

Idaho Coalition Against Sexual & Domestic Violence
Confidentiality for Idaho Advocates - 2023

Who Is Required to Keep Information Confidential?

- VAWA, FVPSA and VOCA all have mandatory confidentiality protections built in.
- VAWA, FVPSA, VOCA all regulations prohibit sharing personally identifying information about victims without informed, written, reasonably time-limited consent.
- These laws permit limited sharing when required by state law or a valid court mandate, and in either circumstance the VAWA/FVPSA/VOCA-funded program must protect the survivor's information as much as possible

When Sharing Information Is Mandatory

- To count as a “mandate” to breach VAWA confidentiality, the statute or court order should specifically address confidentiality and a public policy decision to require a breach of confidentiality. These mandates are generally limited to mandatory reporting laws and court ordered requests for information.
- If a statutory mandate does require the disclosure of certain information, the agency must determine what the law actually requires in terms of: who must report, when they must report, what they report, and to whom they must report.*
- Grantees need to: (1) limit the information released to the minimum required to meet the statutory requirement, (2) take steps to protect the privacy and safety of those impacted by the disclosure, and (3) make reasonable attempts to notify the victim about the disclosure.
- Search warrants issued by a court and court issued subpoenas are generally the only times you should need to/are allowed to breach confidentiality outside of mandated reporting laws.
- Even where there is a court order, VAWA and FVPSA require programs to take measures to protect privacy, which could include going to court to challenge the validity of the subpoena or court order.
- There is no “arrest warrant” exemption in VAWA or FVPSA. There is no obligation or law that requires non-profit advocates to proactively inform the police. If a program becomes aware of a warrant, they can and should notify the victim and help him/her self-report to the police and get legal assistance but may not disclose personally identifying information to the issuing agency.

Who Qualifies for Confidentiality Protection?

- The confidentiality protections set forth in these federal laws and grant conditions apply to any survivor who (1) requests services (regardless if they are provided services or not), (2) is receiving services, or (3) has received services in the past.

Idaho State Laws That Affect Confidentiality

Mandatory Reporter Laws For Children And Vulnerable Adults

- §16-1605 – **Child Protective Act** - (1) Any physician, resident on a hospital staff, intern, nurse, coroner, school teacher, day care personnel, social worker, or ***other person having reason to believe that a child under the age of eighteen (18) years*** has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances that would reasonably result in abuse, abandonment or neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department.
- §39-5303 – **Adult Abuse, Neglect and Exploitation Act** - (1) Any physician, nurse, employee of a public or private health facility, or a state-licensed or certified residential facility serving vulnerable adults, medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, social worker, police officer, pharmacist, physical therapist, or home care worker who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected or exploited shall immediately report such information to the commission.
- I.C. § 39-5211 “(4) Require persons employed by or volunteering services to the project to maintain the confidentiality of any information that would identify individuals served by the project; such information identifying individuals served by the project shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code;”
- I.C. §9-203 [(9)] 8. A person employed by or volunteering at a nongovernmental domestic or sexual violence program shall not, without the written and signed consent of the recipient of services, be required to or compelled to disclose any communication made between the person in the course of employment or volunteer services for the domestic or sexual violence program and a recipient of the program’s services or to disclose information or records about a recipient of the services of a domestic or sexual violence program, provided that disclosure of communications during or as part of court proceedings is subject to the rules of the Idaho supreme court. The provisions of this subsection shall not apply to communications made to a provider or employee during medical services, medical procedures, medical exams, medical evaluations, or forensic interviews.
(10)] 9. For purposes of this section:

(A) "Recipient" means any individual who has received or inquired about receiving services or assistance from a domestic or sexual violence program, including shelter, advocacy, counseling, or other services offered by a domestic or sexual violence program. (B) "Domestic or sexual violence program" means any nonprofit organization, nongovernmental organization, private entity, or tribe or tribal organization that has as its primary purpose the operation of shelters or supportive services for victims of domestic or sexual violence and their dependents or counseling, advocacy, or self-help services to victims of domestic or sexual violence.

Idaho Rules of Evidence 517 – Licensed Counselor – Client Privilege

“(b) General rule of privilege. A client has a privilege in any civil or criminal action to which the client is a party to refuse to disclose and to prevent any other person from disclosing confidential communications made in the furtherance of the rendition of licensed counseling services to the client, among the client, the client's licensed counselor, and persons who are participating in the licensed counseling under the direction of the licensed counselor including members of the client's family.”

“(c) Who may claim the privilege. The privilege may be claimed by the client, or for the client through the client's licensed counselor, lawyer, guardian or conservator, or the personal representative of a deceased client. The authority of the licensed counselor, lawyer, guardian, conservator or personal representative to do so is presumed in the absence of evidence to the contrary.”

Tribal Laws That Affect Confidentiality

Tribes are not subject to state law. If providing services on tribal land please research laws that may be applicable to confidentiality and communications under tribal law. Also be aware each tribe may have differing laws regarding confidentiality.

Confidentiality vs Privilege

- Confidential Communications - A confidential communication is one made with the expectation of privacy. Information that is confidential is private information that is not accessible to the general public. However, if confidential information is subpoenaed, it must generally be released unless it is privileged information.

Privileged Communications - are defined as statements made by people within protected relationships (e.g., husband and wife, attorney and client, doctor and patient) that the law shelters from forced disclosure on the witness stand.

* There are levels of privilege and it is something that can be waived either on purpose or unintentionally so it should be explained to the client when the privilege exists and what that means so they do not unintentionally waive it