

# S-104 DISCLOSURE OF CONFIDENTIAL INFORMATION TO A THIRD PARTY



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## Policy

The disclosure of confidential information to a third party may only occur with the informed and valid consent of the person or people concerned.

Confidential information may not be disclosed without the required consent except under extraordinary circumstances as determined by the *Child, Youth and Family Services Act, 2017* (CYFSA) or the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*, such as a security risk to that person or another person, or as per the *Youth Criminal Justice Act* or by Court Order.

If the confidential information that is requested concerns a person over the age of 16 who has been declared incompetent to sign their consent to disclose information on their own behalf, staff will ask the client's legal guardian or an adult in his or her family who is at least 18 years old and considered as mature, to sign the consent instead.

Employees will make every effort to assist a person with a learning disability to understand the impact of consenting to disclose his or her information to a third party.

## Procedure

### 1. Valid consent

The criteria for valid consent must be respected.

The person must be notified that the consent may be revoked, in writing, at any time.

### 2. Exceptional verbal consent

Verbal consent may only be accepted in the following situations:

- when there is insufficient time to obtain written consent and the situation is urgent;
- when there is no doubt about the identity of the person providing consent and;
- when the information being disclosed is not litigious.

As with written consent, employees who receive verbal consent must include the details in the client's file.

**3. Sharing of information internally**

Employees of Valoris may share confidential information with other staff members, foster parents/home sharers and volunteers within their role (internal case conferences, case transfers, internal referrals, preparations for a child/adult's placement). In the case of personal health information related to mental health or development services, consent must be obtained from the client or the person responsible before information may be shared under the circumstances specified in paragraph 4.

This does not include communication with employees from other agencies (case conferences, referrals) when valid consent is required from the person.

**4. Third party requests for disclosure**

Employees of Valoris do not disclose personal information in their possession to third parties without the client's consent in writing.

This does not include requests from police or children's aid societies in connection with an investigation or a case conference.

Ontario's privacy legislation also provides for the disclosure of personal information to third parties without consent under various circumstances, in particular:

- to comply with legislative requirements;
- in an emergency where the health or safety of an individual is at stake; and
- in order to facilitate communications in connection with a family event.

**5. Disclosing documents/information**

Only the information collected and compiled by the agency may be transmitted to a third party. Documents composed by other professionals may not be transmitted without prior authorization from the author (psychological and psychiatric reports); it is preferable to refer the third party directly to the document's author.

**6. Child protection investigations**

Staff may disclose information without consent to the police or a physician who is examining the child in a joint criminal and/or protection investigation. However, staff must use discretion when interviewing witnesses, references and collaterals (teachers).

When an investigation confirms the assault of a child, and parents must protect their child (victim), it is appropriate to reveal the identity of the aggressor without the latter's consent.

**7. Exceptional disclosure without the person's consent**

Employees may disclose confidential information under the following specific exceptional circumstances:

- to prevent prejudice against the client or a third party, for instance, notifying a mother of her spouse's previous history of sexual assault toward children); and
- to prepare for the placement of a child who may need protection in the near future, for instance, communicating with the extended family.

However, it is preferable to notify the person ahead of time of our reasons and intentions for disclosing their confidential information, in order to allow them to do it themselves.

Legal services and a supervisor must be consulted and must approve the disclosure of confidential information without consent.

Valoris may provide information without the person's consent to the Ministry's Program Supervisor, the Coroner, the Ombudsman and the Crown Attorney.

**8. The media**

Publication or use by the media of identifying information (photos, videos) concerning a missing child or foster or adoptive family recruitment must be authorized by the agency's official spokespersons. However, employees must make every effort to obtain all required consents from the people involved.

**9. Children over 12 years of age who receive counselling services**

Confidential information pertaining to a child over 12 years of age receiving counselling services may not be disclosed to a third party, including parents / foster parents, without the child's consent.

**10. Young offenders**

It is illegal to publish or disclose information identifying a youth dealing with the justice system, except where the youth is over 14 years old and has been found guilty and received an adult or youth sentence for a very serious criminal act, such as murder, involuntary homicide, or sexual assault. In such cases, the child's criminal record will be treated as an adult's.

A young offender's parole officer will be responsible for managing the file and information; it is preferable that the parole officer disclose information in accordance with the *Youth Criminal Justice Act*. However, Valoris staff working with a young offender may disclose necessary information to foster parents, school authorities, health professionals, or others. The disclosure of information must be necessary to ensure the safety of students, staff and others, to ensure that the youth respects the conditions of the Court Order, probation and surveillance conditions, or community service, and to assist with rehabilitation. It is preferable that the youth be present during the disclosure of the information, or that his or her written consent be obtained.

Information received about a young offender must be kept separately within his or her file and destroyed when the information is no longer required, for instance, at the end of the probationary period.

**11. Children under 16 years of age in Valoris's care**

When the information concerns a child under the age of 16 in our care (with the exception of temporary care agreements where a parent has not provided consent), staff and foster parents may disclose confidential information about the child without consent to people responsible for related services (teachers, health care professionals). However, confidential information regarding the child's parents or siblings may not be disclosed during these exchanges.

**12. Youth over 16 years of age in Valoris' care**

When youth over 16 years of age are in our care, the youth's consent is required for any significant matter in his or her life.

Once the child has reached 16 years of age, employees must notify the child of this right and obtain written consent that will authorize the agency to share information about the youth with parents, foster parents, teachers and health care professionals.

**13. Staff, foster parents, home sharers, volunteers**

Employees must provide written consent to authorize the disclosure of their confidential information: personal coordinates, salary, per diem, performance evaluation, disciplinary measures, and health status.

**14. Review of disclosed information**

Staff must verify the documents that have been transmitted in order to ensure that information regarding third parties who have not given their consent is concealed. The names of and information about people who have not given their consent must be concealed before the information is transmitted.

Staff must ensure that the identity of a person who has made a report to child protection is protected.

**15. Method of Disclosure**

With the required consent, staff may provide a copy of documents or a summary of the information to the file following a verbal request for information.

**16. Exception: adoption files / cases before a civil court**

Adoption files are strictly confidential. Consent from adopted children, biological parents or adoptive parents will at no time permit the disclosure of confidential information. Regulations concerning adoption and any sharing of identifying information must be respected in such cases.

Confidential information concerning a case before a civil court where the agency is not recognized as an official party may only be disclosed following a court order or upon receipt of a subpoena.

**17. Testifying in court**

A sworn witness is no longer bound by the obligation to maintain confidentiality during testimony in court.

**Definitions, annexes and references**

**Definitions**

**Consent:** Generally, written consent is provided on a Valoris official form. This form is signed and dated by the person or persons providing their consent as well as by a representative of Valoris.

**Valid Consent:** People providing their consent:

- have been informed of the nature and consequences of providing or refusing their

- consent;
- have the intellectual ability to understand their actions;
  - have provided their consent without influence, threat or coercion;
  - have been offered time to consult with an independent third party (lawyer);
  - understand the limited duration of their consent; and
  - are aware of the identity of the person/agency receiving the information and the type of information that will be disclosed.

***Person who has been declared incompetent:*** An assessment of mental capacity approved by the government or the court declaring that a person is incompetent based on a determination of the person's ability to understand relevant information and evaluate the possible consequences of a decision or a lack of a decision relating to their well-being (medical care, nutrition, lodging, dress, hygiene, security) and their financial situation.

## **Annex**

Authorization to Disclose Information Form

## **References**

- *Child, Youth and Family Services Act, 2017 (CYFSA)*
- *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*
- *Youth Criminal Justice Act, 2002*
- *Quality of Care Information Protection Act, SO 2016*
- *Freedom of Information and Protection of Privacy Act*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Substitute Decisions Act, 1992*