



## Client Privacy and Confidentiality Procedure

### **PURPOSE**

The Privacy and Confidentiality Procedure describes the steps that must be followed to ensure compliance with the Privacy Act 1988 (as amended) and the Australian Privacy Principles (2014). In addition, the Procedure aims to ensure clients' rights to privacy are met, and that they are advised about the purpose for which information is requested and how it may be used. All members of staff sign a Confidentiality Agreement and have a duty to maintain confidentiality regarding all aspects of client contact with HelpingMinds.

### **RESPONSIBILITY FOR IMPLEMENTATION**

All HelpingMinds staff

### **PROCEDURE**

1. Discuss all confidential matters in an environment where others cannot overhear information unintentionally.
2. Fully inform clients and obtain written consent before personal, sensitive or health information is communicated to health professionals, family members, other HelpingMinds services, or other agencies. Ensure that clients understand the reasons for collecting and sharing information.
3. Where written consent cannot be obtained, make every effort to gain verbal, informed consent before exchanging information about a client to any other party, including when there exists a duty of disclosure.
4. Never use coercion to obtain client consent.
5. Where exceptions to consent are considered necessary in the provision of client information (e.g. if a crime has been committed, a subpoena issued, an authorized request from a Government Authority received or a current arrest warrant is in place, or if there is a duty of care to the client and/or their children) discuss these within the service 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 staff member is compelled to disclose information, this must be discussed first with the Head of Service and CEO before disclosing the client information. Advise clients where appropriate if their records are subpoenaed for legal reasons in a Court of Law.
6. Inform clients of HelpingMinds reporting requirements to provide non-identifiable statistical data and general program descriptions to the funding agency, in compliance with the service contract.



7. In the event that clients request to view or change their client notes, explain to them that:
  - They will be asked to complete a written request form which will be directed to the HelpingMinds Privacy Officer who will respond to the request; and
  - If the request is approved, they will be given access to the relevant information in the presence of a staff member.
8. Discuss all requests received from clients to review or correct their client notes with the relevant Head of Service. The Head of Service in discussion with the Privacy Officer will:
  - Request that the client completes the *Request for Access to and/or Correction of Client Records* form;
  - Decide if the request will be approved and advise the client within 15 working days of the written request;
  - Arrange access to the client notes/file in the presence of a staff member. Clients should never remove their files from the premises.
9. Be aware that HelpingMinds is not required to give access to personal information if:
  - Giving access would pose a serious threat to the life, health or safety of any individual, or to public health and safety;
  - Giving access would have an unreasonable impact on the privacy of other individuals;
  - The request is frivolous or vexatious; or
  - There are legal reasons for denying access.
10. Be respectful, open and honest in all interactions with clients.
11. When it is felt that there is a serious issue that family or significant others need to be aware of, seek permission from the client to discuss the matter with others.
12. Inform family members that notes may be written about information they have provided.
13. In the event that a client becomes a staff 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 Head 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 on the shared drives, directing staff to the Head of Service should any information be required at a future date.
14. Under no circumstances disclose the identities or whereabouts of clients of HelpingMinds services/programs to outside callers or visitors. Discuss requests for information with the Head of Service.



15. Do not disclose the personal contact details or mobile phone numbers of other staff members to telephone callers/members of the public/visitors without the consent of the staff member concerned. Telephone numbers of HelpingMinds offices accessed by clients and members of the public may be shared.
16. Never leave documentation lying around for others to inadvertently view it. Do not leave client files unattended in the office or on the desk. They are not to be left in vehicles and should be securely stored at all times.
17. Never leave a computer unattended when client information and notes are visible on the screen for others to see.
18. Ensure that hard copy files are locked up securely as decided in each work site and that signed *Exchange of Information Consent* forms are filed and securely stored.
19. Files may leave the office for a genuine work-related purpose. In these instances, carry the files in a secure fashion in a non-identifiable format and do not leave them unattended.
20. Return files to the office storage as soon as possible after use.
21. Archive closed client files according to agreed HelpingMinds procedures and archive securely for 7 years or as otherwise required (e.g. by the Department for Child Protection and Family Support for children in care). After the required time files should be destroyed, or where it is considered that there may be a legal or family request for the file at a later date, it should be sent to Head Office for archiving.
22. Act immediately if breaches of confidentiality are identified by reporting them to the Head of Service / Privacy Officer who will then report to higher management if considered necessary. If clients feel concerned about any privacy issues, encourage them to report their concerns to the Privacy Officer.

## **GUIDELINES FOR RESPONDING TO SUBPEONAS AND GOVERNMENT AUTHORITY DEMANDS**

Any telephone queries regarding information about HelpingMinds' clients or staff should be treated in a helpful manner. Having a polite general discussion with the caller on the nature of the information required can save the caller time and will clarify what we can and cannot do for the caller. It may be that the caller requires information which we do not have and they can be advised accordingly. If we do hold the information they require, an explanation of our privacy commitments can be given and if necessary, a formal subpoena may follow.



Information regarding a client cannot be given out without written consent from the client. If the caller has written consent it must be faxed or emailed to HelpingMinds before any discussions can take place. HelpingMinds' clients cannot be confirmed or denied without written consent.

### **Government Authority Demands**

There are prescribed Government Authorities which are able to compel the sharing of information. This could include the Department for Child Protection and Family Support and WA Police. 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, for either the CEO or a Head of Service attention;

Clearly identify the client;

List details required to be disclosed;

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.

### **What is a subpoena?**

The Information provided in these guidelines has been sourced from *When the Subpoena Comes: Managing Legal Requests for Client Files*, Australian Psychological Society, September 2016.

<http://www.psychology.org.au/Assets/Files/When-the-subpoena-comes.pdf>

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

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

A subpoena is prepared by and served on behalf of a solicitor. It must be served by a court representative, usually a court clerk or worker, with the purpose of advancing the case of the solicitor's client. Subpoenas may be served by post, but are more often hand delivered to the person named.



Whether the subpoena is a summons to appear in court or to produce documents, it is a direction from the court and should be read carefully and discussed with the Head of Business or Chief Executive Officer. Many courts will include explanatory notes in the subpoena document. Noncompliance with a subpoena can result in a penalty.

When complying with a subpoena, documents should never be sent to the court representative who served the subpoena – they should only ever be sent to the court that issued the subpoena.

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. A letter from a solicitor may not be enforceable, so Heads 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.

### **Responding to a subpoena**

In responding to a subpoena:

1. Usually a subpoena is delivered to the Head of Service or Chief Executive Officer. The Head of Service / Chief Executive Officer should discuss the subpoena with the staff involved in supporting the client. All relevant staff should read the subpoena and case notes, discuss the case and make a decision on how the subpoena should be handled.
2. Ensure that the subpoena is valid.
3. 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.
4. 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.
5. 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.
6. 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 production of his or her information.



### **Responding to a solicitor's request for documents/information**

If the request comes from the solicitor of a former 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 Head 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 or objections and include a request for the solicitor to provide:

- 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 Head of Service should discuss the request with the Head of Business / HR before responding.

### **Dealing with objections to the subpoena**

Subpoenas are frequently served with only a short time for compliance. If there is sufficient time and the Head of Service has concerns about producing the requested documents after discussions with the support worker the Head of Service may contact the solicitor who prepared the subpoena in order to understand its purpose and to outline the concerns. The solicitor and the Head of Service 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 a senior staff member of HelpingMinds needs to attend court.

### **Appearing in court as a witness**

Sworn-in witnesses in a court promise to tell the truth. The truth should not be influenced by what is considered to be in favour of, or disadvantageous to the client. Refusal to answer questions in court will result in the presiding judge directing the witness to answer the question. Further refusal could result in a contempt of court charge. Witness credibility can also be called into question through evasiveness in answering questions.

### **Requests for information from files older than seven years that have been destroyed**

A subpoena can only compel an organisation to produce documents that are in its "possession, custody or control". Documents that have been destroyed in accordance with an established document retention policy are no longer within that organisation's "possession, custody or control". To avoid any repercussions for failing to respond to a



subpoena, the Head of Service should write to the court advising that the documents were destroyed and when, in accordance with the established document retention policy of the business.

It should be noted that, even in line with a document retention policy, documents that could be relevant to an existing or contemplated court proceeding should not be destroyed.

In Western Australia, the Court rules regarding subpoenas are as follows:

<b>Court</b>	<b>Rules</b>	<b>Validity</b>	<b>Served – prior to last date for service</b>
Supreme Court and District Court	Rules of the Supreme Court – Order 36B. Order 22 (Supreme Crt) Forms 4A,4B,4C,4D,4E (District Crt)	Must have court seal or be otherwise authenticated by the court	Served personally by leaving with the addressee and if requested showing a copy of the original
Magistrates Court	(Civil Proceedings) rules 2005 – Rule 71. Forms 46,47,48	Must have court seal	Served personally by giving to addressee or leaving with them; or by leaving with an adult at the relevant address

Subpoenas are accompanied with \$10 on delivery, nominally to cover compliance costs.

### **RELATED DOCUMENTS**

Exchange of Information Consent Form

Client notes

Request for Access to and/or Correction of Client Records Form

Signed staff Confidentiality Agreements

### **RELEVANT POLICY/PROCEDURE**

HelpingMinds Privacy Policy

Privacy Act 1988 (amended 2001)

Australian Privacy Principles 2014

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