

Questions & Answers about Privacy

Family Involvement with Mental Health & Addiction Services

This guideline is written for staff in VCH Mental Health & Addiction Services who provide clinical care to clients.

Clients include any person receiving care, accessing services, or participating in a program that is owned, operated or funded by VCH.

1. What are my privacy obligations to clients at Vancouver Coastal Health Authority (VCH)?

VCH staff are governed by the BC *Freedom of Information and Protection of Privacy Act* (FIPPA). Staff must collect, use and disclose client personal information in accordance with FIPPA, VCH Policy, professional codes of practice, and any contractual obligations.

2. Who is a “family member” under the Family Involvement Policy?

Under the Family Involvement with Mental Health and Addiction Services Policy, “family member” means a person who has been identified by the client, the client’s representative, or the client’s care provider as being in a relationship of importance to the client and who provides support or care for the client on a regular basis.

Family members may include friends or other individuals who provide support or care to the client.

3. Who may make decisions about sharing information with family members?

At the beginning of treatment and on a continuous basis, care providers should discuss with their client who will be involved in the care team and what information will be shared. Document these discussions in the health record.

When it is not possible to discuss these matters with the client, care providers may make decisions about information sharing using their clinical judgment and acting in the best interests of the client.

4. When can I collect information about a client from the client’s family members?

Care providers may collect personal information about clients for the purpose of providing care. In most cases, it is preferable to collect information directly from a client. However, family members are an important part of the care team and may provide valuable insight and information about a client – information that is relevant and necessary for the client’s care and that the client may be unable to provide.

Care providers should be receptive to information offered by family members, keeping in mind the following:

- Information collected should be relevant and necessary for care;

- If possible, ask for a client's consent to obtain information from family members;¹
- If a client is incapable of consenting, the client's representative (e.g. committee, representative under a Representation Agreement for health care decisions) may provide consent on the client's behalf;
- In the absence of consent, staff may collect information from family members if it is not possible to collect the information directly from the client and the information is necessary to provide care;² and
- If a family member provides a care provider with a record about a client and it is used to make a care decision, staff must keep a copy in the client's health record.

5. What if a family member provides information about a client but doesn't want the client to know who provided the information?

Care providers should encourage collaboration and openness among clients, family members and care providers. If a family member asks to provide information in confidence, ask them about their concerns. Information shared by a family member should be held in confidence if disclosing that information to the client would:

- invade that family member's privacy (ie, information about the family member, not the client);
- harm anyone's health or safety; or
- damage the relationship between client and a person providing care so that care is compromised.

Under FIPPA, a client has a right to request access to their health record. However there are a few circumstances where information about a client, and/or the identity of the person who provided the information, will be withheld from the client under FIPPA:

- The information is provided for a law enforcement investigation, such as a police investigation or a Community Care Facilities Licensing investigation;
- The person makes a report of adult abuse or neglect under the *Adult Guardianship Act* or a child in need of protection under the *Child, Family and Community Service Act*;
- Release of the information would be an unreasonable invasion of another individual's privacy (e.g. reveals personal information about a family member); or
- The disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health or result in immediate and grave harm to the applicant's safety or mental or physical health³

¹ FIPPA s. 27(1)(a)(i)

² FIPPA s. 27(1)(a.1)

³ FIPPA s. 19

If information in the health record should be withheld from a client, document in bold: **“Information received in confidence and if released could cause harm.”**

6. Can I share information with family members with client consent?

Care providers may share any information with a client's consent. Details of consent (including a description of the information to be disclosed and to whom) should be documented by the care provider in the client's health record.

7. What if my client asks me not to share information with family members?

In some cases, a client may ask that information not be shared with family members, or that only specific information be shared. Such requests should be respected, but continue to share information on a need to know basis to prevent harm to a client's health or safety, or the health or safety of others.

Care providers should re-confirm such requests from time to time. Care providers should also assess whether, at the time of the refusal, the client is capable of providing consent. Prior discussions about family members' involvement in treatment and the client's current state of health may help in making this assessment. If at the time of refusal the client is not capable of providing consent, care providers should proceed as if they are unable to obtain consent. See question 8 for next steps.

8. What information can I share with family members without client consent?

If it is not possible to obtain the client's consent, either because the client cannot be contacted or is incapable of providing consent, staff may seek consent from the client's representative (eg. committee or representative under a Representation Agreement for health care decisions), if a representative is known to be involved.

In the absence of consent from either the client or client's representative, care providers may:

- Share with family members information they need to provide care, such as behaviours, medications and possible side-effects (ie. sharing for continuity of care / circle of care);⁴
- Share information to prevent harm to anyone's health or safety (compelling circumstances);⁵ and
- Share information necessary to reduce the risk that a person will be a victim of domestic violence, if domestic violence is reasonably likely to occur.⁶

Document what information is released, to whom, and why the family member needs to know.

⁴ FIPPA s. 33.2(a)

⁵ FIPPA s. 33.1(1)(m)

⁶ FIPPA s. 33.1(1)(m.1)

9. What if I receive inquiries from someone I don't know is a family member?

Before sharing information about a client with a family member, care providers must confirm the identity of the person making inquiries. Seek confirmation from the client, the client's representative, another health care provider, or documentation in the health record.

Do not share client information if it is not possible to confirm whether the person making inquiries is a family member. You may ask the person questions, invite the person's input, and consult with team members, managers or supervisors about the person's involvement in the client's care.

10. How do I know if a client is capable of consenting to disclosure of information?

A client is capable of providing or withholding consent to disclosure of information if he or she demonstrates that he or she is aware of the specific information to be disclosed and understands the consequences of agreeing to or refusing the disclosure.

If a client is capable of providing consent to health care under the *Health Care (Consent) and Care Facility (Admission) Act*, this probably indicates that he or she is also capable of providing information-consent.

11. What information rights do clients have if they are under the age of 19?

A client under the age of 19 is considered an "infant" under the *Infants Act*. If a client under 19 is capable of providing consent, care providers must always seek consent directly from the client and not from their parent or guardian.

A client under 19 is capable of providing or withholding consent to disclosure of information if he or she is aware of the specific information to be disclosed and understand the consequences of agreeing to or refusing the disclosure.

If a client under 19 is capable of providing consent to health care under section 17 of the *Infants Act*, this probably indicates that he or she is also capable of providing information-consent.

12. Where can I get more information and guidance?

VCH Information Privacy Office: privacy@vch.ca or 604-875-5568

Family Support and Involvement

Appendix 13 from the BC Guide to the Mental Health Act is also a useful resource.



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