/he shall discuss it with the Department's attorney.
- C. A DVR employee may testify without being subpoenaed at formal administrative hearings if, in the supervisor's judgment, the testimony will be in the person's best interest. Such testimony will normally be limited to hearings involving the procurement or continuation of comparable services or benefits such as Social Security Disability Insurance, Medicaid, or Workers' Compensation.
- D. A DVR employee receiving a subpoena or a request for a deposition must immediately notify his/her supervisor and subsequently the Field Services Manager and DVR's counsel with whom s/he should discuss any questions regarding pending testimony. If a subpoena is served without due notice (e.g., only two days before the court procedure) and would cause substantial inconvenience to the employee, clientele, or co-workers, DVR's counsel or the employee may ask the issuing authority for a delay.
- E. If the case record is legitimately requested, the record may end up in the hands of others for an indeterminate period. Consequently, bringing a copy of it rather than the original is advised.
- F. As for administrative hearings without subpoena, the counselor's supervisor, in making his/her judgment, should review the record and discuss the person's circumstances with the employee and/or appropriate others. If testimony could be damaging to the counselor-consumer relationship, a subpoena should be required.