APS Australian Psychological Society

Ethical guidelines on confidentiality

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1. Introduction

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 safeguard their *clients'* personal information. The assurance of confidentiality helps to establish a relationship of trust between a *psychologist* and a *client*.

1.2. Confidentiality safeguards the *client's* information from unwarranted disclosure. The process of establishing and maintaining confidentiality promotes respect for *clients'* rights and their dignity, and also promotes the reputation of psychology and its good standing in the community.

1.3. Confidentiality is not absolute. There are occasions when *psychologists* must disclose *client* information or may choose to disclose *client* information due to overriding ethical considerations such as risk of harm to *clients* or third parties. Refer to section 5.

1.4. These *Guidelines* outline the scope of ethical responsibilities that *psychologists* need to consider when taking steps to safeguard *clients'* personal information.

2. Confidentiality

2.1. When working with *clients, psychologists* address several factors related to safeguarding confidentiality, which may include:

- communicating to the *client* any potential disclosure of confidential information;
- managing sensitive and private information, including digital records;
- ensuring effective and appropriate record keeping that safeguards *client* information from inappropriate access;
- where relevant, passwords, encryption, firewalls and specialised protection programs related to information and communication technologies; and
- responding appropriately to requests from third parties for access to *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;* and
> ...

2.2. *Psychologists* understand and comply with the legally binding provisions of the Commonwealth Privacy Act (1988), state Health Records Acts and the Higher Education Support Act (2003) regarding confidentiality of *clients'* personal information.

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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 guardian the nature of the provision of *psychological services*, and the extent of the possible disclosure of the *client's* information.

Refer to the *Code*, standard B.5. Provision of psychological services to multiple clients.

> B.5. *Psychologists* who agree to provide *psychological services* to multiple *clients*:
> (a) explain to each *client* the limits to confidentiality in advance;
> (b) give *clients* an opportunity to consider the limitations of the situation;
> (c) obtain *clients'* explicit acceptance of these limitations; and
> (d) ensure as far as possible, that no *client* is coerced to accept these limitations.

3.2. *Psychologists* obtain consent from the *client* (or the *client's* legal representative) prior to disclosing *client* information to *associated parties* related to the service, unless disclosure is required by law.

Refer to *Ethical guidelines for psychological services involving multiple clients* (2014).

3.3. When delivering a *psychological service* where there are multiple *clients* involved, *psychologists* clarify with all *clients* and, where appropriate, relevant *associated parties*, the nature and purpose of the service to be provided, and the limits to confidentiality. Before the *psychological service* commences, *psychologists*:

- obtain informed consent from the direct recipient(s) of the service, or where necessary their parent/guardian;
- clarify who owns and has responsibility for *client* records;
- state how the information will be used and stored;
- explain who has access to the *client* record;
- clarify how information in the *client* record is made available (e.g., in writing, verbal feedback);
- explain what information may be shared (e.g., all or sections of the *client* record); and
- document the above process.

Refer to *Ethical guidelines on record keeping* (2011).

3.4. *Psychologists* who work with involuntary *clients* are particularly mindful of the need to clarify the issues covered in 3.3.

3.5. In circumstances where a third party has requested and/or is paying for the provision of a *psychological service* and the *client* has provided consent for the disclosure of their personal information to that third party, *psychologists* establish that the *client* understands what information they have consented to be released and to whom. *Psychologists* also establish that the consent provided was contemporaneous with the third party request for *client* information.

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

3.6. *Psychologists* providing *psychological services* within entities such as agencies, businesses, schools, hospitals or employee assistance programs inform *clients* 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 healthcare settings, it is common to have a team approach to *client* treatment which may require *psychologists* to share relevant *client* information.

Refer to the *Code*, standard A.4. Privacy.

> A.4. *Psychologists* avoid undue invasion of privacy in the collection of information. This includes, but is not limited to:
> (a) collecting only information relevant to the service being provided;
> ...

3.7. *Psychologists* explain to *clients* that the purpose of collecting personal information is to provide a *psychological service*, which can include assessing, understanding or treating a *client's* presenting concerns. *Psychologists* only collect information pertinent to the *psychological service* being provided.

4. Limited capacity for consent

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

> 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.

4.1. *Psychologists* understand that the process of deciding if an individual 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 (see Marion's case, Secretary of Department of Health and Community Services v JWB and SMB, 1992).

4.2. *Psychologists* are aware that there are several *client* groups who may have limited capacity for consent. This list includes, but is not limited to, children and young people, people who have an acquired brain injury, people with an intellectual disability or cognitive impairment, and people showing symptoms of acute mental illness.

4.2.1. At the outset of providing *psychological services* to children and young people, *psychologists* clarify the limits to confidentiality with all relevant parties, including parents or guardians when they are involved in the consent process. *Psychologists* consider the risk of harm to the child or young person, risk of harm to others, and the impact on the *psychological service* being provided if a decision is made to disclose the young person's private information.

Refer to *Ethical guidelines for working with young people* (2009).

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4.2.2. When an adult *client* has been assessed as being incapable of providing informed consent, consent is obtained through the designated or authorised legal representative, and the *client's* assent is sought.

Refer to *Ethical guidelines for working with older adults* (2014).

4.2.3. *Psychologists* adapt their consent procedures to enable *clients* with an intellectual disability and/or cognitive impairment to understand, to the maximum extent they are able, what is proposed, the alternatives available to them, the consequences of their decisions, any risks or benefits, and their option to withdraw consent.

4.2.4. Where *clients* with an intellectual disability and/or cognitive impairment are limited in their capacity to provide informed consent, *psychologists* consult with legal guardians or those who hold legal authority for the *client*.

4.2.5. Where *clients* are showing symptoms of an acute mental illness and require *psychological services, psychologists* use their professional judgement to decide when to seek the *client's* informed consent.

5. Limits to confidentiality

5.1. *Psychologists* are aware of their contractual obligations regarding disclosure of *client* information to each of the parties involved in a *psychological service*, particularly when conducting fee-for-service work for third party payers.

5.2. Legally-obligated disclosure

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.

Confidentiality is not absolute. *Psychologists* have the responsibility to know their legal obligations related to their workplace context. There are occasions when *psychologists* are legally obliged to disclose *client* information. Examples include, but are not limited to:

5.2.1. Some states in Australia mandate psychologists to report child abuse and neglect.

Refer to *Ethical guidelines on reporting abuse and neglect, and criminal activity* (2010).

5.2.2. Some workplace settings require psychologists to disclose *client* information that affects national security.

5.2.3. Some court-directed reports require disclosure of *client* information obtained in the psychological service.

5.2.4. *Psychologists* working within Medicare-rebated services are obliged to send the referring GP a brief summary report about the *client* after six sessions.

5.2.5. *Psychologists* may receive a subpoena which compels them to attend court and/or provide *client* records to the court.

5.2.5.1. Before taking action, *psychologists* distinguish subpoenas from other requests for *client* information and establish that the subpoena is valid. *Psychologists* may submit to the court a request to vary a subpoena.

Refer to Jifkins (2008; 2011).

5.2.5.2. Before responding to a subpoena, *psychologists* are aware that there are state Evidence Acts (NSW, 1995; Tasmania, 2001; Victoria, 2008) which have relevant exceptions to disclosing *client* information that protect victims of sexual assault.

5.3. Allowable disclosure

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.
>
> 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.

There are occasions when *psychologists* are legally allowed to disclose *client* information, but are not compelled to do so, particularly around issues of safety and risk of harm.

5.3.1. When making a professional decision whether to disclose *client* information, *psychologists* consider what information to disclose, if the *client's* consent is required, the potential impact of disclosure on the *professional relationship*, the consequences of not disclosing, and whether to inform *clients* of a decision to disclose.

5.3.2. In situations involving risk of a *client's* harm to themselves or to others, *psychologists* make a professional judgement about whether to disclose *client* information or not – refer to standard A.5.2.(c) above. A *psychologist's* judgement frequently involves weighing up the need to maintain confidentiality against warning or protecting others, whilst assessing the likely extent of risk and harm.

Refer to sections 4 and 5 of the *Ethical guidelines for working with clients when there is a risk of serious harm to others* (2013).

5.3.3. When *psychologists* choose to disclose *client* information, they have to decide who will be informed. For example, with *clients* at risk of suicide, options at a professional level might include a GP, Crisis Assessment and Treatment team, or police. For *clients'* personal support, options might include their parents, partner or close friend.

Refer to *Ethical guidelines relating to clients at risk of suicide* (2014).

5.3.4. Where the safety of all parties allows, *psychologists* inform *clients*:
(i) if their information is to be disclosed;
(ii) 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.

5.3.6. *Psychologists* may disclose minimal confidential information to protect their own interests, for example, in pursuit of a bad debt, or in response to a formal complaint or a legal action taken by a *client*.

5.4. Responding to requests for *client* information

Psychologists consider the validity of requests for access to *client* records made by other professionals or third parties. They decline the request if doing so would be a breach of confidentiality.

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6. Record keeping

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*.

6.1. *Psychologists* ensure their record-keeping and 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.

6.2. *Psychologists* ensure that digitised records are maintained securely, and that appropriate safeguards are in place to protect confidential *client* records. Professional judgement, as well as awareness of advancements and potential risks associated with security of digitised information, is used to apply these *Guidelines. Psychologists* determine how to inform *clients* with regards to the information and communication technologies used to manage confidential *client* records.

Refer to *Ethical guidelines for providing psychological services and products using the internet and telecommunications technologies* (2011);
Lustgarten (2015); and
Office of Australian Information Commissioner (2015).

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.

6.3. *Psychologists* are responsible for ensuring that the staff whom they supervise in the workplace are familiar with the requirements for the security and management of confidential *client* files.

6.4. *Psychologists* who have been sub-contracted to provide *psychological services* are responsible for clarifying with the contracting party the ownership and security of their *clients'* files.

6.5. *Psychologists* in independent private practice remain responsible for the management of the confidentiality of their *client* files should they cease practising. *Psychologists* are also responsible for planning for the management of the confidentiality of their *client* files after their death. This is known as a Practice Contingency Plan. For example, the Victorian Health Records Act (2001) articulates the responsibilities of health service providers in the event of the transfer or closure of a practice, or death of a health service provider.

Refer to *Ethical guidelines on record keeping (*2011).

7. Summary

7.1. By establishing and maintaining confidentiality, *psychologists* promote respect for *clients'* rights and their dignity, and also promote the reputation of psychology and its good standing in the community.

7.2. *Psychologists* understand the context in which they work and are cognisant of relevant legal and organisational requirements. They inform their *clients* that, while confidentiality is a cornerstone of psychological practice, it is not absolute.

7.3. Through the informed consent process *psychologists* explain to their *clients* the limits to confidentiality and any factors that may influence the *psychologist's* decision to disclose *client* information. When managing *client* confidentiality, *psychologists* also take into consideration issues such as capacity for consent, responsibilities to multiple *clients*, and the requirements of organisational settings.

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