

Chapter 101: Confidentiality

Vermont Division of Vocational Rehabilitation
Policy and Procedures Manual

Revision Date: January 2013

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Section 1. Definitions

- A) **“Personally Identifiable Information (PII)”** means any information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal information that is linked or linkable to a specific individual. This includes case notes, reports, documents from other sources, photographs and lists of names.
- B) **Informed Consent** means voluntary permission or agreement to a proposed action after being informed of the purpose, benefits, and risks of, and alternatives to the proposed action. Consent may be oral or in writing.

Commented [SB1]: James, this last sentence is what is currently included in the definition of “personal Information”. I don’t know that we need it in the definition but will leave it to you to decide.

Commented [JS2R1]: This looks fine.

Commented [JS3R1]: I like it

Commented [SB4]: James, we could leave this out of the definition and do a paragraph on informed consent in the text. The notes from the meeting indicate that you would confer with legal about this.

Commented [JS5R4]: I think it has to be in definitions

Section 2. General Policy

- A) It is the policy of DVR (HigherAbility VT) to protect and safeguard personal and confidential information provided by individuals seeking or receiving services.
- B) Use of personally identifiable information will 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.
- C) 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.
- D) All applicants or participants seeking or receiving 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.
- E) Individuals who are unable to communicate in English or who rely on alternative modes of communication shall be informed of DVR’s policy on confidentiality in a manner which assures adequate understanding.
- F) When due to native language or disability an applicant or participant is unable to provide written consent, the counselor must document oral/verbal consent in the case record.

Commented [SB6]: Not sure this goes here. Your thoughts?

Commented [JS7R6]: Seems fine

Section 3. Use of the Case Record

- A) Only information needed to fulfill the goal of serving the individual and meeting administrative or legal obligations shall be collected. Such information will not be released without prior informed written consent of the individual or their representative unless in accordance with Section 4 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 (IPE);

Commented [SB8]: Should we delete this reference to written consent?

Commented [JS9R8]: I don’t know. I feel very uncomfortable releasing case info without something in writing

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- 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 individual or their representative;
 - 7) Counselor or program evaluation, accountability, and supervision;
 - 8) Statistical reporting;
 - 9) Program-related research which does not reveal the identity of the individual; and
 - 10) Staff training if the individual'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 participant's criminal record to any employer without specific written permission from the participant. This restriction is in force even when the DVR staff member discovers that the participant has not disclosed pertinent information to a potential employer.

Section 4. Release Without Written Consent

- A) A counselor must never release applicant or participant information without their informed written consent unless directed to do so by their Regional Manager and DVR's legal counsel. Below are the circumstances when release is required. The counselor must alert their Regional Manager if they believe any of the circumstances below apply. Before taking any action, staff must consult with the Regional Manager and DVR's legal counsel.
- B) Access to the case record without the informed written consent of the applicant, participant, or their representative is limited to those individuals directly involved in the administration of the program and for uses listed in Section 3 above. However, DVR must release sufficient information to comply with mandatory reporting requirements for cases involving the abuse, neglect, or exploitation of children and individuals who are elderly or who have disabilities. Information must be released without consent:
- 1) When Vermont law creates a duty to warn identified individuals of potential harm to their person or property, or
 - 2) In response to court orders, or
 - 3) To investigate or report criminal activity as required by Federal, or State law or regulation.
- Only information relevant to the situation shall be disclosed and the applicant or participant will be notified. The case record must document:
- 1) The date,
 - 2) The purpose, and content of the report,
 - 3) The name, address, and affiliation of the individual to whom the information was released.
- C) Vermont law requires DVR employees, contractors, and grantees who know of or have information about, or have reason to suspect abuse, neglect or exploitation of a DVRF applicant or participant, to report that information to **Adult Protective Services (APS) (1.800.564.1612)**. Anyone who makes a "good faith" report is immune from any liability associated with making the report.

D) When an applicant or participant 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 individual or property owner. DVR may also release pertinent information to appropriate personnel/organizations to protect any applicant or participant if they pose a threat to themselves. Before taking any action, DVR staff must consult with the Regional Manager or the Field Services Manager who will consult with DVR's legal counsel.

Section 5. Access to Records by Applicants and Participants

- A) A counselor must review everything in a case record before making it available or sending it to the applicant, participant, or their representative. Depending on the information, the counselor may need to edit records and/or consult with DVR medical/psychological consultants before releasing any information. Consequently, it is reasonable 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 appropriately shared with the participant.
- B) An individual seeking or receiving services will have timely access to their case record subject to the following provisions:
- 1) A written request is submitted by the applicant, participant, or their representative. The request must include the name, address, and telephone number of the applicant or participant, the date, and, if possible, the specific information of interest. If the individual is unable to provide a written request due to native language or disability, the counselor shall assist the individual in making the request.
 - 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 must provide DVR with a written opinion, the reasons for the opinion, and suggested conditions under which the participant may review the information, as applicable.
 - 6) Because of financial audit requirements, an individual's case record may include a bill listing several DVR service recipients who participated in a group activity such as VABIR (Vermont Association of Business, Industry, and Rehabilitation) training. This

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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 record before allowing the individual access to it. If the information is removed, the individual must be informed of this action.

- 7) If an applicant or participant believes that information in their case record is inaccurate or misleading, they may request that the information be amended. If the information is not amended, the request for amendment must be documented in the case record.

Section 6. Access to the Record by Others

- A) No individuals, agencies, or organizations not included in or related to Sections 3 or 4 of this policy may have access to any information in the case record without the informed written consent of the applicant or participant or participant and where appropriate their representative. Release forms must be specific about which records/information may be disclosed. However, the records of minors may be disclosed by granting, in the same manner as the applicant or participant's access (Section 5), a parent, guardian, or legal representative of a minor direct access to their 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, and the request will be referred to the source.
- C) Potentially harmful medical/psychological information released to the applicant's or participant's attorney, other advocate, or representative must be accompanied by a letter which fully explains the sensitive nature of the information.
- D) Disclosure of information in the case record must be encrypted consistent with the policies and procedures of the Agency of Human Services (AHS) and the Agency of Digital Services.

Section 7. Subpoena

If a staff person receives a subpoena related to their work for DVR, they must immediately contact their Regional Manager and DVR's Legal Counsel. The DVR legal counsel will provide directions to all staff regarding any response or testimony. Under no circumstance will a DVR staff person respond to a subpoena or testify in a court or administrative proceeding related to their role in DVR *without explicit written permission from the DVR legal counsel.*

Section 8. Breach of Confidentiality

- A) DVR is a division of the Vermont Agency of Human Services (AHS). As such, DVR must follow the requirements of the Health Information Portability and Accountability Act (HIPAA) pertaining to disclosure of personally identifiable information (PII).
- B) Any counselor who becomes aware of a breach of confidentiality resulting from the inadvertent or intentional release of confidential information, including PII, shall

Commented [SB10]: James, I don't know that there needs to be a separate section of this topic, arguably it could be included earlier. But I don't think it should be at the end of this chapter. Thoughts?

Commented [JS11R10]: This seems the logical place

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immediately inform their supervisor, and submit and AHS HIPAA incident report as required by AHS policy.

- C) Where an applicant, participant or their representative believes that DVR has violated their right to confidentiality, they may file a complaint with the AHS Privacy Officer The complaint may be filed by:

1. Phone 802.241.0225
2. Email AHS.PrivacyAndSecurity@vermont.gov
3. Mail AHS Privacy Officer

Agency of Human Services
Office of the Secretary
280 State Drive
Waterbury, VT 05671

To the extent necessary, the counselor shall assist the complainant with the filing of the complaint.

Law

Commented [SB12]: James, this was an area where you were going to consult with legal counsel. This language was excerpted from another state's DOL and has much more detail to it in terms of what the supervisor is to do. If there is an AHS policy that could be referenced here, we could use that. I think we do need some reference to this in HA's policy.

Commented [JS13R12]: I added some language.

Moved down [1]: Confidentiality Notice on email¶

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