



## PR-QR-01/01 PRIVACY, CONFIDENTIALITY AND USE OF CLIENT INFORMATION

### Related Policies

Privacy Policy  
 Privacy Charter and Collection Statement  
 Code of Conduct  
 Client Rights and Responsibilities  
 Complaints and Feedback Policy  
 Access to Care Leaver Records  
 Records Management Policy

### Scope

This procedure applies to the collection, storage, use, disclosure and access to client, carer and family information.

This procedure is aligned with the legislative requirements outlined in the Privacy Policy; and takes into consideration, our organisational approach to working with clients, their family and carers.

The purpose of this procedure is to provide direction to staff to ensure the privacy and confidentiality of client, carer and family information is maintained.

### Definitions and Abbreviations

**Sensitive Information** includes: political opinions; religious beliefs; philosophical beliefs; trade union membership; racial or ethnic origin; health or genetic information; sexual preferences or practices; criminal records.

**Confidentiality** refers to the responsibility of custodians and recipients of personal information to ensure that it is not disseminated to unauthorised users.

**Confidential Information** refers to information of a confidential nature that relates to the business of WMV, and includes (but is not limited to):

- financial, budgetary, marketing, research and business plan information;
- any information which contains trade secrets concerning WMV's business or information relating to any other person or organisation which has been provided to WMV on a confidential basis;
- client and staff information
- supplier and distributor lists and information;
- the terms of any contract, agreement or business arrangement with other parties;
- information which, if published, may be detrimental to WMV's interests;



- licences, know-how, intellectual property and related information; and
- any other information considered by WMV to be confidential.

***In Confidence*** refers to a request from a person other than the client or another health service provider, that information that they have given about that client, not be communicated to the client. “In confidence” information is only to be recorded if it is relevant to the provision of service and is to remain confidential.

***Consent*** refers to the agreement of a client, their authorised representative, or an employee to a proposed action. Consent can be expressed or implied and must be current, informed, specific and voluntary. The employee or client must have legal capacity to give consent.

***Informed Consent*** means that a client or employee (or other) is provided with enough information (in an appropriate form or language that they can understand), which permits them to form a reasonable understanding of the effect of their consent.

***Health Information*** means:

- information or an opinion about:
- the health or a disability (at any time) of an individual; or
- an individual’s expressed wishes about the future provision of health services to him or her; or
- a health service provided, or to be provided, to an individual;

that is also personal information; or

- Other personal information collected to provide, or in providing, a health service.

***Primary Purpose*** refers to the use or disclosure of client’s information that the client would expect to be used or disclosed that is necessary to deliver the service. e.g. name of general practitioner. ***Secondary purpose*** refers to purposes other than the primary purpose that WMV may have for the information collected e.g. data for service planning, reporting, etc.

***Information Privacy*** refers to the rights of an individual to exercise some control over the way information about them is collected, the way it may be used, who it may be disclosed to, and ensuring that the information is securely stored and not misused. It also refers to the right of an individual to have access to information concerning him/herself and to ensure that, when information is used or disclosed, it is not incorrect, out-of-date or misleading.

***Personal Information*** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. (This definition is from the Privacy Act 1988. The Victorian *Information Privacy Act 2000* provides the same definition, and adds: ‘but does not include information to which the Health Records Act 2001 applies’.)

‘...whether recorded in a material form or not’ means that the information can appear in any form (eg, sound, image, text or biologically based), and be recorded in any medium (such as print or electronic).

Information can include name and address, date of birth, medical records, bank account details, photos,



videos, information about opinions, preferences, and employment.

**Security** refers to a set of procedures, techniques and technologies employed to protect information from malicious or accidental destruction, alteration or access.

**Sensitive information** means:

- information or an opinion about an individual's:
- racial or ethnic origin; or
- political opinions; or
- membership of a political association; or
- religious beliefs or affiliations; or
- philosophical beliefs; or
- membership of a professional or trade association; or
- membership of a trade union; or
- sexual preferences or practices; or
- criminal record;

that is also personal information; or

- health information about an individual; or genetic information about an individual that is not otherwise health information.

## Procedural Steps

This procedure covers WMV processes around privacy, confidentiality and use of client, carer and family information, under the following topics:

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## 1. Collection of Information

### Consent

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With clients freely providing WMV with information about themselves, there is an implied consent given by clients for WMV to create a client file, and for the use of their information for all primary and secondary purposes.

However, WMV Staff must obtain informed consent from clients, stipulating their consent to share information with specific agencies or for specific purposes. The consent will be recorded on a WMV Consent Form.

Clients may choose to opt in or out of having their information used for purposes other than all primary and secondary purposes; such as receiving WMV newsletters or marketing materials.

Once completed the form is stored on the client; and written consent form scanned (for electronic client files) and stored in the client file. A client may choose to give verbal consent; this must be clearly provided in the presence of two WMV staff and recorded on the form and in the client file case notes.

Staff must update consent at least every 12 months, or more frequently if required or upon request from a client.

The Release Agreement Consent Forms must be used prior to client, carer or family participation in any WMV publicity activities, and includes specific agreement around interview, photographs, identity, etc.

#### **a. Client Information**

At commencement, WMV staff will inform clients of the following:

- That an client file is securely created and maintained
- The purposes for which the information about them is collected (*contractual reporting required to third parties such as Department of Human Services or DHS requirements, internal reporting, service planning, incidents, etc*)
- The requirement for WMV to keep their information confidential
- That the client is able to gain access to the information held by WMV about them
- That information remains confidential, except in circumstances where WMV must disclose this information (e.g. DHS), to ensure the safety of the client or others or when requested through the legal avenues
- The possible consequences for the client if they do not provide all or part of the information, such as delay in commencement of services.
- That specific consent for the collection of Sensitive Information is required.

WMV staff will provide all new clients with a copy of “Privacy Charter and Collection Statement” and “Rights and Responsibilities” brochure. Staff will discuss organisational responsibilities to ensure that clients understand the material provided, and file signed receipt form into client file.

#### **b. Family and Carer Information**

WMV staff will routinely collect information from clients around carers and family. Staff are required to treat this information with the same privacy and confidentiality as client information.



If carer and family disclose “in confidence” information, that this will not be shared with clients, except under circumstances when we are unable to withhold such disclosure as this may be contrary to the best interests of our client. Staff will inform families/carers of this exclusion prior to their disclosure

### **Information Collected for Other Purposes**

For WMV to use client information for other purposes, staff must obtain informed consent from clients, carers and families. These other purposes, unless previously stated at time of collection, may include, but are not limited to:

- Participation in surveys or consultations
- Receipt of newsletters, notifications
- Financial information for rental, participation fee or other payments

## **2. Storage and Security of Information**

### **a. Data Quality**

WMV staff must ensure that all information they collect, use and disclose is accurate, complete, up to date and relevant to the purpose of its intended use. If information is found to be incorrect or untrue in client’s case notes and attached documents, staff will make a correction in the file, referring to the erroneous information but will not remove the erroneous data.

### **b. Data Security**

If required to be printed, client information must not be left in unsecured locations such as in office desks, cars or on a printer.

### **c. Privacy Breaches**

Violation by staff to the privacy and confidentiality of client, carer and family information, is considered a serious breach of WMV’s Code of Conduct and contractual obligations with our funding authorities, for example DHS Funded services a privacy breach requires a Category 1 Incident Report, and may result in disciplinary action, including termination of employment. Staff access and use of client files will be subject to regular audit.

WMV staff will inform clients that they have a right to complain if they believe the privacy of information held by WMV about them has been breached. A complaint can be made directly to staff, online or in writing via our complaints, compliments and suggestions form.

## **3. Use and Disclosure**

WMV staff are only permitted to use and disclose information held by WMV about a WMV client for the reason that it was initially collected (primary or secondary purpose).



Whenever possible, client information contained in any WMV produced reports must be de-identified. Exceptions to this include where this is a requirement of the funding contract, or where this is necessary for a confidential report, such as an incident investigation.

Following consultation with their Program Manager, staff are only permitted to disclose information without a clients' consent, only if the organisation reasonably believes the use or disclosure will:

- Mitigate or prevent a serious and imminent threat to an individual's life, health, safety or welfare
- Mitigate or prevent a serious threat to public health, public safety or public welfare

A client's information must be made available to another health service provider if the client makes such a request. A request where practical, should be submitted in writing. Subject to our legal obligations WMV must provide a copy or written summary of the information requested.

#### **a. Communication with Families and/or carers**

Staff will routinely seek WMV client's consent before providing information about their condition and treatment/care to families and other carers. However, communication in general terms regarding the well-being of a client with families/carers and clinicians is not only permissible, but encouraged. The role that families and carers might play in a client's care should be raised with each client as early as possible.

Staff should provide information about WMV and services to families as a matter of course.

#### **b. Transfer of information between WMV services**

Staff must only access client files as required to perform their work. Files of clients transferring to a new service will be securely delivered to the new service.

### **4. Access to Information**

#### **a. Client Additions or Correction**

Clients who wish to make an entry in their file should seek the assistance of the Support Worker in order to gain access to the case notes or other section of their file whether a hardcopy paper file or an electronic file such as those found on the CRIS/CRISP/SHIP systems and note that a WMV staff would have to enter the data on behalf of our client(s). Under supervision, clients are able to add a file note or other relevant information for inclusion into their file.

Any such additions or amendments to the client's file must be recorded as being written by the client; as well as the date they were written.

#### **b. Client Request for Access to their File**

Support Workers may receive requests from current clients who wish to access and view their individual client file.

Staff, in consultation with their Program Manager, will review the file taking into consideration sections to be excluded from viewing as directed in Section 4.i. Considerations for Denial of Access (below). Any areas



of concern relating to information to be excluded, or the facilitation of this process, must be discussed with appropriate Program Manager.

Staff will facilitate client's access to their file or copy of their printed file in the event where sections of the file have been excluded and removed, ensuring:

- Clients are encouraged to read the information in their file with support from their Support Worker
- Other individual client files are not accessed or visible

### **c. Formal Client Request for Access to their File**

Where clients are unable to access their file by approaching a Support Worker, clients (including ex-clients) may seek access to sections of their file through a formal request via a 'Request Form for Access to Client Records'. This form must be forwarded to the WMV Privacy Officer. WMV Privacy Officer will aim to respond to all formal requests within 45 days.

Upon receipt of the written request, WMV Privacy Officer will:

- Acknowledge receipt of request
- Notify Program Manager with copy of request to General Manager.
- Negotiate with Program Manager and client around appropriate options for access to client file, which may include the following:
  - Facilitated viewing of file with staff member at service site (requiring sighting of photo identification unless client is known to staff for greater than 12 months)
  - Delivery of copy of file to the client home by WMV staff (requiring sighting of photo identification unless client is known to staff for greater than 12 months)
  - Secure postal delivery (requiring sighting of photo identification) of copy of client's file to client home.

The relevant Program Manager will:

- Retrieve old hard copy file (from Service Site or off-site archive); and print out or copy the client file (case notes and relevant attachments) depending on specific request from client.
- Review client file and prepare it for client access, taking into account sections needing to be as directed in Section 4.i. Considerations for Denial of Access (below).
- Facilitate client access to file, or receipt of copy of their file

### **i. Considerations for Denial of Access**

Request to access a client file (or specific information within a client file) may be withheld under privacy legislation for the following reasons:

- Where access would pose a serious threat to the life or health of any individual



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- Where the privacy of others may be affected
  - If a request is frivolous or vexatious
  - If information relates to existing or anticipated legal proceedings (including medico-legal)
  - If access would prejudice negotiations with the individual
  - If access would be unlawful. (This may entail making enquiries with relevant agencies about any restrictions on access rights, that is, there is no Family Court custody or other legal actions pending, or other prohibitions to access)
  - Where denying access is required or authorised by law
  - Where the request comes from a family member and the client is deceased.

If information is withheld, the individual must be given reasons for the denial of access. If in doubt, advice should be sought from the General Manager.

Sections of a client file may be removed or excluded for the following reasons:

- Where access would pose a serious threat to the life or health of any individual (client, staff member or any other member of the community)
- Where the privacy of others may be affected
- Where information was provided by another party “in confidence”
- Where information is not owned by WMV: for example a Clinical Psychologists Report.

#### **d. Subpoena or Search Warrant Request for Access to Client File**

This section refers to a request via a subpoena from a court or a Search Warrant from Police. Under these circumstances, WMV is legally required to provide the \*original hard copy file and/or printed section/s of file as specified in the subpoena or search warrant and does not require consent of the client. Sections of the client file must not be altered or removed for any reason. However, we note there will always be copies of a client files when using client information technology systems such as CRIS/CRISSP/SHIP systems.

Requests for subpoenas must be responded to in the time set down by the Court or the Police.

Upon receipt of a Subpoena or Search Warrant, the Service Manager must:

- Immediately notify Area Manager and General Manager of request: no documentation can be released without authorisation from the relevant General Manager.
- Verify that the subpoena or search warrant is valid (check details of / reason for request, address, signature, name, expiry date). Retain copy of the subpoena or search warrant on the client file.
- Request to sight the officer’s official identification, including a photograph
  - a. Provide the court or Police with the client file in a secure manner. Receipt must be sought and retained by WMV, with a copy in the client file.
  - b. WMV Staff must follow up with the Court or Police to ensure the hard copy client file is returned to WMV.



Policy Area: *Quality and Risk*  
 Procedure Name: *PR-QR01/01 Privacy, Confidentiality and Use of Client Information*  
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Options are as follows:

- Court Officer or Police Officer may collect client file from WMV Office. Appropriate identification must be obtained from the officer. WMV staff member may deliver the client file to the appropriate court or Police Office.

**\*Note:** Please note: there are circumstances where a copy of the client file is sufficient; this permission must be sought from the Requesting Officer.

#### e. Other Organisation / Person Request for Access to Client File

Copy of client file will not be provided to any other organisation or person, except in circumstances where a client has provided written consent, or as listed below. Please refer to your General Manager for further guidance.

#### ii. Considerations for Granting Access to client file without Client Consent

Client consent is not required when:

- The information has been de-identified i.e. the client's identity cannot be reasonably ascertained from the information.
- In limited circumstances, where there is a serious and imminent threat to an individual's life, health or safety; or a serious threat to public health or safety. This will be at the discretion of the relevant General Manager.
- Where there is a law that requires disclosure of the information e.g. mandatory reporting of child abuse or the notification of diagnoses of certain communicable diseases, in line with relevant WMV procedures.
- The request is made from a delegate e.g. power of attorney or guardian if the client is not capable of giving consent. In the case of a request being received from an underage carer or family member, it will be a matter for the relevant General Manager to exercise his/her judgment.

#### Variations to Procedure

##### Service or Program Specific Variations

For clients in out of home care please refer to Access to Care Leaver Records Procedure.

#### Related Documents

##### Related Forms, Guidelines, other documents

Client Consent Form

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Client Handbook

Complaints, Compliments and Suggestion Form

Release Agreement Consent Form

#### **Related Local Procedures**

NA

#### **External Context**

##### **Relevant Standards**

NA

##### **Relevant Legislations / Regulations**

Mental Health Act 1986 (Victoria)

Privacy Act 1988 (Commonwealth)

The Privacy Amendment (Private Sector) Act 2000 (Commonwealth)

Charter of Human Rights

Carer Recognition Act 2010

Information Privacy Act 2000 (Victoria)

Health Records Act 2001 (Victoria)

Electronic Transactions Act 2000 (Victoria)

Victorian Chief Psychiatrist's Working with Families and Carers Guidelines 2005

#### **Revision Record**

<i>Version</i>	<i>Date</i>	<i>Document Writer</i>	<i>Revision Description</i>
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2	<i>August</i>	<i>KAbramoff</i>	<i>Review of procedure to align with new legislation</i>
3	<i>November</i>	<i>Shaheen Evans</i>	<i>Update to reflect links to Quality Policy and procedures</i>
4	<i>12<sup>th</sup> December</i>	<i>Shaheen Evans</i>	<i>Update to reflect feedback from Kelly Stanton</i>

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