



Confidentiality FAQ (Frequently Asked Questions)



What should happen to expired Releases of Information (ROI)?

Your program needs a record of the ROI, should a question come up regarding your permission to release information. However survivors do not benefit from having expired ROI's in their file. When a release has expired, it should be removed from the client file and moved to an administrative file.



I can't get a written release because (choose one: I am only doing telephone advocacy and the distances are too far for in person advocacy; my client is gone for the day and her cell phone is dead; I am doing advocacy by email, not in person; time is of the essence and my client will lose her job if she leaves to sign a release today) what do I do?

RCW 70.123.076 is very clear that "A recipient of shelter, advocacy, or counseling services may authorize a domestic violence program to disclose information about the recipient. The authorization must be in writing, signed by the recipient..."

That doesn't leave a lot of wriggle room. Here are some options:

- Faxing a form back and forth: Many computers come with a standard fax option, so some survivors may be able to send or receive a fax. Confirm the fax location with the survivor by phone.
- Scanning and sending the ROI as an attachment: It is also acceptable to scan a release of information, send it as an attachment to a SAFE email address, and for the survivor to print it, sign it, re scan it, and send it back with her signature.
- Electronic signatures transmitted via email: Whenever using email, be sure to confirm the release verbally on the phone with the survivor. Be aware that email accounts are easy to get into and do not communicate about a release exclusively in email.
- Retroactive signature: Read the ROI form over the phone to the survivor and fill it out based on her verbal permission, noting the circumstances ("client could not sign in person because she was at work; gave permission over the phone, plans to stop by on xx date to sign"). Try to get the ROI signed as soon as possible.



The woman I am serving would like me present at a meeting with her attorney. The attorney is resisting, saying it will compromise privilege. Is attorney client privilege compromised if an advocate is in the room during a meeting of a survivor and her attorney?

The working assumption with privileged communications (such as with an advocate or an attorney) is that if the person felt okay sharing it with anyone else, then it didn't need to be privileged (so for example, if the survivor brings in her sister for support, this does compromise privilege, since the assumption of privacy is gone). However, in this case, both advocate and attorney conversations are privileged, so it is harder to make the argument that the survivor did not intend her communications to be privileged.

It is a possibility that the other side could attempt to make the advocate's presence an issue later. However, the advocate and the client should explore with attorney how likely this is in her particular case, and under what circumstances this might occur. As an advocate, help the survivor consider the trade-offs on the benefits of the advocate being present versus the risk (possibly quite low) that it could lead to problems. Advocate presence may make it possible for the attorney to represent the client more effectively, if it allows the survivor to calmly provide information or raise issues. Even if the other side raised the issue, the advocate would still be bound to keep whatever she heard confidential. A good attorney would fight efforts to argue that the assumption of privilege and privacy were gone once an advocate was present.

- How to handle this: share risks with the client
- Assess with the attorney and others the probability of this being an issue and understand under what circumstances it might be a problem.
- Encourage the attorney to weigh the specific risks and likelihoods in this particular case; the fact that something *could* happened does not mean it is likely to happen.
- If you do accompany a client in an attorney meeting prepare with her to help her plan on what to say with you there, and consider what she does NOT want to say with you there
- Evaluate from there and do what the survivor wants you to do.



Do abusers who are parents of children served in a dv program have a right to kids' dv program records?

No.

As part of the 2005 Violence Against Women Act, the Department of

Health and Human Service adopted the following rule for recipients of VAWA funds

Programs cannot share info without consent of the person "(or in the case of an unemancipated minor, the minor and the parent or guardian; or in the case of persons with disabilities, the guardian) about whom information is sought..... consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor."

This means that the abuser cannot obtain a child's records without the consent of the *child and the child's parent or guardian*. Wow! The child must consent as well! It also means the abuser may not give your program "consent" to release a child's records to anyone else.

This rule applies to any program receiving federal VAWA monies this would include all programs funded by DSHS including FVPSA, STOP, GTEA and LAV.



Should we let DCFS social workers meet with shelter clients in the shelter or provide services in shelter?

This is up to your program; nothing in statute or WAC would forbid this.

The general principle is balancing what is best for every shelter resident at the time. You may not need a set policy; it may be possible to handle on a case by case basis. With some houses, it might be okay, with some it might not. Consider a flexible approach.

Here are some things to think about:

On one hand, allowing a social worker into the shelter can ease access to needed services for the client and her children. It can also make providing advocacy around the DCFS intervention easier.

On the other hand, while being there, a social worker may see other families who are in the shelter; this potentially compromises their confidentiality. Some survivors may not wish to be known to a DCFS social worker. This may be a particular issue in small communities.

If you do allow social workers to come to the shelter:

- Inform other clients who will be coming, what agency they are from and when they will be in the shelter
- If a survivor does not want to be present while a social worker visits, facilitate her being away from the shelter by providing supports for this: movie vouchers, bus tickets, help packing a picnic lunch for her and her kids, etc.
- Always have the social worker sign a confidentiality agreement.
- If possible, arrange with DCFS to have just one worker coming to shelter.



Residents need to receive phone calls at the shelter; how do we facilitate this while at the same time keeping their confidentiality?

Residents without phones need to get messages about jobs, apartments, various forms of aid, etc. How do we verify that the caller really is the person the resident is expecting to call and not the abuser? How do we know when to say, “yeah, she’s here, I will get her” or “I don’t know that person”? AND how can we make sure advocates are not spending all their time managing phone calls for residents?

The answer to this depends on your individual program and funding:

- Some programs have installed individual phones in rooms, each with a unique number. The resident is free to give this number to whoever she wishes and handles her own calls.
- Set aside at least one phone and one phone line for incoming calls.
- Take a message every time without confirming resident’s presence “If you want to leave a message, I will take it; I can’t verify that person is here; but if they are here, I will get them this message.”
- Have residents provide a list of expected callers and their phone numbers. Set up an office phone with caller ID (most hotlines do not have) and verify caller’s identities this way.
- Have residents give callers a password so that you know the resident has given them the phone number. These may need to change frequently.