

# POLICY ON PRIVACY AND CONFIDENTIALITY



*The Commission on Human Rights and Administrative Justice*

## GLOSSARY

ACHPR	African Charter on Human and Peoples' Rights
CHRAJ	Commission on Human Rights and Administrative Justice
GAC	Ghana AIDS Commission
HIV	human immunodeficiency virus
HPP	Health Policy Project
ICCPR	International Covenant on Civil and Political Rights
PLHIV	People Living with HIV

## PREFACE

This document is the result of concrete experiences, success and errors as well as gradual communication and of interaction between and among stakeholders. The development of this policy reflects contemporary strategy of the Commission on Human Rights and Administrative Justice (CHRAJ) and acknowledges that no institution is static but an evolving entity.

CHRAJ is committed to both the legal and normative regulations pertaining to the storage and disclosure of information in Ghana. This commitment is not abstract thinking, rather it is rooted in what CHRAJ does directly to promote and strengthen its human rights mandate. This policy, reflects the recent thinking of the Commission towards a set of social realities that confront all humanity.

The Commission prides itself on advancing the protection and promotion of human rights of every Ghanaian citizen. This policy will set the standards for the required attitudinal and behavioural change for protecting the privacy and confidentiality for all CHRAJ clients. It is expected that this policy will evolve over time with new information and experience as a result of critical changes in social attitudes.

The Commission is therefore delighted to introduce this essential and across-the-board privacy and confidentiality policy to address issues around disclosure, trust and secrecy.

Given the multidimensional nature of the Commission's mandate, this document will be disseminated widely to stakeholders including the Judicial Service, Department of Social Welfare, Ghana Police Service including DOVVSU, Ghana Health Service, Ghana AIDS Commission, Ghana Labour Commission, Ghana Employers' Association, Labour Unions, Civil Society and other relevant public and private sector organisations.

This policy is directed to all Commission Members and staff to do their part to attain the goals of the Commission. The Commission on Human Rights and Administrative Justice established under the CHRAJ Act, 1993 (Act 456) is responsible for ensuring implementation of this policy.

Guided by this policy, the Commission is poised to move forward with a common task and the collective responsibility to ensure its effective implementation.

*COMMISSIONERS*

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## **POLICY STATEMENTS**

In fulfilment of the commitments to promote and protect human rights, enhance administrative fairness and promote public service ethics, and to further advance the vision of a society that is truly free, just and equitable where human rights and human dignity is respected, the following statements are directed to every Commission member and staff:

### **I. Privacy**

Commission Members, all persons holding appointment under the Commission, and other persons given lawful access to private information/communication of persons seeking the services of the Commission, must at all times ensure that the privacy of such persons is protected in all dealings.

### **II. Confidentiality**

All information and data received or gathered by staff and other authorized persons in the course of performing the functions of the Commission shall be treated as confidential. This information and data shall not be disclosed to any unauthorized persons without the consent of the giver unless otherwise required to do so by law.

### **III. Non-Discrimination**

In the performance of the functions of the Commission, all staff and other authorized persons must, at all times, ensure that no one seeking the services of the Commission is discriminated against and that the dignity of all such persons is upheld.

### **IV. Equality Before the Law and Equal Access**

All staff and persons authorized to perform the functions of the Commission must ensure that all persons have unimpeded access to the Commission's services and shall be treated equally.

### **V. Right to Information**

In the event of a right-to-information request, or other requests made pursuant to any law of information held by the Commission, the policy of non-disclosure of private and confidential information shall continue to be respected by staff until otherwise authorized by a Commissioner.

## 1.0 BACKGROUND

The Commission on Human Rights and Administrative Justice (CHRAJ) was established to receive and investigate complaints of fundamental human rights and freedoms, administrative injustices, corruption and abuse of power, and other related issues including, but not limited to, discrimination against individuals. The Commission on Human Rights and Administrative Justice Act (Act 456) established CHRAJ and entrusted it with the responsibility of ensuring the confidentiality and rights of its clients in the delivery of service.

Specifically, Act 456 requires that the Commissioners, staff, and any other person holding appointment under the Commission (and who is likely to have access to confidential information) to maintain secrecy of all matters that come to their knowledge and to take and subscribe to the oath of secrecy set out in the schedule to the Constitution. In order to implement this statutory requirement it became necessary to formulate a policy on privacy and confidentiality to guide staff in the performance of their responsibilities.

The issue of confidentiality became even more crucial in the wake of the Commission's strategic focus on vulnerable populations, especially people living with HIV (PLHIV). It was therefore important to assure the public, especially those such as PLHIV who are vulnerable to stigma and discrimination, that the Commission would dispassionately and sensitively handle their complaints pursuant to an official policy.

Historically, the lack of detail on how CHRAJ provided confidential services reduced the trust and confidence that the Ghanaian public had in the Commission. Responding to this challenge, the CHRAJ sought to build public trust by developing a clear policy. As such, the Policy on Privacy and Confidentiality changes the work culture and practices of CHRAJ to ensure clients' privacy and confidentiality in all situations. This policy is intended to set out in detail what ordinary Ghanaians who seek services from the Commission should expect from Commissioners and staff. As a result, any person with a complaint should be able to confidently approach the Commission and trust that the matters she or he informs the CHRAJ of will be handled with the utmost confidentiality.

### 1.1 Defining Privacy and Confidentiality

While the two terms, privacy and confidentiality, are often used interchangeably, from a legal standpoint they mean distinctly different things.

**Privacy** applies to the person and the way that potential persons are identified, including the settings in which potential parties and case officers/investigators interact.

Privacy covers the ability of an individual or group to seclude themselves, or information about themselves. Although the boundaries and content of what is considered private may differ between cultures and individuals; generally, privacy is related to anonymity (i.e., the wish to remain unnoticed or unidentified in the public domain).

**Confidentiality** is an extension of privacy and pertains to identifiable information held in confidence, shared only after authorisation. This includes procedures to ensure that only authorised individuals have access to certain information, and protections against the inappropriate disclosure of that information.

Confidentiality relates to how client information is handled, managed, and used, including the storage and sharing of data. Whereas, confidentiality is an ethical duty, privacy is a right. Both privacy and confidentiality are terms rooted in Ghanaian law.



## 2.0 THE POLICY FRAMEWORK

CHRAJ acknowledges that the Policy on Privacy and Confidentiality is premised on the recognition of Chapter 17 of the 1992 Constitution of the Republic of Ghana, the CHRAJ Act (Act 456), and the Data Protection Act (Act 843). Creating an enabling environment for all persons in the delivery of confidential services is part of Commission's constitutional mandate; and therefore essentially a legal requirement.

### 2.1 Guiding Principles

The key principles underpinning the CHRAJ's Policy on Privacy and Confidentiality are anchored in internationally- and nationally-accepted principles of non-discrimination, privacy and confidentiality, equality, and equal access before the law. The right to privacy is not only guaranteed under Ghanaian law but also complements other laws and policies based on the following:

- a. The commitment to **protect** the safety and integrity of the state and the privacy of individuals;
- b. The expanded scope of the Commission's service delivery, in line with its broad mandate, which covers **promotion** of equality, fairness, non-discrimination, privacy, use and sharing of clients information, disclosures, and holding records in confidence;
- c. The commitment to explore innovative ways to **improve** upon structures, systems, and attitudes of officers to ensure continuous improvement in the protection of human dignity and ethical service delivery to the highest professional standards;
- d. The assurance that all clients would be **informed** and made aware on how information held in confidence can be used;
- e. The obligation to **provide choice** to allow all clients to decide whether their information can be disclosed or used in particular ways; and
- f. The commitments that the Commission will always look for better ways to **protect, inform, and provide choice** to all its clients.

### 2.2 Rationale of the Policy

The privacy and confidentiality policy was prepared in order to

- Provide clear and strict guidelines to CHRAJ staff on how to maintain privacy and confidentiality;
- Demonstrate to staff the importance of these principles; and
- Set the standards for using, sharing, storing and disposing of information and records in a secure and ethical manner.

### 2.3 Policy Goals

The long term goal of the policy—to uphold the dignity of all persons—is embedded in Chapter 5 of Ghana's 1992 Constitution. Privacy is a right under Article 18 of the constitution. Specifically, Chapter 5, Article 18 (2) states clearly that "No person shall be subjected to interference of privacy his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others". Chapter 5, Article 17(1) stipulates that, "all persons shall be equal before the law." Article



17(2) further states that, “a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed, or social or economic status.” In clause (3) of the same article, discrimination is defined as giving, “different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed whereby persons of one description are subjected to disabilities or restrictions to which persons of another are not made subject or are granted privileges or advantages, which are not granted to persons of another description.”

## **2.4 Broad Objectives of the Policy**

The broad objectives of the CHRAJ’s privacy and confidentiality policy are twofold. First, the policy creates a favourable environment for all aspects of professional service delivery by CHRAJ to its clients. Second, the policy seeks to clearly set out privacy and confidentiality guidelines for CHRAJ staff to ensure that all individuals/clients are served with the best professional ethics. Specifically, the broad policy objectives are to

- Provide a general framework for defining private and confidential service delivery;
- Guide all staff on what is required of them to create a conducive environment that assures the public and service users that privacy and confidentiality issues are taken seriously within the Commission; and
- Build public trust, ensure confidence, and protect the integrity of the work of the Commission.

### **2.4.1 Specific Policy Objectives**

In light of CHRAJ’s focus on vulnerable groups, specifically HIV stigma and discrimination related cases, CHRAJ’s privacy and confidentiality policy will specifically aim to

- Ensure compliance with the statutory directive in Section 17 of Act 456 that staff handle all matters in the execution of the functions of the Commission with the greatest degree of confidentiality;
- Protect from undue public exposure the privacy and confidentiality of all persons, especially vulnerable groups such as PLHIV and other key populations;
- Ensure that all staff are trained to uphold the dignity of all persons who seek the services of the Commission, in particular key populations and PLHIV, in the best professional manner; and
- Improve CHRAJ’s service delivery environment, making it friendly to vulnerable groups, through public education, capacity building of staff, and the provision of appropriate facilities.

## **2.5 Scope**

The privacy and confidentiality policy broadly covers every situation in which CHRAJ is required to ensure the highest standard of professional ethics. As such, the policy enables CHRAJ to provide the best possible private and confidential services to the public. This includes all situations of case in-take, in particular oral/verbal complaints, movements of all case files, and the handling of all official correspondence. As part of policy implementation, confidentiality and privacy issues will form part of staff training/induction programmes.

## 3.0 LEGAL FRAMEWORK

### Legal Considerations

There are a range of statutory provisions (e.g., the Data Protection Act) that limit or prohibit the use and disclosure of information in specific circumstances. A second set of provisions (e.g., the Evidence Act) explicitly require that confidential client information be disclosed. Further, there are a number of administrative laws in Ghana that require authorities to obtain explicit client consent prior to information disclosure.

The Data Protection Act (Act 843) clearly outlines data principles including the privacy of the individual, processing of personal data, consent, justification, and objection. Section 17 of the Data Protection Act provides that, “a person who processes data shall take into account the privacy of the individual.” In Section 20 of the same Act, it is stipulated that, “a person shall not process personal data without prior consent of the data subject unless the purpose for which the personal data is processed is... (b) authorized or required by law, (c) to protect a legitimate interest of the data subject, (d) necessary for the proper performance of a statutory duty.”

Further examples of the statutory restrictions and/or legal requirements that constrain the use and disclosure of confidential personal information include:

- **International** legal and normative frameworks such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights, including the 1993 Vienna Declaration and Programme of Action;
- **Regional** frameworks such as the African Charter on Human and Peoples’ Rights (ACHPR); and
- **National** legal frameworks including the Constitution of the Republic of Ghana (1992), which covers privacy issues related to home, communication, and personal records; the Data Protection Act; and the Right to Information Bill.

The rights and freedoms of every citizen in Ghana are guaranteed in Chapter 5, Article 12(2) of the 1992 Constitution that, “Every person in Ghana whatever his/her race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual as contained in this chapter.” In Article 18(2) of the same chapter, the Constitution provides that, “No person shall be subjected to interference with the privacy of his/her home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.”

The Right to Information Bill stipulates, “respect for the rights and freedoms of others and for public interest,” and underscores the importance of laws and conventions on human rights such as the ACHPR, the European Convention on Human Rights, and the ICCPR which provide necessary guidelines.

The underlying premise of the right to information is the need to protect the safety and integrity of the State and the privacy of individuals. In addition, the bill provides for exemptions and protections from the disclosure of various kinds of information, including those considered confidential which, if disclosed, would be prejudicial to the security of the State or injurious to public interest.

Chapter 24 of the Constitution provides the Code of Conduct for Public Officers and stipulates in Article 284 that, “a public officer shall not put himself in a position where his/her personal interest conflicts or is

likely to conflict with the performance or functions of his/her office.” Article 287(1) further provides that, “an allegation that a public officer has contravened or has not complied with a provision of this chapter shall be made to the Commissioner for Human Rights and Administrative Justice, and in the case of Commissioner for Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.” In clause (2) of this article, “the Commissioner of Human Rights and Administrative Justice or the Chief Justice as the case may be, may take action as he/she considers appropriate in respect of the results of the investigations or the admission.”

Further, the Oath of Secrecy under the CHRAJ Act (Act 456) provides for the legal obligation to enforce state secrets, as is required under Chapter 28 of the Ghana’s Constitution. Specifically, Section 17 of the Act provides that

1. “The Commissioner or a Deputy Commissioner and every person holding an office or appointment under the Commission shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions;” and
2. “Every person holding office or appointment under the Commission who is likely to have access to confidential information of the Commission shall before proceeding to carry out his functions under this Act, take and subscribe to the Oath of Secrecy set out in the Second Schedule to the Constitution.”

There are also some existing institutional frameworks and mechanisms within CHRAJ, including the registry manual and the manual on procedures of investigations, which further underscore the need to protect the privacy of individuals and personal information. These protect privacy rights by regulating complaints in-take and disclosures from individuals, and by providing guidance on professionalism and rules of confidentiality.

Despite the institutional and normative frameworks that exist none clearly define privacy and confidentiality situations, nor do they provide practical guidance for staff conduct.

CHRAJ’s Policy on Privacy and Confidentiality recognises the gaps and limitations in the existing institutional principles/frameworks and sets the standards that will bring about the required attitudinal and behavioural change for achieving the goals of this document.

## 4.0 PROVIDING PRIVACY AND CONFIDENTIALITY SERVICE

Privacy and confidentiality may be described as, “ensuring that information is accessible only to those authorized to have access and is protected throughout its lifecycle.”<sup>1</sup> Confidentiality is an important principle in any working environment because it imposes a boundary on the amount of personal information and data that can be disclosed without consent. Knowing that confidentiality practices are in place allows a person giving sensitive and personal information to feel secure and to trust that their privacy is being protected.

Matters of privacy and confidentiality arise when one person discloses information to another in circumstances where it is reasonable to expect that the information will be held in confidence. People entrust the CHRAJ with, or allow the CHRAJ to gather, sensitive personal information as part of seeking redress. They do so in confidence and have the legitimate expectation that staff will respect their privacy and act appropriately. In some circumstances clients may lack the competence to extend this trust, or may be unconscious, but this does not diminish the duty of confidence.

Most importantly, for the Commission to meet legal requirements and retain the trust of individuals, it must be seen to provide a confidential service. The privacy and confidentiality policy provides detailed guidance to staff on how to ethically use client information. For example, information that can identify individuals must not be used or disclosed for any purposes without the individual’s explicit consent, some other legal basis, or where there is a robust public interest or legal justification to do so. In contrast, anonymous information is not confidential and may be used with relatively few constraints.

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<sup>1</sup> International Charter, n.d., *Confidentiality Policy*. <http://www.internationalcharter.org/confidentiality.html>

## 5.0 PROVIDING A CONFIDENTIAL SERVICE: THE CONFIDENTIALITY MODEL

The tenets of the confidentiality model suggest requirements that must be met in order to provide individuals with a confidential service. Record keepers and users must inform the individuals involved of the intended use of their information, provide them the choice to give or withhold their consent as well as protecting their identifiable information from unwarranted disclosures. These processes are inter-linked and should be ongoing to aid the improvement of a confidential service.

### **Making Confidentiality Decisions: The Key Questions**

There may be situations where an institution or organization entrusted with individuals' information finds it necessary to share or disclose confidential information. When making decisions about the use or disclosure of confidential client information, a number of key questions must be critically assessed to ensure that the requirements of the law, ethics, and policy are adequately addressed.

**If the purpose served by disclosing is not healthcare or another medical purpose, what is the basis in administrative law for disclosing?** All departments and units including staff should only do the things that they have been set up to do. While specific purposes may be permitted, disclosures to other agencies for other purposes may not be.

**Is disclosure either a statutory requirement or required by order of a court?** Although disclosure should be limited to what is required (and there may be a scope to ask the court to amend an order), any disclosure that has either a statutory requirement or court order must be complied with.

**Is the disclosure needed to support the provision of legal service or to ensure effective response to the complaints?** Clients need to understand that some information about them must be shared in order to provide them with service and to make and track referrals. Efforts must be made to provide clients with this information, check their understanding, reconcile concerns, and honour any objections. Where this is done there is no need to seek explicit individual consent each time information is shared.

**Is the use of identifiable and confidential individual information justified by the purpose?** Where the purpose served is not to provide healthcare or legal argument on behalf of the individual or to satisfy a legal obligation, disclosure should be tested for appropriateness and necessity, with the aim of minimizing the identifiable information disclosed. Further, information should be made anonymous wherever practicable.

**Have appropriate steps been taken to inform the individual about proposed disclosures?** There is a specific legal obligation to inform individuals in general terms about the disclosure of confidential information, including who will see information about them and for what purpose. Where the purpose is to seek consent, a more detail explanation may be necessary and individuals need to be made aware of their rights and how to exert them.

**Is the explicit consent of the person needed for a disclosure to be lawful?** With some exceptions, explicit consent is required for the disclosure of identifiable information. Exceptions include when the disclosure is required by law /the courts, is for a healthcare purpose, can be justified sufficiently in the public interest to warrant breach of confidence, or is supported by any law or act.



## **6.0 DISCLOSING AND USING CLIENTS' CONFIDENTIAL INFORMATION**

The Commission recognises the legal and normative regulations pertaining to the storage and disclosure of information in Ghana. In particular the Commission recognises the relevant provisions in the 1992 Constitution, the Data Protection Act (Act 843), the Public Health Act, and the Code of Conduct for Public Officers. The Commission also recognises the international human rights guidance regarding protection of the right to privacy and its limitation

Therefore, the disclosure and use of confidential client information needs to be both lawful and ethical. While laws and ethics in this area may largely be in agreement, the law may, at times, provide a minimum standard which may not always reflect the appropriate ethical standards that the State and the professional regulatory bodies require. Further, where the law is unclear, a standard may be set as a matter of policy that clearly satisfies the legal requirement but may exceed some interpretations of the law.



## 7.0 PROVIDING A CONFIDENTIAL SERVICE

### Obligation of Members and Staff of CHRAJ

There are statutory provisions/laws requiring the disclosure of information in Ghana. For instance, court orders may require a disclosure under the Evidence Act. In such situations, the amount of information disclosed should always be proportionate to the actual need. Even though the individual cannot prevent this disclosure, they must normally be told that it is taking place or that it has already occurred if this is the case.

Voluntary staff or National Service personnel who are not employees and students are also under obligations of confidentiality, and must sign an agreement indicating their understanding when helping within the CHRAJ.

### Inform Clients Effectively to Avoid Surprises

Clients must be made aware that any information they give may be recorded, shared, and/or provided to third parties in the course of providing them with service. Always consider whether clients would be surprised to learn that their information was being used in this way. If so, then they are not being informed correctly. In order to inform clients properly, staff must themselves be familiar with the content of the laws requiring disclosure and make confidential information leaflets and brochures available. Further, staff are obligated to

- **Check that clients have read and understood the available information leaflets.** Every CHRAJ officer should read and have information leaflets, posters, and other materials to support communications about confidentiality and the way that client information is used and shared.
- **Incorporate checks within their daily work practice.** For instance, receptionists at all CHRAJ offices should ask when clients arrive if they have seen/read the relevant leaflets and offer the client the leaflet or inform the client of the content of the relevant leaflet. This should be supported with encouragement to address concerns such as, “Do let me know if you have any queries or if you would like more information.” Likewise, complaint in-take officers should ensure that clients have had opportunities to read and understand the leaflets provided. This should be supported with encouragement to address concerns such as, “Have you read the brochure/leaflet on information disclosures and use?”
- **Make clear to clients when information is recorded and accessed.** This may require no more than incorporating comments such as, “Let me note that in your file,” or, “I am just taking a note of your details/bio data,” as part of case management.
- **Make clear to clients when information is or may be disclosed to others.** Clients may have limited information on CHRAJ procedures and related agencies (e.g., Metropolitan, Municipal and District Assemblies and Ministries, Departments and Agencies) and how the CHRAJ collaborates with institutions through referral. Staff must ensure that clients are well informed and know when data or information will be disclosed or used more widely. Examples might be:
  - With a referral letter, “I am writing to the Department Social Welfare to refer your case/ history and the complaints.”
  - With electronic records, “The Systems Administrator/registry is able to view your records with the Commission”; or
  - With other agencies, “I will tell Social Services your needs to help them make arrangements for you.”

- **Check that clients are aware of the choices available in respect to how their information may be used or shared.** Clients have the right to choose whether or not the information they provided in confidence can be used or shared beyond its original intent. Clients' information or records may be shared or used in the following situations:
  - In order to provide legal evidence
  - Where it is required on the basis of public interest, public morality, public order, and national security

These are important distinctions and the legal and ethical requirements may differ in each case.

- **Check that clients have no concerns or queries about how their information is used.** Clients are at liberty to raise any concerns/queries after they have been briefed and while their case is pending. In most circumstances it may require simple follow-on questions such as, "Did you understand the leaflet?" or, "Did it make sense to you?" In other instances, if it is clear that the information being recorded is particularly sensitive to the client concerned, staff should be explicit about what information is being recorded and ask the client directly if he or she is happy with that information being shared.
- **Answer any queries personally or direct clients to others who can answer their questions or to other sources of information.** It is much better for clients if their concerns can be addressed immediately. However, if a staff member cannot answer the questions properly, the staff must refer the client to a superior officer capable of addressing the concern. Further, the Commission must have a client services officer or a client services unit and a client charter.
- **Respect the right of all Clients to have access to their records.** Clients have a right to see and/or have copies of their records under the Data Protection Act.
- **Communicate effectively with clients to help them understand.** It is important to recognise that clients have different communication needs. While some may read information leaflets when waiting to be attended to, others may be disinclined or unable to do so because of disability, illiteracy, cultural issues, or language difficulties. Difficulty in communicating does not remove the obligation to help people understand.

## Provide Choice to Clients

Clients have different needs and values. What one person considers sensitive might not be to another and vice versa. This must be reflected in the way they are treated in terms of their complaints, conditions, and the handling of their personal information.

The development of a truly confidential service will maximise client trust and minimise the number of objections raised. While it is necessary to disclose client information to staff members who are dealing with a case, it is important to ensure that those who see information have a genuine need to know.

To ensure client choice is respected, staff must do the following:

- **Ask clients before using their personal information in ways that do not directly contribute to, or support case management.** Where information about a client is required, but does not satisfy the case management necessity and appropriateness that govern the use of identifiable client information (e.g., using it for the purposes of research), it should be anonymised to protect the client. In all other circumstances, efforts must be made to obtain and record consent unless there are statutory grounds for setting confidentiality aside or robust public interest issues.
- **Respect clients' decisions to restrict the disclosure and/or use of information.** In some cases, it may not be possible to restrict information disclosure without compromising service

delivery. This would require careful discussion with the client, but ultimately the client's choice must be respected. In the short-term it may not be possible to meet some of the clients' requests. In order to both respect the client's right to confidentiality and need for service delivery, staff should examine potential compromises with the client. This may require discussions about the root of the client's concerns. It may be possible to allay those concerns and fears without significant change to the information disclosure arrangements, perhaps by explaining more fully the security arrangements in place, or discussing options in the service delivery process. In addition, it is essential that complete records are kept of all cases and of any restrictions placed on disclosing by clients. When clients impose constraints it is important to demonstrate that neither clients' safety, nor the Commission's responsibility for service provision, has been neglected.

- **Explain the implications of disclosing and not disclosing.** In order to make valid choices, clients must not only know what their options are, but also what the consequences are of making those choices. Explanations must be proportionate to the risks involved and reflect, where possible, the client's particular circumstances. Where clients insist on restricting how information may be used or shared in ways that compromise the CHRAJ's ability to provide them with high-quality service, this should be documented within the client's record. It should be made clear to the client that they are able to change their mind at a later point.

## 8.0 KEEPING CLIENTS' INFORMATION PRIVATE

- All information received from clients shall be confidential. No person shall disclose such information without authorisation.
- No employee shall disclose information given by any person to the Commission.
- No employee shall engage in **improper** use of confidential information. This includes not gossiping as gossiping is clearly an improper use of confidential information.
- No employee shall disclose any information to another about a client unless the other employee needs to know for official purposes. Such information shall only be disclosed for the purpose of an investigation or resolving an issue.
- No employee shall disclose any information to a person who is not an employee of the Commission.
- No employee shall disclose confidential information to the public or media without authorisation.
- All employees shall take care when discussing cases in public places. It may be pertinent to discuss cases with colleagues for professional reasons (e.g., to gain advice or share experience and knowledge), but extra care must be taken to ensure that the identity of the individual client is protected.

## **9.0 KEEPING CLIENT INFORMATION PHYSICALLY AND ELECTRONICALLY SECURE**

Both manual and electronic records must be secured. To this end, management shall ensure that

- All client information is kept physically and electronically secured at the Registry;
- Such information may be requested by authorised employees in the course of their duty; and
- To the extent possible no employee shall take any client record(s) outside the office. Where it becomes necessary, authorisation is required.
- All client information that is electronically stored shall be done in a manner prescribed by the Commission.
- Only authorised persons shall have access to client information that is electronically stored.
- No employee shall copy or keep a copy of any electronically stored client information without authorisation.
- Staff should not leave portable computers, case notes, or files in unattended cars or in easily accessible areas.
- All stored files and portable equipment containing clients' information/records must be locked when not being used.
- Staff should not take clients' records home. Where this cannot be avoided; procedures for effectively safeguarding the information should be locally agreed upon.

## 10.0 STAFF CAPACITY AND HUMAN RESOURCE DEVELOPMENT

Although it will not be possible to immediately achieve best practice, the CHRAJ confidentiality procedures and policy guidelines outlined in this document should be regularly reviewed and adhered to.

### Staff Obligations

1. Staff must be aware of privacy and confidentiality issues and seek clarification, support, and training in order to deal with all issues appropriately. Staff should be encouraged to demand training where necessary.
2. Staff must be aware of the basic requirements, where they can access support and further information, and encouraged to seek out training and guidance in order to develop confidential services. Staff must adhere to these policy guidelines and with any other codes of conduct, protocols, and procedures. Further, staff must be able to demonstrate that they are making every reasonable effort to comply with relevant standards.
3. All staff members should guard against possible breaches of confidentiality and risk of breaches.
4. In the event of a breach or possible breach of confidentiality by a colleague, staff should draw the attention of his or her superior. Where the breach is on the part of a superior, staff should bring it to the attention of the Director or Commissioner. Further, staff must be made aware of local procedures for reporting where breaches of confidentiality or abuses of client's information are taking place; and be encouraged to report organizational systems or procedures that need modification.

### Management Obligations

1. Management shall ensure that all newly-recruited staff members are trained in privacy and confidentiality as per this policy and institute refresher trainings to staff where it may be deemed necessary.
2. Management shall provide directives to protect individuals reporting breaches and/or possible breaches. Procedures and mechanisms for safeguarding staff safety and anonymity shall be instituted.
3. Management shall ensure that every staff member is aware of the requirements and standards of behaviour. These standards must be included in employment contracts as specific requirements linked to disciplinary procedures.
4. Management shall ensure the availability of equipment and fittings for securing data and information.
5. Management shall ensure that all staff abide by this policy; Sanctions shall apply where there is a breach.
6. Management shall ensure that all employees, upon hire, sign a privacy and confidentiality agreement indicating that they will not disclose personal information and records without consent and/or authorization. This agreement shall be legally binding and diligently enforced by the Commission.





