

## Guidelines for Confidentiality Policies

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This document includes guidelines and recommendations for community-based, non-profit and tribal domestic violence and sexual assault service providers related to victim-advocate privilege, mandatory reporting, and release of information.

**First and foremost:** Remember it's the survivor's information. The survivor has the right to choose and be informed of when, how and what personal information will be shared, or not shared, and with whom, and to know for what purpose their information will be released. Agencies and advocates are responsible for respecting and honoring the victim's wishes and safeguarding any of the survivor's information that they collect or hold.<sup>1</sup>

**Law and General Principles:** Your program<sup>2</sup>, staff and all volunteers, including board members<sup>3</sup>, must know the law that governs confidentiality and any exceptions to those laws.

These guidelines were created to assist programs supported with Oregon DOJ-CVSSD and DHS domestic violence (DV) and sexual assault (SA) grant funds to develop confidentiality policies and procedures.

Oregon DOJ and DHS have adopted and integrated the U.S. Violence Against Women Act (VAWA), Victims of Crime Act (VOCA) and the U.S. Family Violence Prevention and Services Act (FVPSA) confidentiality protections for all DHS and DOJ-CVSSD funded domestic violence and sexual assault programs or services, across all grants<sup>4</sup>.

Also, the state of Oregon has created certified advocate-victim privilege<sup>5</sup> and confidentiality<sup>6</sup> for "certified advocates" working for "qualified victim services programs" and established basic confidentiality requirements for those advocates & programs.<sup>7</sup>

Your program, organization, tribe, or profession may have other confidentiality provisions and/or laws that also apply to domestic violence and sexual assault survivors.

Tribal programs are included in Oregon certified advocate-victim privilege statute, and tribal advocates may meet the definition of "certified advocates."<sup>8</sup> Tribes are sovereign nations, however, and it is their individual Tribal Codes that determine privilege and reporting requirements in their respective jurisdictions. For example, a survivor's communications with a certified advocate who works for a tribal government-based program may be covered by Oregon's advocate privilege

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<sup>1</sup> For the purpose of this document, the terms "victim" and "survivor" are used interchangeably.

<sup>2</sup> For the purpose of this document, "program" means organization, agency or government, as well as victim services division or component.

<sup>3</sup> While all board members shall have basic understanding about these laws, only those with direct access to DVSA clients and/or client information, or those who make decisions about identified clients, are required to comply with the requirements to become a certified advocate outlined in OAR 137-085-0080.

<sup>4</sup> 34 USC §12291(b), 42 USC §104062 (5)(F), and 42 USC 110, §10406(c)(5)

<sup>5</sup> ORS 40.264

<sup>6</sup> ORS 147.600

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laws, but because the privilege is created by state (not tribal) law, the privilege will only apply in state civil, criminal, administrative and school proceedings. It will not extend to any tribal court or agency proceedings (unless the tribe says it does). This can be challenging for survivors and providers alike, and can lead to uncertainty about what communications are private and confidential. We encourage you to ask for help when questions arise.

These guidelines refer to federal and state laws, rules, and best practices. When something is required rather than optional, we use the terms “will”, “shall” and “must.” Recommendations for best practice use the terms “may” and “should.” It is the responsibility of each Oregon DOJ-CVSSD and DHS-funded program to have comprehensive confidentiality policies in place and to ensure all staff and volunteers are familiar with them. We recommend that programs seek legal advice when creating agency policies. Federal and State statutes and rules include:

FVPSA – 42 USC §10406(c)(5)

ORS 40.264 – Advocate-Victim Privilege

ORS 147.600 – Confidentiality of Certain Victim Communications and Records

OAR<sup>9</sup> 137-085-0080 – Advocate Certification

VAWA – 34 USC §12291(b)(2)

- VAWA Confidentiality FAQs: [https://www.doj.state.or.us/wp-content/uploads/2017/11/vawa\\_confidentiality\\_provision\\_faqs\\_2017.pdf](https://www.doj.state.or.us/wp-content/uploads/2017/11/vawa_confidentiality_provision_faqs_2017.pdf)

VOCA – 28 CFR § 94.115

Confidentiality protections are applicable to all staff and volunteers, including members of the board of directors, governing body, or advisory councils, who have access to DVSA clients or client information, or make decisions about identified clients. ***For brevity in this document this is often referred to as “staff and volunteers.”***

### I. KEEPING INFORMATION CONFIDENTIAL

Confidentiality starts with the first contact/inquiry and protected information may not be shared without a written release of information, except as described in these guidelines. The VAWA confidentiality requirements apply to anyone who seeks, receives, or was denied victim services from a victim service provider.

#### Protected Information

**The following information shall not be released without a VAWA-compliant release of information.**

- Personally identifying information (PII) collected in connection with services requested, utilized, or denied **will not** be disclosed from the Grantee’s organization including victim and non-victim services divisions or components and leadership of the organization without a written release of information, unless an exception applies.

#### Compliance Certification – DOJ-CVSSD and DHS

All DOJ-CVSSD and DHS DVSA grantee programs **must sign** the form, *Grantee Certification of Understanding and Compliance with Confidentiality and Privilege Requirements*, provided by DOJ-CVSSD and DHS.

As outlined in OAR 137-085-0080, all staff and volunteers who have access to clients or client information, or make decisions about clients, including members of the board of directors or governing body, if any, **must receive the required training to make them Certified Advocates and sign** the *Employee and Volunteer Certification of Understanding and Compliance with Confidentiality and Privilege Requirements* form provided by DOJ-CVSSD and DHS.

<sup>9</sup> Oregon Administrative Rule (OAR)

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- The information **will not** be disclosed even if it has been encoded, encrypted, hashed or otherwise protected. (This would include PII by email, text, etc.)
- Privileged communications made by a victim to a certified advocate, at a qualified victim services program, as described under Oregon law, made when a victim is seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking.
- Records of a qualified victim services program in Oregon that are created or maintained in the course of providing services regarding the victim.

“Personally identifying information”, “individual information”, or “personal information” is defined as:

- a first and last name;
- a home or other physical address;
- contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
- a social security number; and
- any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

### Protected Information in Multi-Service Organizations, Agencies, and Governments:

- Disclosure of Protected Information **is prohibited** from victim services divisions or components of an organization, agency, or government:
  - to any other non-victim service divisions within the organization, agency, or government; **and**
  - to the leadership of the multi-service organization, agency, or government (e.g., executive director). The executive shall have access without releases only in extraordinary and rare circumstances. Routine monitoring and supervision are not extraordinary and rare circumstances.

One example of an “extraordinary and rare circumstance” that justifies release to an organization’s leadership is if allegations of fraud are made against the victim services division or one of its staff. (VAWA FAQ #10, page 4)

### Protecting Information in a Coordinated Community Response (CCR) setting (such as Sexual Assault Response Team (SART), Multidisciplinary Team (MDT), Child Abuse Multidisciplinary Intervention (CAMI), Co-located, School outreach/prevention):

- All program staff and volunteers **must** follow the VAWA/VOCA and Oregon privilege requirements regardless of the location of the service, intervention, or activity.
- VAWA/VOCA and Oregon privilege requirements **cannot be over-ridden** by a certified advocate, executive director, or other qualified victim services program staff or volunteer signing a confidentiality agreement within a coordinating team, e.g. in an MDT or SART. Only the survivor may consent to their information being shared, Services may not be conditioned on a survivor signing a release of information.
- VAWA/VOCA and Oregon privilege requirements **cannot be over-ridden** by signing a Memorandum of Understanding.

### Media Request for Information:

- If the program receives a request from the media regarding a recipient of services, the program **shall**:

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- Not indicate anything to the media, including confirming whether or not the client was a recipient of the program's services, without the client's permission as set out in the terms of a release of information (ROI);
- Make reasonable attempts to notify the victim/recipient of services immediately;
- Notify Oregon DOJ-CVSSD promptly that there was a media request if the services were funded with VAWA, VOCA, and/or ODSVS grants. (DOJ CVSSD Grant Agreement).
  - Program will notify assigned CVSSD Fund Coordinator,
  - Fund Coordinator will notify CVSSD management and DOJ Media Director.
  - Program shall not disclose any PPI about the subject of the media request if the Program is required to inform the CVSSD Fund Coordinator.

### Shelter:

- The shelter address or location **will not** be made public, except with written authorization of the person or persons responsible for the operation of such shelter.

### Access to Victims/Service Areas:

Programs **should** protect confidentiality by restricting access to service areas where survivors may be present.

For example, programs **may** refuse access to confidential shelters. Programs **may** limit access to their public offices. Programs **may** establish separate entrances for survivors, especially if main entrances are shared with other non-DVSA services. Programs **should** have policies for responding to law enforcement or other officials demanding access to their premises. Programs **should** have policies outlining how to contact emergency services in a way that protects the personally identifying information of victims. Programs **may** want to have a separate name, checking account, and "cover story" for their confidential shelters or service areas, so that repairs, deliveries, etc. can be made without revealing that the space is related to their DVSA agency. Arrangements with motels for emergency housing **should** be made in a way that keeps motel staff from knowing that the person being housed is a client of a DVSA program.

Programs **should** always require signed confidentiality agreements from anyone not a staff or volunteer who accesses survivor service areas. Survivors **should** always be warned if anyone who is not a certified advocate will have access to service areas they may be using or planning to use.

### Records:

The Program **must** assure that paper and electronic records are kept confidential and secure (this includes on site, off-site, and during transport). For example, programs **may** have electronic records on computer(s) not connected to the internet. Programs **may** have locking filing cabinets or controlled access to file storage areas.

Document retention and destruction policies **should** be in place and posted (see grant agreements for retention requirements).

- Destruction policies **should** cover both paper and electronic records.
- Paper records being destroyed **should** be shredded or made unreadable in some way.
- Offsite or during transport, programs **may** want to provide locking briefcases, require that confidential records be transported in a locked car trunk, and/or require that locking file cabinets be available offsite.
- Programs **may** also want to consider offsite policies that forbid the use of personally identifying information on paperwork outside the office/shelter, or have policies that govern how staff should protect survivors' PII when working remotely and on electronic devices.

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## **Inadvertent Release of Information:**

The program **must** take reasonable efforts to prevent inadvertent releases of “personally identifying information” or “individual information” (VAWA Rule 90.4 (5)). For example, programs **should not** permit personally identifying information to be shared by email or other electronic methods without survivor consent. Programs **may** want to ensure that any written information that is mailed or otherwise shared has been double checked by a certified advocate to ensure that only the intended and appropriate information is being shared and that it is being shared with a party covered by a signed ROI.

In the case of an inadvertent release of confidential information, the program **shall** (1) make reasonable attempts to notify the victim; and (2) take steps necessary to protect the privacy and safety of the persons affected by the release of information. For example, victim notification **must** be made in a manner that the victim has designated as safe. Victim notification messages **should not** include information about the fact of or content of the inadvertent release. Programs **should** provide any assistance necessary to mitigate the impact of the inadvertent release, including reimbursing travel and re-housing costs. With a signed ROI from the victim, programs **may** want to contact an attorney on how to protect privacy and safety.

In the case of an actual or imminent breach (paper, oral, electronic) of PII, the program **must** report to CVSSD as soon as possible without unreasonable delay so they can report within 24 hours to the OVW/OVC program manager per special conditions of the VOCA and VAWA 2018 grant awards. The report to CVSSD shall not include any identifying information about the individual(s) whose information was released.

## **The Following Information May Be Released:**

Non-personally identifying data in the aggregate **may** be shared regarding services to their clients in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements, as long as such information, alone or in combination with other provided information, does not identify any individual.

## **II. WHEN RELEASE OF PROTECTED INFORMATION IS PERMITTED**

**There are four circumstances in which releasing PII information is permitted: 1) With a written, informed, reasonably time limited, signed release of information; 2) Statutory mandate; 3) Court mandate; and 4) Fatality review team request (if all the necessary requirements are met).**

1. Release of Information (ROI) is permitted where the survivor/victim knowingly and voluntarily consents to the release.
  - An ROI **cannot** be required as a condition of service.
  - The release of information (ROI) document **must be**:
    - Voluntary
    - Written
    - Informed
    - Reasonably time-limited
    - Per person or agency, no blanket releases
    - Specific as to the scope and limited circumstances of any disclosure
    - Revocable

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“Informed” consent means that the survivor and the provider have discussed why the information will be shared, what information might be shared, who will have access to the shared information; they have agreed what information will be shared and with whom, and the release records the scope of their agreement<sup>10</sup>.

- Information **should not** be released based on a release of information from another agency. Only a release of information generated by the DV/SA program, discussed by DV/SA staff or volunteers with the survivor (as outlined below), and signed voluntarily by the survivor meets the exception to the requirement to keep all personally identifying information and records confidential.<sup>11</sup>
  - Programs **should not** create or respond to mutual releases.
- Discussions about signing a release **must** include:
  - Why the information might be shared,
  - Who would have access to the information,
  - What information could be shared under the release
- Discussions about signing a release **should** also include:
  - Alternatives to the release,
  - The risks & benefits of the release, including implications of releasing information to mandatory reporters or organizations with limited privacy protections<sup>12</sup>
  - How to revoke the release
- The release **must be** signed by:
  - Victim–
    - If the victim has legal capacity to consent
    - This includes a minor victim if the minor has the right to receive the services provided without a parent/guardian’s consent.<sup>13</sup>
  - Parent or Legal Guardian and the Minor –  
If the victim is an unemancipated minor and does not have the right to receive the services provided without the parent/guardian’s consent.
  - Guardian Only –  
If the person with a guardian lacks legal capacity to consent.
  - If victim is a minor incapable of knowingly consenting, the parent or guardian may provide consent.
    - If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate.
  - NOTE: Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the minor’s other parent.

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<sup>10</sup> 28 CFR 90.4

<sup>11</sup> In some very limited situations, an organization may accept a ROI from another agency after consulting with the survivor to confirm that it was knowingly executed, that that content was discussed, that the survivor and program agrees on the scope, purpose, implications of signing (including the risks and benefits, and alternatives to signing) and that the release reflects this agreement.

<sup>12</sup> Note that persons/programs that are not mandated to report abuse may choose to make such a report if they are not prohibited from doing so by VAWA, VOCA, FVPSA, Oregon law, or other privacy protections that limit such reporting. Be sure you understand the privacy protections of any organization to whom you refer a survivor or before advising a survivor on the risks/benefits of releasing information to another organization.

<sup>13</sup> As of this writing state legislative proposals are being considered to clarify youth consent to DVSA services.

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- The Signed Release Form **may be** based on NNEDV Confidentiality Templates: <https://www.techsafety.org/confidentiality-templates>.
- For examples of VAWA-compliant bilingual or Spanish-only templates, email the Victim Rights Law Center at [privacyTA@victimsrights.org](mailto:privacyTA@victimsrights.org).

## 2. Information May Be Released If Required by Statutory Mandate:

As noted above, PII may be released if required by a statutory (or court) mandate. Domestic and sexual violence advocates within qualified victims services programs, according to Oregon state law, are exempt from the list of “public or private officials” in the definition section of the mandatory reporting law, and are therefore not mandated by the state to report child abuse, elder abuse, abuse of persons with severe and persistent mental illness or abuse of persons with developmental disabilities.<sup>14</sup>

- Each Tribal Nation has its own Tribal Code. Some tribes have tribal codes that specify that certain or all tribal members, staff, volunteers, residents, or other persons may be mandatory reporters.
- Advocates that are not mandated to report abuse under state or tribal law, are **prohibited** by federal and state funding to report suspected abuse learned of in the course of their role as staff and volunteers unless the survivor signs a written release of information voluntarily signed with informed consent (as outlined in the ROI section above).
- Advocates **must** know their personal status with regard to mandatory reporting such as tribal law, other professional employment (e.g., a DHS, school, or nursing home employee) or licensing (e.g., a licensed clinical social worker, certified child care provider, or health care provider), as well as any exemptions (e.g., a lawyer, clergy, psychiatrist).
- Each staff member, volunteer and board member **should** know who within the organization is a mandatory reporter and what type of abuse that person must report.
- Informed consent to services requires that a survivor be advised – before they make a disclosure – if the provider is a mandatory reporter of any kind of abuse (child, adult with a qualifying disability, or elder).

## **LIMITS to STATUTORY MANDATE/ABUSE REPORTING:**

Each tribe may have tribal codes/laws that will guide statutory mandates and abuse reporting. Each tribe determines its own laws, so tribal codes differ in their mandatory reporting laws.

Mandatory reporters who are subject to confidentiality restrictions cannot report information voluntarily to DHS-CW. They can only report abuse as defined by the legislature.

Oregon specifically excludes from the definition of “public or private officials” employees of a public or private organization providing child-related services or activities if the individuals are

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<sup>14</sup> ORS 419B.005(5)(bb)(B).

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employees of “a qualified victim services program as defined in ORS 147.600 that provides confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.”<sup>15</sup>

**Mandatory reporters must make reasonable attempts to notify the victim/survivor and take steps necessary to protect the privacy and safety of the persons affected by the release of information.** This includes limiting any report to ONLY the information that has been mandated by state or tribal law.

The following describes statutory reporting mandates under state law:

- Child Abuse: Those who are mandatory child abuse reporters under Oregon law are mandated to report child abuse only if they come in contact with either: (1) a child they have reasonable cause to believe has been abused or (2) a person they have reasonable cause to believe has abused a child. This obligation is in effect 24 hours/day and 7 days/week; it is not limited to the reporter’s working hours or contact made in an official capacity. (See ORS 419B.010)

The report shall contain, if known:

- the names and addresses of the child;
- the parents of the child or other persons responsible for care of the child;
- the child’s age;
- the nature and extent of the abuse, including any evidence of previous abuse;
- the explanation given for the abuse; and
- any other information that the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator. (ORS 419B.015)

- Elder Abuse: Those who are mandatory elder abuse reporters, as defined by Oregon law, are mandated to report abuse only if they come in contact with either: (1) a person 65 years of age or older whom they have reasonable cause to believe has been abused or (2) a person they have reasonable cause to believe has abused a person 65 years of age or older. This obligation is in effect 24 hours/day and 7 days/week; it is not limited to the reporter’s working hours or contact made in an official capacity. (See ORS 124.066)

The report shall contain, if known:

- the names and addresses of the elderly person;
- any persons responsible for the care of the elderly person;
- the nature and the extent of the abuse (including any evidence of previous abuse);
- the explanation given for the abuse; and
- any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator. (ORS 124.060)

- Abuse of Certain Adults with Severe and Persistent Mental Illness (who are receiving mental health treatment from a community program), Developmental Disabilities or Substance Use Disorder: Those who are mandatory reporters of abuse of certain vulnerable adults (defined below in accordance with state laws), are mandated to report abuse only if they come in contact with either: (1) the vulnerable adult they have reasonable cause to believe has been abused or (2) a person they have reasonable cause to believe has abused the vulnerable adult. **A report is only mandatory if the vulnerable adult**

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<sup>15</sup> ORS 419b.005(5)(bb)(B)

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**also has a serious functional impairment that substantially interferes with or limits their ability to protect themselves from abuse.** This obligation is in effect 24 hours/day and 7 days/week; it is not limited to the reporter’s working hours or contact made in an official capacity. (See ORS 430.765)

- “Adults” covered by this section include:
  - Adults with a severe and persistent mental illness (SPMI; defined by rule<sup>16</sup>) who are receiving mental health treatment from a community program;
    - SPMI means<sup>17</sup> at least one of the following conditions as a primary diagnosis:
      - Schizophrenia and other psychotic disorders;
      - Major depressive disorder;
      - Bipolar disorder;
      - Anxiety disorders, limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
      - Schizotypal personality disorder; or
      - Borderline personality disorder

**REMEMBER:** In order to trigger mandatory abuse reporting responsibilities, the adult with SPMI **must also have** a serious functional impairment that substantially interferes with or limits their ability to protect themselves from abuse.

- Adults with a developmental disability (DD; defined by statute) who is currently receiving services from a community program or facility or who was previously determined eligible for services as an adult by a community program or facility; or
- Adults receiving services for a substance use disorder (SUD) or mental illness in a facility or state hospital.

The report shall include, if known:

- the name, age and present location of the allegedly abused adult;
- the names and addresses of persons responsible for the adult’s care;
- the nature and extent of the alleged abuse, including any evidence of previous abuse;
- any information that led the person making the report to suspect that abuse has occurred plus any other information that the person believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator; and
- the date of the incident. (ORS 430.765)

When a person is mandated to report, they **must** immediately notify the supervisor or ED (where appropriate) that a particular report is mandated.

### 3. Release of Information is Permitted When Required by Court Mandate.

“Court mandate” is the other exception to the prohibition against releasing PII without written and informed consent. Typically a court mandate includes a subpoena or court order.

When responding to subpoenas, programs **must** make reasonable attempts to notify the survivor and take steps necessary to protect the privacy and safety of the persons affected by

<sup>16</sup> OAR 407-045-0130(24)

<sup>17</sup> See footnote directly above.

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the release of information if any information is going to be released.

- Programs **should** identify a “custodian of records.”
- When a subpoena is presented, a program **should**:
  - Immediately notify the supervisor, Executive Director, and/or “custodian of records” as applicable.
  - Never disclose anything to the person serving (delivering) the subpoena.
  - Note how the subpoena was served (mail, personal service, left at the door), by whom, when it was received (date/time), and to whom it was delivered
  - Note whether it is accompanied by a check for appearance fee and mileage
- After accepting a subpoena, a program **should**:
  - Contact the survivor in a timely manner to determine how the survivor wants the agency to respond to the subpoena;
    - If the survivor determines they want your program to release confidential information, the program **must** have survivor sign a detailed ROI as outlined above;
    - The survivor should review the records to be released before giving consent;
    - Refer the survivor to an attorney to discuss the pros/cons of the release of such information.
- If the survivor does not want any confidential information released, the program **must** make efforts to protect that information. The program **may** contact an attorney to quash the subpoena or file a motion for a protective order, based on confidentiality and advocate-victim privilege. The program **should** refer the survivor to an attorney.
- If a survivor cannot be contacted to determine their position on the release of the information, the program **must** take efforts to protect that information. The program **may** contact an attorney to quash the subpoena or file a motion for a protective order, based on confidentiality and advocate-victim privilege.
- If confidential information is ordered to be released even after taking these steps, the program **must** take all steps necessary to protect privacy and safety of the survivor and any others affected by the release of information.
- Case law is also considered a “court mandate.” If a court decision sets out a rule that certain professionals or providers are required, as a matter of law, to reveal or report otherwise confidential information in specific circumstances this is considered a “court mandate” under VAWA.

#### 4. Release of Information to Fatality Reviews:

If information is provided to a fatality review, the program **will** take reasonable steps to protect the rights and safety of surviving relatives and any others affected by the release of information.

Release of “personally identifying information” or “individual information” about deceased victims is permitted for a fatality review to the extent permitted by state law (ORS 418.712) or tribal law **and only if the following conditions are met:**

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- The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase offender accountability;
- The fatality review includes policies and protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team;
- A reasonable effort has been made to get a release from the victim's personal representative (if one has been appointed) and from any surviving minor children or the guardian of such children (but not if the guardian is the abuser of the deceased parent), if the children are not capable of knowingly consenting; and
- The information released is limited to that which is necessary for the purposes of the fatality review.
- Note that all of these criteria must be met before the information may be released.

### III. RECORD KEEPING

- The program **should** keep minimal survivor records, and inform survivors that this is their practice.
- Records **should** include:
  - Only what is necessary to the delivery of services and/or
  - Non-personally identifying information required by funders
- Records **should not** include:
  - Casual comments, staff or residents' opinions, exact and complete quotes or statements made by or concerning a survivor (including emails, letters), opinions, criticisms, observations or speculations, information from other sources or information unrelated to providing services
  - Photographs (unless necessary to the delivery of services)
  - Additional information that would compromise survivor safety or self-determination if released.
- Only certified advocates shall have access to records containing PII.
- Programs that maintain electronic records should follow best practices to safeguard information stored on computers. This includes internet access, computer and server maintenance, cloud storage and who owns and has access to information stored in the cloud, etc.
- If electronic records are created or accessed remotely the program **should** establish policies governing staff's remote access. This should address matters such as through whose devices the information may be stored or accessed (program's, personal or both), whether, how and how often information will be transferred or deleted, how it can be recovered or deleted for former staff, password security, and device storage when off-site.

### IV. ENSURING COMPETENCE RE: CONFIDENTIALITY

- Members of the Board of Directors, Governing Body, and/or Advisory Council **must** attend two hours of training on confidentiality and privilege as part of the 12-hour requirement. They are strongly encouraged to also complete the 40 hours of pre-service advocate certification training for staff and volunteers.

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- Consequences **should** be outlined for breaching confidentiality by staff and volunteers. These can include termination as appropriate.
- The importance of continuing to maintain confidentiality for staff and volunteers who are no longer with the program **should** be emphasized throughout the tenure of staff and volunteers, and any consequences outlined.
- The program **should** provide appropriate onboarding and additional trainings on program policies related confidentiality, privilege, appropriate release of information and the consequences for breaching confidentiality.
- Programs **should** have a brief explanation that quickly and clearly explains confidentiality to survivors.
  - Staff and volunteers who have access to clients or client information, or make decisions about clients, including members of the board of directors or governing body, if any, should be able to recite the brief explanation. Such explanations must be provided to a survivor before survivors are asked to make disclosures of any kind. For example:

“You get to decide who has access to what information about you. Except for \_\_\_\_\_ and \_\_\_\_\_ who are mandatory reporters of child abuse, no one here will share your information with anyone else without your written permission. We will only share information about you if you sign a paper telling us just what you want us to share and who you want us to share it with. I will not share anything with \_\_\_\_\_ or \_\_\_\_\_ (M.R.’s) unless you tell me to. The only time someone here will share information about you without your permission is if a court orders us to share it. If a court does order us to release your information, we will always try and reach you first to let you know and to ask what you want us to do. If we can’t reach you, we will try and protect your information the best we can.”

### **Acknowledgement:**

These guidelines were developed by representatives of: Oregon Department of Justice, Crime Victim and Survivor Services Division, Oregon Department of Human Services, Oregon Coalition Against Domestic and Sexual Violence, Oregon Department of Education, Oregon Law Center, El Programa Hispano Católico, National Crime Victim Law Institute, Oregon Attorney General’s Sexual Assault Task Force, Confederated Tribes of Umatilla Indian Reservation, and Victim Rights Law Center.