



BACKGROUND

DISCLOSING INFORMATION IN WOMAN ABUSE CASES:

GUIDING PRINCIPLES FOR COMMUNITY-BASED ANTI-VIOLENCE PROGRAMS WORKING WITH HIGH RISK CASE ASSESSMENT TEAMS

A. Purpose

This Backgrounder includes background information on laws and policies and guiding principles for community-based agencies working with domestic violence high risk case assessment teams. The Guiding Principles are meant to ensure that local information sharing practices:

- help maximize safety for women and children
- are consistent with federal and provincial privacy laws
- are consistent with provincial policy.

These Guidelines can be adapted by community-based antiviolenace programs who are members of local violence against women in relationships coordination committees to form part of a local protocol or high risk case management process, such as the establishment of a high risk case management team.

If you are designing a local protocol for sharing information with other provincial or federal agencies, be aware that they are governed by privacy legislation that is different than the privacy legislation which covers your agency or program. The Guidelines in this Backgrounder are meant to be used by community-based antiviolenace programs governed by the *Personal Information Protection Act*. System-based responders, such as government ministries will be governed by the *Freedom of Information and Protection of Privacy Act*. RCMP are governed by the federal *Privacy Act*.

B. Background

In cases flagged as potentially high risk, it may be necessary to pro-actively share key details of the case to keep the survivor/victim, her children, or other involved people safe. Federal and provincial privacy laws allow for personal information to be shared **without consent** where it is in the public interest (*Privacy Act*) or there are significant health or public safety concerns (*Personal Information Protection Act; Freedom of Information and Protection of Privacy Act*) or for the purpose of reducing the risk of domestic violence (*Freedom of Information and Protection of Privacy Act*).

Refer to the Appendix of this document for a list of applicable legislative provisions.

Victim advocates will likely already know about risk factors associated with an increased chance of further violence in woman abuse cases. *All* responders, whether they are based in systems or in the community, must make themselves aware of the safety implications of certain risk factors and use validated approaches to analyze risk. The presence of certain risk factors will result in a more pro-active approach to information sharing and risk management in a particular case.

This is now recognized in BC's *Violence Against Women in Relationships Policy Protocol for Highest Risk Cases*:

...certain cases pose a greater risk of violence for serious bodily harm or death. This protocol is intended to enhance the justice and child welfare system response to highest risk cases through heightened information sharing, comprehensive and collaborative safety planning and risk mitigation strategies.(at p. 59)

Under the policy, once a domestic violence case is identified as highest risk by police, the protocol and its enhanced provisions for information sharing come into effect. The policy reinforces existing legislative authority for information sharing:

To facilitate an effective and co-ordinated justice and child welfare system response, and protect the victim and others at highest risk for violence or death, timely sharing of information is required between police, Crown counsel, corrections staff (i.e. bail supervisor and/or probation officer), the victim service worker , and child welfare worker.

...The authority to share information among justice and child welfare partners is found in provincial and federal legislation. (at p. 60)

The Violence Against Women in Relationships Policy (VAWIR) sets the benchmark. In the event of an inquest or civil litigation, specific information sharing practices will be assessed against the standard outlined in VAWIR.

C. The Legal Framework

Generally, consent is required before personal information about a survivor/victim, perpetrator or involved family members can be shared with other agencies. However applicable privacy laws allow personal information to be shared without consent in certain situations including the following:

- *Federal Privacy Act* (RCMP, Parole): where in the opinion of the head of the institution, the public interest in disclosure clearly outweighs any invasion of privacy that would result from disclosure or disclosure would clearly benefit the individual to whom the information relates. s.8(2)(m)(i)
- *Freedom of Information and Protection of Privacy Act* (Municipal Police, Crown Counsel, Community Corrections, Local Health Authority): if the head of the public body determines that compelling circumstances exist that affect anyone's health or safety. s.33.1(1)(m)(i)
- *Freedom of Information and Protection of Privacy Act* (Municipal Police, Crown Counsel, Community Corrections, Local Health Authority): The public body may disclose the information for the purpose of reducing the risk that someone will be a victim of domestic violence if domestic violence is reasonably likely to occur¹. s.33.1(1)(m.1)
- *Personal Information Protection Act* (Community-based antiviolence programs): If there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual. s.18(1)(k)
- *Child, Family and Community Service Act* (Ministry of Children and Family Development) The director² may disclose information obtained under the act if the disclosure is necessary to ensure a child's safety or well-being, or to ensure the safety of a person other than a child. s. 79(a); s. 79(a.1)

These are the main privacy laws that apply. There may also be more specific laws involved for certain institutions or agencies. For example, only certain *Freedom of Information and Protection of Privacy Act* provisions apply to Ministry of Children and Family Development personnel.

¹ Domestic violence is defined as the physical or sexual abuse of an intimate partner or their parent or child. See FIPPA Schedule 1 in the Appendix for the full statutory definition.

² Someone designated in writing by the Minister pursuant to CFCSA s. 91

Be aware that any legislation cited in the Appendix to these Guidelines is subject to periodic amendment. Amendments can be checked by accessing the BC Laws website at: <http://www.bclaws.ca>

D. Guiding Principles

1. Determine whether information about the case should be disclosed to the high risk case management team

Community-based antiviolence programs collect³ information (with consent) from the survivor/victim for a number of different purposes including to: offer information and support about the justice system, provide advocacy, and counseling services, provide safety planning, determine appropriate referrals, and offer resources etc. The information gathered is used to deliver the service or perform the function of the agency. In woman abuse cases, community-based antiviolence programs also use the information to determine whether there are indicators of further violence which suggest that the survivor/victim or her children may be at risk of harm.

If there are sufficient indicia of risk, then the community-based victim serving program should disclose relevant details of the case to the designated contact person on the high risk case management team. Often, this would be the police representative on that team.

³ Each agency or program should ensure that it has the authority to collect personal information about the survivor/victim and perpetrator.

2. Ensure disclosure of information is made in accordance with privacy laws

a. Information about the survivor/victim

Information the survivor/victim provides to the community-based antiviolence program can be disclosed to the high risk team with her express or implied consent if the information in question is about her.

If possible and if it is safe to do so, every effort should be made to obtain written consent from the survivor/victim before disclosing her personal information to the high risk case management team.

There may be situations where the community-based program is unable to get the survivor/victim's consent, for example, she may have fled the community and her new contact information is unavailable.

In the absence of the woman's consent, the community-based program must be able to justify release of information to the high risk team on other grounds.

b. Information about the perpetrator

The survivor/victim may also provide information about the perpetrator. Normally, disclosing this information would require the consent of the person whom the information is about, e.g. the perpetrator.

Since it is likely not practical or safe to seek the perpetrator's consent for release of information about him, the community-based antiviolence program must be able to justify disclosing this information on other grounds.

c. Disclosure of information about the perpetrator to assist law enforcement or for safety planning/risk management purposes⁴

The community-based antiviolence program may disclose personal information about the perpetrator without consent to the high risk case management team to assist in an investigation or in making a decision to start an investigation.

The community-based antiviolence program may disclose personal information about the perpetrator if disclosure is for the purposes for which the information was collected (e.g. risk management) and if the disclosure is necessary for those purposes.

d. Disclosure of the survivor/victim's information on the basis of compelling circumstances affecting health or safety

The community-based antiviolence program may disclose personal information about the survivor/victim without consent to the high risk case management team if there are reasonable grounds to believe that compelling circumstances exist that effect the health or safety of any individual.

Compelling circumstances exist where there is a necessity to act to avert imminent danger to someone's health or safety or to protect someone's health or safety.

If possible and if it is safe to do so, every effort should be made to obtain written consent from the survivor/victim before disclosing her personal information to the high risk case management team.

When making difficult judgment decisions about whether to disclose personal information *without* consent, the paramount principle guiding this decision is that the preservation of life trumps privacy.

⁴ Please note that municipal police and RCMP have specific and separate authority under the *Freedom of Information and Protection of Privacy Act* and the federal *Privacy Act* respectively to collect, use and disclose personal information for law enforcement purposes.

E. Disclosing Information in Compelling Circumstances: Steps for the Community-based Program to Take

1. Decisions to disclose to be made on a case-by-case basis.
2. If possible and if safe to do so, make every effort to obtain the survivor/victim's consent before disclosing information about her. A decision to disclose survivor/victim information without her consent should only be made in rare circumstances.
3. Only release information relevant to the health and safety concern in question.
4. Designate someone in your agency who makes the decision.
5. If time permits, have this person consult with a supervisor.
6. Have the person authorizing the disclosure keep a confidential file containing a brief record of the disclosure decision.
7. Develop an overarching information sharing agreement with the high risk case management team which outlines restrictions on the use that will be made of the disclosed information, its secure storage and its safe disposal.
8. When transmitting the information, make reference to the conditions of disclosure contained in the information sharing agreement.
9. Find a safe way to keep the survivor/victim informed.
10. In appropriate circumstances, provide notice of the disclosure to the survivor/victim by mailing a notice to her last known address.

F. Where to go for more information and support

1. More resources on information **sharing and the establishment of high risk teams** can be found on the Ending Violence Association website at:

www.endingviolence.org.

You can also contact the Community Coordination for Women's Safety Program directly by phone or email. Contact information is provided on the website.

2. Further information on **privacy laws** can be found at:

www.oipc.bc.ca

www.priv.gc.ca/index_e.asp

3. Information on applicable **provincial polices** dealing with domestic violence can be found at:

www.pssg.gov.bc.ca/victimservices/publications/docs/vawir.pdf

www.ag.gov.bc.ca/prosecution-service/policy-man/index.htm

For information on RCMP Operational Policies and Child Protection Response Policies contact the Community Coordination for Women's Safety Program.

4. Information on **risk factors** associated with an increased likelihood of future violence in woman abuse cases can be found at:

- www.jocelyncoupal.com

APPENDIX

PRIVACY PROVISIONS WHICH IMPACT SERVICES DELIVERED BY COMMUNITY BASED ANTI-VIOLENCE PROGRAMS

I. Personal Information Protection Act⁵ (BC) (Generally applies to community-based antiviolenence programs)

Part 1-Introductory Provisions

Definitions

1. In this Act

"employee personal information" means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;

"personal information" means information about an identifiable individual and includes employee personal information but does not include

- (a) contact information, or
- (b) work product information;

Part 4- Collection of Personal Information

Collection of personal information without consent

12. (1) An organization may collect personal information about an individual without consent or from a source other than the individual, if

- (a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way,
- (c) it is reasonable to expect that the collection with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding,

⁵ Statutory provisions included in this document are excerpts only. In some cases, only portions of a particular provision that related specifically to domestic violence service delivery have been included.

(l) the personal information is collected for the purposes of the organization providing services to a third party if

(i) the third party is an individual acting in a personal or domestic capacity,

(ii) the third party is providing the information to the organization, and

(iii) the information is necessary for the purposes of providing those services.

Part 6-Disclosure of Personal Information

Disclosure of personal information without consent

18. (1) An organization may only disclose personal information about an individual without the consent of the individual, if

(a) the disclosure is clearly in the interests of the individual and consent cannot be obtained in a timely way,

(c) it is reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or a proceeding,

(j) the disclosure is to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation,

(i) to determine whether the offence has taken place, or

(ii) to prepare for the laying of a charge or the prosecution of the offence,

(k) there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual and if notice of disclosure is mailed to the last known address of the individual to whom the personal information relates,

(4) An organization may disclose personal information to another organization, or to a public body, without consent of the individual to whom the information relates, if

(a) the personal information was collected by an organization under section 12 (1) (k) or (l),

(b) the disclosure between the organizations, or between the organization and the public body, is for the purposes for which the information was collected,

(c) the disclosure is necessary for those purposes, and

(d) for each disclosure under this subsection, the third party referred to in section 12 (1) (k) or (l), as applicable, consents to the disclosure.

II. Freedom of Information and Protection of Privacy Act (BC) *(Applies to Municipal Police, Crown counsel, Community Corrections, Local Health Authority)*

Part 2-Freedom of Information

Division 4-Public Interest Paramount

Information must be disclosed if in the public interest

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

(a) any third party to whom the information relates, and

(b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party, and

(b) to the commissioner.

Part 3- Protection of Privacy

Division 1-Collection, Protection and Retention of Personal Information by Public Bodies

Purpose for which personal information may be collected

26 A public body may collect personal information only if

(a) the collection of the information is expressly authorized under an Act,

(b) the information is collected for the purposes of law enforcement,

- (c) the information relates directly to and is necessary for a program or activity of the public body,
- (d) with respect to personal information collected for a prescribed purpose,
 - (i) the individual the information is about has consented in the prescribed manner to that collection, and
 - (ii) a reasonable person would consider that collection appropriate in the circumstances,
- (e) the information is necessary for the purposes of planning or evaluating a program or activity of a public body,
- (f) the information is necessary for the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur,
- (g) the information is collected by observation at a presentation, ceremony, performance, sports meet or similar event
 - (i) at which the individual voluntarily appears, and
 - (ii) that is open to the public, or
- (h) the information is personal identity information that is collected by
 - (i) a provincial identity information services provider and the collection of the information is necessary to enable the provincial identity information services provider to provide services under section 69.2, or
 - (ii) a public body from a provincial identity information services provider and the collection of the information is necessary to enable
 - (A) the public body to identify an individual for the purpose of providing a service to the individual, or
 - (B) the provincial identity information services provider to provide services under section 69.2.

How personal information is to be collected

27 (1) A public body must collect personal information directly from the individual the information is about unless

- (b) the information may be disclosed to the public body under sections 33 to 36,
- (c) the information is collected for the purpose of
 - (v) reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur,
- (e) the collection of the information is necessary for delivering or evaluating a common or integrated program or activity,

Division 2-Use and Disclosure of Personal Information by Public Bodies

Use of personal information

32 A public body may use personal information in its custody or under its control only

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),
- (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or
- (c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36.

Disclosure of personal information

33 A public body must ensure that personal information in its custody or under its control is disclosed only as permitted under section 33.1, 33.2 or 33.3

Disclosure inside or outside Canada

33.1 (1) A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:

(m) if

- (i) the head of the public body determines that compelling circumstances exist that affect anyone's health or safety, and
- (ii) notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that giving this notice could harm someone's health or safety;

(m.1) for the purpose of reducing the risk that an individual will be a victim of domestic violence if domestic violence is reasonably likely to occur⁶.

⁶ This provision [FIPPA s. 33.1(1)(m.1)] also applies to MCFD pursuant to CFCSA s. 74(2)(e)(iv)

Disclosure inside Canada only

33.2 A public body may disclose personal information referred to in section 33 inside Canada as follows:

(a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34);

(b) [Repealed 2011-17-14.]

(c) to an officer or employee of the public body or to a minister, if the information is necessary for the performance of the duties of the officer, employee or minister;

(d) to an officer or employee of

(i) a public body, or

(ii) an agency,

or to a minister, if the information is necessary for the delivery of a common or integrated program or activity and for the performance of the duties, respecting the common or integrated program or activity, of the officer, employee or minister to whom the information is disclosed⁷;

(i) to a public body or a law enforcement agency in Canada to assist in a specific investigation

(i) undertaken with a view to a law enforcement proceeding, or

(ii) from which a law enforcement proceeding is likely to result;

Definition of consistent purpose

34 For the purposes of section 32 (a), 33.1 (1) (r) (iii) or 33.2 (a), or paragraph (b) of the definition of "data linking" in Schedule 1, a use of personal information is consistent with the purpose for which the information was obtained or compiled if the use

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses the information.

⁷ This provision [FIPPA s. 33.2(d)] also applies to MCFD pursuant to CFCSA s. 74(2)(e)(ix)

Part 6-General Provisions

Power to make regulations

76(1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(h.1) respecting the written documentation that confirms that a program or activity is a common or integrated program or activity;

Schedule 1

Definitions

agency" means, for the purposes of sections 33.2 (d) and 36.1 (3) (b) (i) and the definitions of "**common or integrated program or activity**" and "**data-linking initiative**",

- (a) a government institution subject to the *Privacy Act* (Canada),
- (b) an organization
 - (i) subject to the *Personal Information Protection Act*, or
 - (ii) operating in British Columbia that is subject to the *Personal Information Protection and Electronic Documents Act* (Canada),
- (c) a public body, a government institution or an institution as defined in applicable provincial legislation having the same effect as this Act, or
- (d) a prescribed entity;

"domestic violence" means physical or sexual abuse of

- (a) an individual,
- (b) a parent or child of the individual referred to in paragraph (a), or
- (c) any other individual who is in a prescribed relationship with the individual referred to in paragraph (a)

by an intimate partner of the individual referred to in paragraph (a);

"intimate partner" includes, with respect to an individual,

- (a) a current or former spouse of the individual, by marriage or common law,

- (b) a current or former boyfriend or girlfriend of the individual, and
- (c) an individual referred to in paragraph (a) or (b) who is the same gender as the individual;

“personal information” means recorded information about an identifiable individual other than contact information;

"program or activity" includes, when used in relation to a public body, a common or integrated program or activity respecting which the public body provides one or more services

III. Child Family and Community Service Act (BC) (Applies to the Ministry of Children and Family Development)

Duty to report need for protection

- 14** (1) A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.
- (2) Subsection (1) applies even if the information on which the belief is based
- (a) is privileged, except as a result of a solicitor-client relationship, or
- (b) is confidential and its disclosure is prohibited under another Act.
- (3) A person who contravenes subsection (1) commits an offence.
- (4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.
- (5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.
- (6) A person who commits an offence under this section is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.
- (7) The limitation period governing the commencement of a proceeding under the *Offence Act* does not apply to a proceeding relating to an offence under this section.

Confidentiality of information

- 24** (1) A person must not disclose, or be compelled to disclose, information obtained in a family conference, mediation or other alternative dispute resolution mechanism, except
- (a) with the consent of everyone who participated in the family conference or mediation,
- (b) to the extent necessary to make or implement an agreement about the child,
- (c) if the information is disclosed in an agreement filed under section 23, or

(d) if the disclosure is necessary for a child's safety or for the safety of a person other than a child, or is required under section 14.

(2) This section applies despite section 79 of this Act and despite any provision, other than section 44 (1) (b), (2), (2.1) and (3), of the *Freedom of Information and Protection of Privacy Act*.

Freedom of Information and Protection of Privacy Act

74 (1) Sections 74 to 79 apply despite the *Freedom of Information and Protection of Privacy Act*.

(2) For the purpose of its application to this Act, the *Freedom of Information and Protection of Privacy Act* is deemed to be modified as follows:

(e) the only provisions of sections 33.1 and 33.2 that apply to a director are the following:

(iv) section 33.1 (1) (m.1) [*domestic violence*];

(ix) section 33.2 (d) [*common or integrated program or activity*];

Disclosure without consent

79 A director may, without the consent of any person, disclose information obtained under this Act if the disclosure is

(a) necessary to ensure the safety or well-being of a child, or

(a.1) necessary to ensure the safety of a person, other than a child,

IV. Privacy Act (federal)*(Applies to RCMP, Parole)*

Disclosure of personal information 8 (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal information may be disclosed (2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

Notice of disclosure under paragraph (2)(m) (5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2) (m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.