

Confidentiality and Privacy

What is the difference between confidentiality and privacy?

Is it ever okay to disclose client information to others?

What other policies should I be aware of in relation to confidentiality and privacy?

Introduction

Confidentiality and privacy are related but distinct concepts. Confidentiality protects people's ability to tell other people information and trust that they will not tell further people. Privacy protects people's ability to limit the spread of information about themselves. In many situations, confidentiality and privacy overlap and a breach of privacy will also be a breach of confidentiality (or the other way around).

This guidance note provides advice about maintaining professional standards of integrity and conduct, in relation to confidentiality and privacy.

Notifications

The SWRB receives notifications about situations where there are allegations that registered social workers have breached confidentiality and privacy. These may take the form of complaints, or concerns raised by members of the public, people receiving social work services, employers or colleagues. Examples of confidentiality or privacy breaches include situations where social workers have:

- accessed confidential case files of whānau members friends, or others, without a legitimate business reason to do so
- disclosed to others that an individual is a client
- provided confidential information obtained in their role as a social worker to a client or others in a personal capacity
- mistakenly sent an email containing client information to an incorrect email address
- talked about cases in public spaces, where others could hear e.g. outside a courthouse.

The SWRB Code of Conduct

The SWRB Code of Conduct (the Code) sets out the minimum professional standards of integrity and conduct that apply to registered social workers. The following principles of the Code are relevant to the topic of privacy and confidentiality:

Principle 3: Respect the cultural needs and values of the client

When working with clients who are unable to understand the language being used, you should avoid using family/whānau members as interpreters. This can compromise confidentiality and neutrality. In most circumstances it's best to use an independent, qualified interpreter.

Principle 7: Respect the client's privacy and confidentiality

This principle identifies the importance of respecting and protecting a client's right to privacy and confidentiality of the information provided during the professional relationship. This includes treating all information gained, during your role as a social worker, as confidential and using it for professional purposes only. It also includes not accessing information from your organisation's files about anyone who is not your client.

Be aware of the laws, codes, regulations, and your employer's policies that relate to privacy and confidentiality, particularly around when you can disclose information about a client.

It is important to inform clients of the extent to which any other professionals or colleagues will be able to access their records. It is also important to inform clients of the extent of confidentiality and the situations where you may need to disclose their information. e.g. to prevent or lessen a serious and imminent threat to public health, public safety, or to the life or health of a client or another person (Health Information Privacy Code, Rule 11). Wherever possible you must advise your client of such a situation. The decision not to advise a client of the disclosure of information requires careful consideration and is likely to occur only in very exceptional circumstances, such as on occasions when notifying them about the disclosure would expose others to risk e.g. in some child-protection matters, or where there is a specific requirement that prohibits such a disclosure. Always consult with your supervisor, manager, or other appropriate professionals, including seeking legal advice, before disclosing information without your client's consent.

Aotearoa New Zealand is a small country and you may not be aware of connections between clients, colleagues, and other people. Discussing client information in public or on social media, whether names are used or not, is not appropriate. People can still be identified by inference.

Principle 10: Keep accurate records and use technology effectively and safely

This includes taking special care to protect client privacy and client information in any electronic records, emails, documents, notes, or any other place where client information is held. Store records securely and make sure they are only accessed or removed for professional purposes.

Remember that your employer (or you, if self-employed) must comply with the principles of the Privacy Act 2020, particularly the requirement that any collected information must be relevant to a function or activity of the agency and necessary for that purpose. Therefore, records must not be used for purposes other than what was intended when the information was collected. Also, personal information must not be collected by means that are unfair or intrude unreasonably on the personal affairs of the individual concerned.

If you conduct an online search of a client without their consent, you may be breaching the Privacy Act. It could also

undermine your professional relationship based on trust and confidence, as you hold a 'secret'. If you find yourself wanting to see your client's online activities, question your reasons for this and if necessary, discuss the issue in supervision. Searching for information about clients online may be professionally justifiable, such as in emergency or crisis situations. The actions taken and the reasons for it should be fully recorded.

Reflections

Below are some questions, that you could consider using in supervision to reflect on the topic of privacy and confidentiality:

Am I aware of the laws, codes, regulations and policies that relate to privacy and confidentiality?

How do I ensure confidentiality and neutrality when working with interpreters?

Am I being mindful about the conversations I have in public spaces, including on social media, about my work?

Am I routinely informing my clients of the extent to which other professionals or employees will be able to access their records?

Am I routinely informing my clients of the extent of confidentiality and situations where information may need to be disclosed, and wherever possible advising them of such situations?

Am I ensuring that I am only accessing information or case files that are necessary for the work I am undertaking?

Summary

Social workers are responsible for ensuring that any information gathered about clients is kept confidential. Social workers are further obligated to not use information collected in their role as a social worker for personal reasons. This includes not accessing information from your organisation's files on anyone who is not your client.

Best practice for disclosing client information is to do so with consent. However, there are some specific situations where information can or should be disclosed without consent. If you are ever unsure about disclosing information, or you think you may have breached someone's privacy, seek immediate advice from your supervisor, manager, legal advisor, employer or the SWRB. Any breach of a client's privacy, even by mistake, can damage the social worker/client relationship and the general perception of trustworthiness of the social work profession.

Related advice

- Social Workers Registration Board Ngā Ture Whanonga/Code of Conduct swrb.govt.nz/practice/code-of-conduct
- Health Information Privacy Code 2020 privacy.org.nz/privacy-act-2020/codes-of-practice/hipc2020
- Privacy Act 2020 legislation.govt.nz/act/public/2020/0031/latest/LMS23223.html
- The Health and Disability Commissioner's Code of Health and Disability Services Consumer Rights Regulations 1996 hdc.org.nz/your-rights/about-the-code/code-of-health-and-disability-services-consumers-rights



swrb.govt.nz

