

NC DIVISION OF SERVICES FOR THE BLIND POLICIES AND PROCEDURES VOCATIONAL REHABILITATION

Section:	C
Title:	Confidentiality
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Combined: Policy and Procedures

GENERAL PROVISIONS

1. The North Carolina Division for Services for the Blind (DSB), through its Area and District Offices and facilities shall maintain a case record on all eligible individuals receiving services from the State Agency. All records shall be of a confidential nature and shall not be made available to the general public.
2. Except as required or allowed in this policy, no confidential information obtained concerning an individual served by the Agency may be disclosed by the Agency without the consent of that individual. If the information concerns a minor, the consent of a parent or guardian must also be obtained. After an individual has reached the age of 18 years, the records of that individual may be disclosed only with the consent of that individual, or, if the individual is incompetent, the individual's representative/guardian. Furthermore, whenever consent or action is required of an individual, the individual's representative, if properly authorized, may give such consent or take such action.
3. Except as provided in this policy, each Vocational Rehabilitation (VR) individual served by the Agency shall have full access to all records which contain the individual's confidential information. A parent or guardian of a minor shall have full access to the confidential information contained in the records of that minor.
4. All individuals, representatives, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of an individual's personal information and the conditions for accessing and releasing this information.
5. All individuals or their representatives must be informed about the Agency's need to collect personal information and the policies governing its use. The Agency shall inform individuals of the following:
 - a. Identification of the Vocational Rehabilitation Act as the authority under which information is collected;
 - b. Explanation of the principle purposes for which the Agency intends to use or release the information;
 - c. Explanation that the individual's provision of any information is mandatory, if such information is necessary to determine Eligibility, to plan rehabilitation goals and services, and to accomplish the rehabilitation program. Failure to provide such information will result in delay or denial of services. Information which is not crucial or pertinent to the rehabilitation program would be deemed voluntary and would not affect provision of services if not provided by the individual;

- d. Identification of those situations where the Agency requires or, does not require informed written consent of the individual before information may be released (these situations are explained below); and
 - e. Identification of other agencies to which information is routinely released and the types of information so released.
6. All explanations to individuals and their representatives about policies and procedures affecting confidential information must be in the individual's primary language or must be through appropriate modes of communication for those individuals who rely on special modes of communication.

INDIVIDUAL RECORDS

1. OWNERSHIP OF RECORDS

All confidential information acquired by the Agency is the property of the Agency and shall remain so. All contracts, grants, agreements, and other documents entered into by the Agency shall so provide.

The Agency shall maintain in its records only such information about an individual as is relevant and necessary to accomplish any purpose of the Agency required by statute or rule.

No information in the case record shall be removed, destroyed, or altered for purposes of avoiding compliance with this policy.

Whenever the Agency makes a disclosure to any person or entity other than the individual, the disclosed material shall be stamped with a "**CONFIDENTIAL INFORMATION**" stamp or accompanied by a letter containing the following statement:

THIS IS CONFIDENTIAL INFORMATION FROM THE RECORDS OF THE NORTH CAROLINA AGENCY OF SERVICES FOR THE BLIND. FEDERAL LAW AND REGULATION PROHIBIT YOU FROM MAKING ANY FURTHER DISCLOSURE OF THIS INFORMATION WITHOUT THE INFORMED WRITTEN CONSENT OF THE INDIVIDUAL TO WHOM THIS INFORMATION PERTAINS.

2. REQUEST TO CHANGE THE CASE RECORD

- a. An individual may submit a written request to add, delete, or amend information contained in the case record. The Agency shall make a decision whether to amend the record.
- b. If the record is to be amended, the Agency shall:
 - amend any portion of the record which is not accurate, relevant, timely, or complete by making appropriate notations on the record; or

- insert corrective material into the file.
- c. If the record is not to be amended, the Agency shall inform the individual in writing of the decision not to amend the record, the reason for such decision, and the procedures for the individual's placing statements into the record.

REQUESTS FOR INFORMATION

1. REQUESTS FOR INDIVIDUAL INFORMATION SHALL BE IN WRITING

The consent for disclosure shall contain:

- a. The name of the individual;
- b. The name or title of the person or organization to whom the disclosure is to be made;
- c. The extent or nature of the information to be disclosed;
- d. A statement that the consent is subject to revocation at any time;
- e. The date on which the consent is signed;
- f. The signature of the individual.

2. RESPONSES TO REQUESTS FOR INFORMATION

- a. When a requested record has been identified and is available, the Agency shall notify the requester as to where and when the record is available for inspection or copies will be available. Copies may be sent by mail to the requester. The notification shall also advise the requester of any applicable fees.
- b. A response denying a written request for a record shall be in writing and shall include:
 - the identity of the person responsible for the denial;
 - a reference to the specific law or regulations authorizing the withholding of the record with a brief explanation of how each applies to the record withheld; and
- c. If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

3. WHEN CONFIDENTIAL INFORMATION IS RELEASED OR RELEASE IS DENIED

When confidential information is released or release is denied, the Vocational Rehabilitation Counselor releasing it shall place an entry in the Progress Record (On-Line DSB-4011-VR-Case Progress Notes with instructions) stating the name of the person to whom it was given or

by whom requested, the date, the documents released or reviewed, and the reason for such release or denial.

4. PHOTOCOPIES OF THE CASE REPORT

The original file may not be removed from the control of the Agency, but may be viewed in the office in the presence of an Agency staff member. All other releases requesting or requiring copies shall be provided through photocopies.

- a. There will be no charge for the sharing of copies to individuals, agencies, or organizations which require copies for the benefit of the individual's rehabilitation program.
- b. For purposes related to matters not directly associated with the individual's rehabilitation plan, each photocopy shall be provided at 25 cents per page, and such funds shall be deposited in the Revolving Fund and cleared at the end of the Fiscal Year.

5. REQUEST FOR RECORDS

The Agency periodically receives broad requests for "all individual records." Experience has shown that such requests are most often made with no knowledge of what is actually contained in an individual file and generally are wanting medical, psychological, and vocational information. The individual requesting such information can be contacted and asked to be specific about the particular information needed.

RELEASE OF CONFIDENTIAL INFORMATION WITH THE CONSENT OF THE INDIVIDUAL

The individual may request and consent in writing to the release of confidential information to the individual, parent, guardian, or representative or other individual, agency, or organization. The following shall apply to all such releases:

1. WHEN A INDIVIDUAL REQUESTS RELEASE OF CONFIDENTIAL INFORMATION TO THE INDIVIDUAL, PARENT, GUARDIAN, OR REPRESENTATIVE

When an individual requests release of confidential information to the individual, parent, guardian, or representative, all confidential information contained in the individual's file may be inspected and copied, with the exceptions as noted below:

- a. On **rare** occasions, certain information obtained from another organization is restricted from further re-disclosure. Such information is generally so marked and the Agency will honor such restrictions by directing the individual to the original source.
- b. Any information, including medical or psychological information, which, in the judgment of the Vocational Rehabilitation Counselor may be harmful to the individual, may not be released to the individual. It may be released to the individual's parent, guardian, or representative or to a physician or licensed psychologist. Some information is so sensitive and potentially harmful that the Vocational Rehabilitation Counselor shall seek consultation

with the Assistant Director of Programs and Facilities or the Chief of Rehabilitation Field Services before responding to the request. When releasing such information, the Agency shall caution the receiver of the information that it may be harmful to the individual and that, therefore, the receiver is responsible for the use of the information.

2. WHEN THE INDIVIDUAL REQUESTS RELEASE OF INFORMATION TO ANOTHER INDIVIDUAL, AGENCY, OR ORGANIZATION

When the individual requests release of information to another individual, agency, or organization, the Agency, upon receiving the informed written consent of the individual, shall release to such other individual, agency, or organization for its program purposes only that information which may be released to the individual, and only to the extent that the other individual, agency, or organization demonstrates that the information requested is necessary for its program.

Information which is determined by the Agency to be harmful to the individual shall be released only when the other individual, agency, or organization assures the Agency that the information will be used only for purposes for which it is being provided and will not be further released to the individual.

RELEASE OF CONFIDENTIAL INFORMATION WITHOUT THE CONSENT OF THE INDIVIDUAL

1. An employee may, in the course of providing Vocational Rehabilitation Services, disclose confidential information without the consent of the individual to other Agency employees.
2. The Agency may authorize the release of confidential information to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the program or for purposes which would significantly improve the quality of life for individuals. Inquiries of this nature should be directed to the Assistant Director of Programs and Facilities or to the Chief of Rehabilitation Field Services. Before participating in such activities, the Agency will require assurance that:
 - a. The information will be used only for the purposes for which it is being provided;
 - b. The information will be released only to persons officially connected with the audit, evaluation, research, or employee disciplinary action;
 - c. The information will not be released to the individual;
 - d. The information will be managed in a manner to safeguard confidentiality; and
 - e. The final product will not reveal any personal identifying information without the informed written consent of the individual.

3. The Agency may share confidential information on a need-to-know basis with its trainees, interns, and volunteers who shall be bound by Agency policy concerning confidentiality in the same manner as employees.
4. Confidential information must also be released without consent in the following situations:
 - a. In order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others;
 - b. If required by Federal law;
 - c. In response to investigations in connection with law enforcement, fraud, or abuse; or
 - d. In response to judicial order.
5. Periodically, the Agency will receive requests for individual information from attorneys in Workers' Compensation cases who will not present a consent for release, but will assert that Workers' Compensation information is not privileged under North Carolina Law G. S. 97-27 which states that information from physicians and surgeons who examine injured workers shall not be privileged. **However, the Agency must require individual consent** because Federal law and regulation require (34 C.F.R. 361.38) and must prevail in this situation.

SUBPOENAS

An employee who receives a subpoena shall contact the Assistant Director of Programs and Facilities or the Chief of Rehabilitation Field Services. A subpoena is either an order to (1) appear and testify at trial or at a deposition, or an order to (2) produce documents (a subpoena duces tecum) at trial or a deposition. The subpoena itself does not obviate or overrule the confidentiality regulations dealing with individual records; therefore, individual confidentiality may be invoked when questions are asked about confidential individual information. This is applicable to either (1) testimony or production documents at trial, or (2) testimony at a deposition. In the case of the former, the judge would decide on the spot whether to order the testimony or production. If an employee is so ordered, he or she would be required to testify or produce the documents. In the case of the latter, interposing individual confidentiality would require the party to obtain a court order compelling the requested testimony.

1. Upon receiving a subpoena to appear and testify in court, the employee shall attempt to secure written individual consent by informing the individual, or the attorney involved, of the need for a signed release. The employee shall appear according to the terms of the subpoena. If no individual consent has been given, the employee shall inform the court of the requirements of the law and regulations concerning confidentiality and shall testify only upon judicial order.
2. A subpoena to produce documents (subpoena duces tecum) at a deposition raises a different procedural problem. Again, individual consent should be pursued with the attorneys involved being immediately contacted and informed of the need for a signed individual release.

However, unless an objection to inspection is made in apt time, Rule 45(d) (1) of both the Federal and State Rules of Civil Procedure requires that the documents be produced and permitted to be

inspected and copied. Upon receipt of a subpoena for the production of individual information at a deposition, and absent consent of the individual, written objection to the production of documents should be served on the attorneys or such other person designated in the subpoena. The written objection to production must be served "... within 10 days of the service (of the subpoena on the employee, either by personal service or by registered or certified mail) or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service..."

The written objection to production of documents should read as follows:

"Pursuant to Rule 45(d)(1) of the North Carolina Rules of Civil , Procedure (Federal Rules of Civil Procedure) should be substituted if the action is filed in Federal court), the Division of Services for the Blind, North Carolina Department of Health and Human Services, and the undersigned employee thereof, object to the inspection or copying of the documents designated in the subpoena directed thereto on the grounds that the documents are confidential pursuant to 34 C.F.R. 361.38(e)(4)."

Upon service of the written objection, the employee is relieved of the duty to produce the documents. Thereafter, the burden is on the party issuing the subpoena to obtain a court order to compel production, but only after notice is given to the deponent (employee). The order may be obtained at any time before or during the taking of the deposition. In the vast majority of cases, attorneys are cooperative and generally obtain the proper consent and thereby obviate the need for a judicial order.

3. On rare occasions, certain information which the Agency received from another source may be restricted from further disclosure by the original source. That information is generally so marked when the Agency receives it and the Agency should honor the restrictions on re-disclosing it. The Agency should respond to subpoenas for such information by directing the person issuing the subpoena to the original source. If the subpoena requires court appearance, the employee shall follow the order of the court after drawing the court's attention to the Federal regulations concerning confidentiality.
4. The employee may testify without individual consent about general information concerning the Agency, such as services available and eligibility criteria.

DISABILITY DETERMINATION SECTION

Regulations of the Social Security Disability Insurance Beneficiaries and Supplemental Security Income program authorize the disclosure of information about the claimant by the Disability Determination Section and the Social Security Administration. Likewise, the regulations authorize the Agency to disclose, individual information to these parties for the purpose of disability determination, which includes the appeals process when claimants are denied benefits. During the application process for these benefits, the claimant authorizes the Disability Determination Section and the Social Security Administration to collect any medical records or other information about his disability from physicians, hospitals, agencies, or other organization. This signed release by the individual meets the requirements set forth in the Agency policy, and authorizes the Vocational Rehabilitation

Counselor, when requested by the Disability Determination Section or the Social Security Administration, to forward copies of medical records or other information about the individual's disability for the purposes of disability determination.

1. Vocational Rehabilitation Counselors are authorized to release information to the Disability Determination Section upon written or oral request.

If the request is oral, Vocational Rehabilitation Counselors should note in the case progress notes the date of the request, the information being requested, and the name of the individual making the request.

2. Re-disclosing confidential information obtained from Disability Determination Section and from the Social Security Administration is permitted with individual consent.