



Saskatchewan College of Psychologists

1026 Winnipeg Street
Regina SK, S4R 8P8

Tel: (306) 352-1699
Fax: (306) 352-1697
Email: skcp@sasktel.net
www.skcp.ca

Membership Advisory

Final checklist for creating a consent form for collecting and releasing private information

As a template cannot adequately cover the different contexts psychologists work in and obtain informed consent for collecting and releasing private information, the committee concluded that a checklist with a preamble would satisfy Executive Council's mandate that the committee, "... develop examples of consent forms, policy pertaining to privacy issues...".

Preamble

The information provided below is not legal advice, but general practice advice. The information below does not absolve the individual psychologist of his/her professional responsibility to ensure competent, legal, ethical practices are adhered to.

Obtaining informed consent to gather, use, and disclose personal information is a process.

Obtaining informed consent to gather, use or disclose private information is part of a general set of privacy rules and principles that govern how information is to be managed by professionals:

1. Collection and purpose: Limited to only what is needed for a purpose, and the client needs to be informed what that purpose is.
2. Use and Disclosure: Information may be used and disclosed with consent for the purpose the information was collected, and where allowed by law.
3. Retention: Records should be retained as long as necessary to serve the purpose for which it was collected or as specified by law. The College's Professional Practice Guides state: 13.1 - Length of record retention - A member must ensure that all information in their professional records in respect of a client are maintained for not less than seven years after the last date that professional services were rendered to that client. In cases with extenuating circumstances where factors such as age at the time of service delivery or capacity are at issue, records may need to be retained for longer periods or possibly indefinitely.
4. Safeguards: Administrative (policies, codes); physical (locks, safe storage); technical (firewalls, encryption).
5. Right to access and right of correction.
6. Consent.
7. Accountability: Each professional and/or trustee is accountable for the personal information collected about a client that remains in his/her possession, as per Professional Practice Guidelines (14.0 Security of and access to records), and Practice Advisory: Release of Psychology Records.
8. Openness and compliance: Policies and procedures should be available to the public.

The Canadian Psychological Association's Code of Ethics reminds us:

1. I.17 – Recognize that informed consent is the result of a process of reaching an agreement to work collaboratively, rather than of simply having a consent form signed.
2. I.23 – Provide, in obtaining informed consent, as much information as reasonable or prudent person would want to know before making a decision or consenting to the activity. The psychologist would relay this information in language that the persons understand (including providing translation into another language, if necessary) and would take whatever reasonable steps are needed to ensure that the information was, in fact, understood.
3. I.24 – Ensure, in the process of obtaining informed consent, that at least the following point are understood; purpose and nature of the activity; mutual responsibilities; confidentiality protections and limitations; likely benefits and risks; alternatives; the likely consequences of non-action; the option to refuse or withdraw at any time, without prejudice; over what period of time the consent applies; and, how to rescind consent if desired.
4. I.27 – Take all reasonable steps to ensure that consent is not given under conditions of coercion, undue pressure, or undue reward.
5. I.30 – Respect the right of persons to discontinue participation or service at any time, and be responsive to non-verbal indications of a desire to discontinue if a person has difficulty with verbally communicating such a desire (e.g., young children, verbally disabled persons) or, due to culture, is unlikely to communicate such a desire orally.

Defining a record: The Freedom of Information and Protection of Privacy Act, The Local Authority Freedom of Information and Protection of Privacy Act and The Health Information Protection Act all have the same definition, which is: a “record” means a record of information in any form and includes information that is written, photographed, recorded, digitized or stored in any manner, but does not include computer programs or other mechanisms that produce records.

According to Practice Advisory: Release of Psychology Records, records are further divided into practice records, test material, and test results, each of which has specific requirements regarding members' responsibilities for consent to release to a client, or third party. Please see the Release of Psychology Records for additional information.

Key factors in developing a process for obtaining informed consent to gather, use, and disclose personal information.

1. Psychologists must understand what legislation primarily applies to their practices, because this will influence what kinds of consent are needed and under what circumstances.
 - a. This will involve a review of relevant legislation (see list).
 - b. Consultation with colleagues, supervisors and/or managers.
2. This checklist does not cover obtaining informed consent for psychological assessment or psychological treatment.
3. Does HIPA prevail as the authority regarding personal health information in your custody or control?

4. Can the client provide voluntary consent? i.e., is the client in the age of understanding* and does he/she have the cognitive capacity to understand what giving informed consent to use private information entails.
5. Is the consent related to the purpose for which the information is required?
6. Is the consent voluntary?
7. Is the consent informed?
8. Has the client been informed about why the information is being collected and all anticipated uses and disclosures?
9. Have you provided information about how consent may be revoked?
10. Are you collecting personal health information only for the benefit of the person the information is about?
11. Has the term of the consent been established?

Obtaining informed consent to release private information is a requirement for competency as a psychologist, in clinical practice, supervision, research and consultation.

The process of obtaining informed consent to release information is complex and requires an understanding of the context in which the need for informed consent occurs. These contexts involve the nature of your clinical, research, supervision and consultation activities; the laws applicable to your work (see List of Relevant Legislation); professional practice guidelines; and ethical code.

In some cases, informed consent is not required to release information or is expected under law, e.g., duty to warn, duty to protect, as in reporting imminent risk of suicide, homicide, or child in need of protection, or other mandatory reporting requirements. Other examples of mandatory requirements include duty to report if an individual is unfit to operate a motor vehicle (under the Traffic Safety Act), ensuring a worker's injury is reported (the Saskatchewan Workers' Compensation Act).

Under the Workers' Compensation Act (WCA) health care professionals (as defined in the WCA, psychologist is among them) must report a work injury to WCB. Health care professionals must also provide WCB with whatever information WCB deems necessary to adjudicate an injury claim. A signed consent form to provide this information is not required but is prudent.

Consideration must also be given to how, when, and under what circumstances informed consent may be obtained. These considerations include: is the client so emotionally distressed as to be unable to provide informed consent; has a request for information been received to prompt a discussion of releasing information? Is the request specific, or is an omnibus request for the entire record at issue? What duty do you have to produce information requested of you? This will depend on what information is requested (e.g., progress reports, test data, test protocols), and under what circumstances (e.g., a solicitor requests a copy of your entire chart; an insurance carrier requests you complete a provided form summarizing your diagnosis, treatment, and visits with a client; a police officer has a few questions about your client).

When processing a request for information regarding a client, the psychologist must also consider whether the person or agency requesting the information can understand and properly use any information that might be disclosed.

What form of consent is needed in the particular circumstance you are dealing with – is verbal consent with file documentation sufficient, or must a consent form be signed? While a signed consent form is preferable, on occasion, a verbal consent is adequate. For example, an individual leaves your clinic to their remote-rural home, but failed to give written permission for the assessment report to be released to the physician. A verbal consent to release the report, that is witnessed (i.e., another person working with the psychologist also listens to the conversation to verify), is acceptable in some situations. Non-witnessed verbal consent is not advised.

If a signed consent form is used, what are the essential features of a professional, legal, ethical consent form? The checklist below was developed to assist psychologists in developing consent forms for obtaining informed consent.

Most agencies rely on a process for obtaining informed consent. One type of process used in clinical practice unfolds as follows:

1. Client presents for intake, but no consent for release of information is discussed.
2. As treatment unfolds, and the client is deemed competent to discuss issues of confidentiality, anticipated releases of information are discussed and a consent form is reviewed and signed to provide permission for information to be released.
3. If there is no anticipated need to release information, no form is signed or discussed until a request is received.

A Checklist for Developing a Consent Form for Collecting and Releasing Private Information:

- You are a trustee as defined by HIPA, or, you work under the Mental Health Services Act.
- You create records that have personal health information, in the course of your work as a psychologist (i.e., clinical, research, consultation, supervision).
- The justification for gathering private information is explained in the form.
- You offer to collect, use or disclose personal information only on a need-to-know basis. The psychologist is obligated not to release information unless it matches the request for which consent to release has been obtained.
- There is a statement to inform clients of anticipated uses and disclosures of the information collected.
- Consent to collect and release information forms are not needed in all circumstances, you will have determined one is needed for your situation.
- Your consent form addresses your client's right to access and amend personal information in your possession.
- Your consent form includes your name, title, and contact information.
- The consent form includes the name of the client, signature and date (note: not all types of consent involve a signed consent form, e.g., some are verbal).
- The information to be released is specified.
- When a request for release of information is received.
 - The request is examined to determine that it signed by your client.
 - That request is for specific information for a specific purpose. If the request is for the psychologist's entire file/chart, then clarification is sought from the requesting individual or agency. A letter from a client's lawyer requesting information is not sufficient to release information. A letter from an insurance company with an

- omnibus general release for all information does not meet practice expectations or legislative requirements for protecting private information.
- The person or agency requesting the information is deemed to have the capacity to understand and use any information released in a proper manner (e.g., (e.g., if the request is for raw test data or test protocols, the release is made to another equally qualified psychologist who has the requisite skills and knowledge to interpret the information provided).
 - There is no prohibition to providing the information requested to the party making the request.
- The individual(s)/organization(s) recipient(s) of the private information is/are listed in the consent form.
 - The consent form contains a statement that the consent was given voluntarily.
 - The consent form contains a statement that the client understands the provisions in the consent form.
 - The consent form contains a statement that the client was given opportunity to discuss the issues pertaining to providing consent, and the questions were answered to the client's satisfaction, i.e., that the consent provided was informed (Note: A legal test resembles the following: Is enough information provided to enable the individual to make an informed decision about consent?).
 - The consent form explains that consent may be revoked at any time, but no revocation shall be retroactive. The form specifies how consent may be revoked (i.e., by written request).
 - The period of time the consent may apply is specified in the consent form.
 - If the client is not at the age of understanding*, provision for custodians to provide consent are in the consent form.
 - The consent form lists the limits to confidentiality, situations in which information must be disclosed (i.e., suicide, homicide, child in need of protection, legal requirement).
- Age of Understanding – replaces “age of consent”, and refers to provision in HIPA: Part VIII General: Exercise of rights by other persons – 56(c) by an individual who is less than 18 years of age in situations where, in the opinion of the trustee, the individual understands the nature of the right or power and the consequences of exercising the right or power.

Practice Advisories are issued by the College of Psychologists in response to practice issues arising out of investigation of complaints or issues raised by members. Once available on the College website, members are presumed to have knowledge of Practice Advisories and are expected to incorporate them into their practice of psychology. Practice Advisories may be used by the College to evaluate the conduct of a Member.