

# S-104 COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION AND CONSENT - MODIFIED



*In this document, the masculine gender may be used for the sake of conciseness, but it applies to everyone.*

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(previously DG-06)

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## Policy

As part of the work Valoris does in supporting individuals and families, it has to collect, use and possibly disclose personal information.

Valoris uses a person-centred approach, and during the intake process, individuals are asked to consent to the collection, use and disclosure of their personal information unless the *Child, Youth and Family Services Act, 2017* (CYFSA) authorizes the agency to do so without consent.

The CYFSA authorizes children's aid societies (which include Valoris), to carry out its functions (which include assessing, reducing or eliminating a risk of serious harm to a person or to provide a service to that person) without consent to collect, use or disclose personal information about an individual. Valoris still has to obtain consent to collect, use and disclose personal information in certain circumstances.

A client may withdraw or limit the scope of their consent at any time.

Personal information must be collected, used or disclosed when necessary to provide a service. Even if consent has been given, Valoris employees are committed to the reasonable use of personal information.

Information is collected in different ways, including orally, in writing or electronically. The information may be collected directly from the person or his substitute decision-maker, or indirectly from a third party.

The information will be used reasonably and only to provide a service or to assess, reduce or eliminate a risk of serious harm.

Personal information may only be disclosed to a third party with the informed and valid consent of the person concerned, unless authorized as an exception under the CYFSA or another Canadian statute.

For instance, the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*, and the *Youth Criminal Justice Act, 2002* provide certain exceptions in cases where there is a risk to the safety of the person or another person, or if there is a Court order authorizing it.

Valoris personnel must make every possible effort to help a person with a developmental disability to understand the impact of consenting to the disclosure of information about him to a third party, or the person can name a substitute decision-maker who will be responsible for the consent.

If the confidential information being requested concerns a person over 16 years of age who has been declared incompetent to sign a consent to collect, use or disclose information about him, Valoris personnel will ask his legal guardian or a mature adult family member aged 18 or over to sign the consent for him.

Other than in the exceptions under the law, personal health information may not be collected, used or disclosed without the free and informed consent of the client concerned. One exception to this is when the personal health information is to be shared without prior consent with a children's aid society if the latter is conducting an investigation or a group study.

## **Procedure**

### **1. Inform the person**

The Valoris employee will clearly explain that he is going to collect information, and that it will be used to provide the service. He will also explain that the information may be disclosed to a third party with the person's consent, or without such consent if so authorized by law.

### **2. Consent for the collection, use and disclosure of personal information**

Depending on the type of service provided and the law, the Valoris employee shall obtain his client's informed consent to collect, use and disclose his personal information. Consent is generally given in writing on the official form used by Valoris, which is signed and dated by the person(s) giving the consent and by a witness.

#### ***Valid consent***

Consent is deemed valid when the person:

- a) or that person's substitute decision-maker is providing consent pertaining to confidential information about that person;
- b) has been informed that he can give, withdraw or limit the scope of his consent;
- c) has been informed of the nature of and consequences of giving or refusing that consent;
- d) has the intellectual capacity to understand the giving of consent;
- e) has consented without being influenced, threatened or coerced;
- f) has been given time to consult an independent third party (e.g. a lawyer);
- g) understands the limited duration of the consent; and
- h) is aware of the identity of the person/agency receiving the information and the type of information that will be disclosed.

### **3. Implicit or explicit consent**

Depending on the situation, consent may be implicit (without a form) or explicit (with a signed form). The person shall be informed that he may withdraw his consent, in writing, at any time.

**4. Exceptional oral consent**

Oral consent is only acceptable if:

- time does not allow for obtaining written consent and the situation is urgent;
- there is no doubt as to the identity of the person giving the consent; and
- the information being disclosed is not litigious in nature.

An employee who obtains oral consent must record the following details in the file: name of the person giving the consent, date of that consent and any limits under that consent. That same information must be recorded in the case of written consent.

**5. Withdrawal/refusal/limitation of consent to the collection, use or disclosure of personal information**

Depending on the type of service and the laws in effect, a client may refuse/withdraw/limit his consent to the collection, use or disclosure of his personal information. If a client makes such a request, the employee in charge of his case shall inform him of the reasonably likely impact of withdrawing/refusing/limiting his consent on the services, and record the conversation in the client's file.

**6. Capacity**

A person is presumed capable of giving his consent regardless of age, unless that presumption is unreasonable under the circumstances (e.g. the person is a baby, a very young child or unconscious).

If a person has been declared incompetent by a government- or Court-approved capacity assessor who establishes that the person is incompetent after having assessed that person's capacities, then the substitute decision-maker will make the decisions or give the consent in the person's place.

If a Valoris employee must determine whether a person is able to give consent for the collection, use or disclosure of his information, that employee will proceed with the following test:

- Does the person have the capacity to understand the information that will be collected, used or disclosed?
- Does the person have the capacity to understand and foresee the impact of his choices regarding the collection, use or disclosure?

**7. Sharing of information internally**

Valoris personnel may share confidential information with other Valoris personnel, foster parents, homesharer parents or volunteers in connection with their duties (internal case conference, case transfer, consultation, internal referral, preparation for placement of a child/adult, etc.).

In regard to personal health information related to mental health or developmental health services, the client's consent, or that of his substitute decision-maker, is required before information can be shared in the circumstances set out in the above paragraph.

This does not include communications with employees of external agencies (case conferences, referrals), in which cases the person's valid consent is required unless it is a matter of disclosure without consent permitted under the CYFSA.

## **8. Disclosure to third parties without consent**

As a rule, Valoris personnel do not disclose personal information that has been entrusted to the agency to third parties unless the agency has the client's consent.

However, Valoris may disclose certain personal information without consent when so permitted under Ontario's privacy legislation, specifically:

- in compliance with the provisions of legislation such as the CYFSA;
- in an emergency situation where the health or safety of an individual is at stake;
- in a family situation to facilitate communication;
- to prevent harm to the client or to a third party (e.g. to inform a mother of her partner's previous history of sexual aggression against children);
- to prepare for the placement of a child who may soon require protection (e.g. communicating with the extended family); or
- if the child or parent has so identified, to communicate with the appropriate First Nations, Inuit or Métis community.

Nonetheless, it is best to inform the person ahead of time about our reason for disclosing his confidential information and our intention to do so in case the person wishes to disclose it himself. Legal services and the supervisor shall be consulted and must approve the disclosure without consent of confidential information.

Valoris may provide information without the person's consent to the departmental program supervisor, the coroner, the ombudsman or the Crown attorney.

## **9. Disclosed documents/information**

Only information collected and drafted by or for Valoris may be provided to a third party. The legal team shall be consulted before disclosing documents drafted by other professionals. Such requests are handled on a case by case basis.

## **10. Child protection investigation**

Valoris personnel may disclose without consent information to the police or doctor examining a child in connection with a joint criminal and/or child protection investigation. However, Valoris personnel shall be discreet when interviewing witnesses, sources and other parties (teachers). When an investigation confirms that a child has been assaulted and that the parents must protect their child (the victim), it is appropriate to disclose the aggressor's identity without his consent.

## **11. Media**

The publication or use by the media of identifying material (photos, videos) concerning a missing child or the recruitment of foster or adoptive families must be authorized by the Valoris spokesperson(s). However, the agency's personnel must make the necessary effort to obtain the required consent of the persons concerned.

## **12. Child aged 12 or over receiving counselling services**

The disclosure of confidential information to a third party, including the child's parents or foster parents, requires the consent of a child over 12 years of age receiving counselling services unless the child is deemed incapable of giving consent. In that case, the child's parent, substitute decision-maker or legal guardian must consent in his place.

If the child is under 12, and Valoris determines that the child understands the scope and impact of his consent, that child will have to consent before the disclosure of confidential information to a third party, including his parents or foster parents.

### **13. Young offenders**

It is illegal to publish or disclose information identifying an adolescent in the justice system unless that adolescent is 14 years of age or over and has been found guilty and been sentenced as an adult or as an adolescent for a very serious crime such as murder, involuntary homicide or sexual assault. In such a case his criminal file is treated like that of an adult.

The person in charge of a young offender's file and information is his probation officer. It is preferable to have that person share the information in accordance with the *Youth Criminal Justice Act*. However, Valoris personnel working with a young offender may disclose any necessary information to the foster parents, school authorities, health care professionals or others. Such disclosure must be deemed necessary to ensure the safety of students, personnel and other individuals, to ensure that the adolescent complies with the conditions of the court order, the conditions of probation and parole, assigned community work and to facilitate his rehabilitation. It is preferable if the teen is present when that information is shared and that he gives his consent in writing.

Due to the confidential nature of this information, Valoris will not disclose these documents when they are no longer in effect, including to the youth upon request.

### **14. Child in the care of Valoris**

The consent of a child in care is required in any matter of importance in his life. Valoris personnel shall notify him of that right and have him sign a consent authorizing Valoris personnel to share information about him with his parents, foster parents, teachers and health care professionals.

When the information concerns a child in care (with the exception of temporary care, where the parent has not given consent), Valoris personnel and the foster parents may disclose personal information about the child without his consent to individuals responsible for related care (teachers, health care professionals) if that information is required for the provision of that related service. However, they may not disclose confidential information about the parents or siblings during those exchanges.

### **15. Review of disclosed information**

Valoris personnel must check the documents transmitted to ensure that they do not contain any personal information concerning third parties that did not give their authorization. The name of and personal information about individuals who have not given their consent must be blacked out before the information is transmitted.

Valoris personnel shall ensure that the identity of a person who reported a child protection issue is protected.

## **16. Method of disclosure**

With the required consent or pursuant to applicable laws, Valoris personnel may follow up on a request for information orally or in writing, by providing a copy of the documents or a summary of the information on file.

## **17. Exception: Adoption files / civil Court cases**

Adoption records are strictly confidential. The consent of the adopted child, his biological parents or his adoptive parents does not under any circumstances mean that confidential information can be disclosed. The regulations on adoption and the sharing of identifying information must be respected. Confidential information about a civil Court case where the agency is not recognized as an official party may only be disclosed under a court order or a subpoena.

## **18. Testimony in court**

A sworn witness is not bound by his obligation to preserve confidentiality during his testimony in court.

## **Definition**

### ***Personal and confidential information:***

Means information in our possession about an individual to whom we offer a service, or that could lead to the identification of the individual based on that information. The simple fact of confirming or infirming that we are offering services to that individual is also personal and confidential information. That information may be in paper, electronic, digital audio, photo, video or other form. The following are examples of personal information:

- the individual's race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or family status;
- the individual's medical, psychiatric, psychological, criminal or work history;
- any number, symbol or other identifying detail assigned to the individual (e.g. health card or driver's licence);
- the individual's address, phone number, finger prints or blood type;
- letters sent to Valoris by the individual that are implicitly or explicitly of a private or confidential nature, and replies to such letters that would disclose the contents of the initial letter;
- the individual's personal opinions or points of view, except if they pertain to another person;
- the points of view or opinions of another person about the individual; and
- the name of the individual when it appears with other personal information concerning him, or when disclosing the individual's name would reveal other personal information about him.

## **References**

- *Personal Health Information Protection Act, 2004*
- *Child, Youth and Family Services Act, 2017 (CYFSA), Part X*
- *Youth Criminal Justice Act, 2002*

- *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*
- S-102 Accès aux renseignements personnels des particuliers et rectification
- S-103 Confidentiality and Privacy
- S-105 Complaints from Clients
- A-101 Communications
- RH-116 Sanctions disciplinaires
- A-301 Authorization and Use of Valoris Information Technology Systems and Data Resources