



Model policy and guide for programs regarding confidentiality and releasing information in the event of a program participant's death

Using the “In the Event of My Death” Release of Information Form

- Programs can either use the model “In the Event of My Death” release of information form, or incorporate the release in their existing confidentiality forms.
- Advocates should discuss the “In the Event of My Death” release of information form with program participants in the context of explaining the program’s confidentiality policies.
- Emphasize the program’s commitment to confidentiality, and spell out under what circumstances the program would release information about the program participant to anyone.
- Clarify that in the event the program participant is killed, the program will not reveal that she/he had used the program services to anyone (including family, police, and prosecutors) unless she/he gives permission.
- Let each program participant know that she/he can specify whether she/he wants information about her/his contact with the program to be released in the event of her/his death to police and prosecutors, friends or family members, or the Domestic Violence Fatality Review.
- The form includes a box for additional comments. Use this section if a program participant wants to give the program permission to release only some information after her/his death. In this case, include in the comments section which information the program can release. For example: “limited to dates of contact; types of services used; reports of violence by abuser; abuser’s threats.” Do not list specific information that the program participant does not want released. Remember that in the event of the person’s death, the release form itself (and whatever is written on it) may become public record.
- Program participants should never be pressured to agree to release information to anyone.
- State law requires that any consent to release information have an expiration date. If there is no expiration date, the release will automatically expire in 90 days. Fill in the expiration date with a date far in the future (100+ years).
- Keep the signed release with the program participant files.
- Train staff and volunteers on how to use the “In the Event of My Death” form and how to talk with program participants about the form.

Sample language for agency policies

Consider adopting this policy for your agency:

Each person receiving services from the agency will be informed about her/his rights with regard to confidentiality and the limits of confidentiality, and that the agency's confidentiality policy remains in effect in the event of the program participant's death. Program staff will explain the "In the Event of My Death" release of information form and offer it to participants to complete. Program participants may revoke the "In the Event of My Death" release at any time by informing program staff or volunteer of their wishes either verbally or in writing.

Most programs are required by contract or statute to keep records for a specified length of time. Some programs then destroy records rather than archive them. Programs with a destruction policy may want to consider adding the following to their policy:

The program will keep the program participant's records for no less than (the contract/statute specified #) years since the last time the participant sought services from the program.

If the program participant signed the "In the Event of My Death" release of information form, the program will preserve only:

- *The name of the program participant and the time period she/he and her/his children used services (e.g., Mary Smith, in shelter 12/1/05-2/1/06 or Jane Doe, support groups 7/12/98 to 12/30/98)*
- *"In The Event Of My Death" release of information form signed by the program participant.*

When should advocates ask program participants to sign the release?

Explain the "In the Event of My Death" release when you explain the agency's confidentiality policies. Include the form with the other forms participants sign about protecting their confidentiality and other participants' confidentiality.

Do not introduce the form for the first time when you are talking about safety planning or the program participant's fears. The "In the Event of My Death" form should be part of your routine with every program participant, not something triggered by your fear for a particular person.

How should we talk about the form?

It may be uncomfortable or scary to bring up the idea of a program participant's death. Talk about the form in the context of your program's confidentiality policies. Let the program participant know that signing the release is her/his opportunity to make the decision about what happens to her/his information in the event that she/he was killed. Here are some suggestions for how to start the conversation:

"We will not tell anyone you used services here or even that we ever met you unless you give us permission. Because we take confidentiality so seriously, we cannot share information about you with anyone even after you have died."

"We share this form with everyone. This is a release of information that lets you decide who we can tell about the services you received here if you were to die as a result of domestic violence."

It may be helpful to use an example. "For example, if a friend or family member called here and asked about your belongings, we would not be able to tell that person you stayed here without a release."

In the Event a Program Participant Dies

When program staff find out that a person the program has served has died, staff should identify whether that person signed an “In the Event Of My Death” release. If the program participant signed an “In the Event Of My Death” release, program staff must use their discretion to decide how to follow the requests set forth in that release. Below are some things to think through when making those decisions.

In the event a person your program has worked with is killed or dies:

- Don't rush. Take the time to talk it over and make thoughtful decisions about what you will do.
- Don't make decisions alone. Decisions about what information you will release and to whom should be made by more than one staff person, and should include the advocate who worked most closely with the person who has died.
- Do not send the program participant's file to anyone. Instead, use discretion about which information to release.
- Be transparent about the process you use to make decisions about releasing information. Make sure everyone in your agency understands the decision.
- Consider: What were the wishes of the person who signed the release? What are the potential consequences of releasing this information? How might it help? How might it be harmful?
- If you have questions or want support making these decisions, you can call WSCADV at (206) 389-2515 or (360) 586-1022.

When to release information

The “In the Event of My Death” release form gives your program permission to release information in the event the program participant has died. Your program may decide to release information about someone who has been killed by an abuser, who has died by suicide, or whose death has been ruled an accident. Some ways your program might confirm a program participant's death include: news media report the death; law enforcement or prosecutors confirm the death; a hospital or health department confirms the death. If someone who has used your program services is missing, but not confirmed dead, do not release information. It is impossible for programs to determine whether someone who is missing is choosing to be in hiding.

Releasing information to police and prosecutors

- Do not send the program participant's file.
- Keep in mind that information released to law enforcement and prosecutors can become public information.
- If you decide to release information to the police and prosecutors, do not simply turn over all records. Instead, use discretion in deciding what to share. Some things you may want to consider are: Is the information recorded here and the language used consistently respectful and non-judgmental? Is there information here about surviving family members (e.g. the victim's children) which should remain confidential? Could this information be used to support defense arguments, blame the victim, or hurt the victim's surviving family?

- Consider setting parameters for what information you will release to law enforcement and prosecutors. Some suggestions are: dates of contacts, types of services used, victim's reports of prior violence by the abuser, and the abuser's homicide or suicide threats.

Releasing information to the Domestic Violence Fatality Review (DVFR)

- When a program identifies that a program participant has died as a result of domestic violence and the program participant requested that her/his information be released to the DVFR, program staff should contact DVFR staff at (206) 389-2515, and send a copy of the release of information to the DVFR.
- Pursuant to Washington Administrative Code, program representatives cannot disclose specific information about a program participant to the DVFR (including whether she/he sought services) without a release of information.