

## **Slide 1**

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## **Slide 2 – Survivor Confidentiality and Housing**

Hello and welcome to Part 6 of VFMN's Housing 101 for Victim Service Providers, entitled Survivor Confidentiality. My name is Meggie Royer. I am the Youth and Prevention Program Manager at Violence Free Minnesota. Today we will be talking about confidentiality protections for survivors of domestic violence in relation to housing.

Everyone viewing this session is aware that survivor confidentiality is bedrock to everything we do. But not everyone is knowledgeable about specifically how it might affect someone's housing search, or their ability to maintain safe and stable housing. Advocates and other victim service providers can also play a very important role in educating housing providers and others who work in the institutional housing apparatus about the potentially life-saving importance of adherence to statutory requirements in this regard. This session will cover confidentiality as it relates to housing, rather than the entirety of confidentiality

issues. For more extensive information, please refer to the coalition or other state and national technical assistance providers.

This session is designed primarily for advocates and other direct service providers, although it's important information for everyone. Our next session on comparable databases will include information about confidentiality primarily for agency leaders and others who are responsible for funding and reporting.

### **Slide 3 – Duty of Confidentiality**

Let's begin with some basic information about the duty we owe to survivors to hold their information confidential.

### **Slide 4- Why is Confidentiality so Important?**

Confidentiality is a fundamental principle of victim services, for many reasons.

When assured of confidentiality, survivors will be much more likely to disclose the true nature of the abuse to allow for more effective safety planning. They are also more likely to trust in the advocacy services offered them, and will be more likely to access those services.

Confidentiality can also enhance the dignity of a survivor by reinforcing the principle that the survivor owns their information and has control over how, when, and if it will be shared. Survivors have the right to choose what information to share and with whom. Victim service providers should always be aware that the decision to share information with a particular person at a particular moment in time is complex, and survivors must be supported in making these decisions for themselves. The concept of “safety” is very personal and individual. Survivors must be supported in deciding for themselves what safety means for them. No one else is living in their shoes and so, no one else knows the entirety of their individual situation and what disclosure of any particular piece of information might mean for them. This is one reason why it is so important that survivors have the absolute right to say no to requests for information.

Unauthorized disclosure of confidential information can have devastating consequences. It can lead to further physical harm to the survivor or their children, can provide information that an abusive partner can try to use in child custody or other court cases, could affect the survivor’s housing or employment, could negatively affect a survivor’s mental health or wellbeing and more. It can

also endanger them by potentially revealing their location, risking an escalation of the violence, and compromising a survivor's safety plan.

These are only some of the reasons confidentiality is so fundamental to everything a victim services agency does. As we will see, it is also embedded in state and federal statute.

### **Slide 5 – Applicable Federal Statutes**

Advocates, and anyone working or volunteering in a victim service provider agency, should follow the strongest requirements protecting confidentiality. The main federal laws are the Violence Against Women Act, or VAWA; the Family Violence Prevention and Service Act, or FVPSA (pronounced fip-saw), and the Victims of Crime Act, or VOCA. However, even if your agency does not receive funds through any of these acts, it is recommended that you follow the provisions of VAWA, FVPSA and VOCA.

All these laws strictly prohibit the disclosure of personally identifying information about victims in most circumstances.

Personally identifying information is defined as:

“information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected.” Examples include first and last name, address, date of birth, social security number, or even racial, ethnic, religious, or similar data if it could potentially identify someone.

The exceptions to this requirement are:

- The survivor has signed an informed, written, time limited agreement to share certain information;
- A valid court order has ordered disclosure; or
- Disclosure is required by statute, such as reporting child abuse.

## **Slide 6 – Applicable Minnesota Statutes**

Minnesota law also contains specific provisions to protect survivor information.

Minnesota Statute 595.02(l) says that a domestic abuse advocate cannot be compelled to provide testimony in court about a survivor without their consent, or unless a court has ordered it. When deciding whether to compel the advocate

to testify the court must consider factors such as the public interest, the effect on the survivor, and how disclosure would affect the advocate/survivor relationship.

The law does not specifically state that the consent of the victim must be in writing, but it is always best practice to obtain written permission, whether or not required by statute.

Advocates must still adhere to reporting requirements for vulnerable adults and child maltreatment.

Programs located on and serving survivors on a tribal reservation should check their tribal codes for applicable information on advocate privilege, as tribal codes may vary to some extent from Minnesota state law.

Minnesota Statute Chapter 5B is a law establishing and governing the Safe at Home program, which allows survivors to use a P.O. Box as a substitute address for all purposes. People attempting to escape actual or threatened domestic violence, sexual assault, or harassment or stalking frequently must establish new addresses in order to prevent their assailants or probable assailants from finding them. The Safe at Home program provides address confidentiality to survivors by

allowing them to use a substitute mailing address designated by the Secretary of State's office.

And finally, Minnesota's Data Practices Act protects the privacy and confidentiality of victims or witnesses of certain crimes by requiring law enforcement to withhold identifying information from public access. This applies to victims of sex crimes, to witnesses who do not wish to be identified publicly, and in some cases, the identity or phone number of someone who called 911.

### **Slide 7 – Confidentiality In Practice**

Let's turn now to exploring what this means in daily practice.

### **Slide 8 – Information – Gathering**

Advocates and others in victim services programs are required for a variety of reasons to ask survivors for information. This generally includes information about their experiences with violence and other circumstances of their lives; specific information about their background, residence, and households; and demographic information.

It is always important to consider when, where, and how to ask for information.

It's important to talk with the survivor in a confidential location and a setting that is comfortable for the survivor, and that invites disclosure. Remember that a survivor might not be comfortable disclosing everything, especially in an initial meeting or phone call. Respect the survivor's individual autonomy and process and offer multiple opportunities for disclosure.

Advocates must be clear with themselves, and most importantly, with the survivor, about what information is being requested and why. Some information is helpful to victim service providers staff in determining with the survivor the kind of help and support being sought, and to create strategies for helping the survivor achieve their goals.

Other information may be requested for more administrative purposes, such as reporting to funders about who is being served by the program, what services are provided, program outcomes, and more. This information helps with program development and evaluation, securing future funding, and can contribute to larger initiatives, such as public policy and funding decisions.



Generally, best practice for VSPs is to gather, record and retain only what information is necessary to provide the services the survivor is seeking. This principle can sometimes be at odds with what a funder might want to help them document how successful they believe a program or policy initiative has been. It is very important to provide assurances to the survivor that all information specific to them is confidential, with the exceptions we've covered; that they are not required to provide information; that they will still receive services if they decline; and what the impact of declining could mean for them, for example, that some information will determine their eligibility for certain housing programs.

### **Slide 9 – Releases of Information**

We know that victim service providers, or VSPs, cannot disclose personally identifying information unless required by court order, to comply with statutes such as reporting child abuse, or a valid release of information. Let's talk about what a valid release of information must include.

When talking with a survivor about signing a release of information, it is important to emphasize that the purpose of the release is to help the survivor achieve their goals. It is very important to approach the discussion from the

standpoint of what the survivor wants to accomplish by releasing information and exploring what the impact of disclosure vs. non-disclosure might mean for them.

Best practice is to approach the release of information as written instructions from the survivor about what they need and what they want done with the information.

To the extent possible, avoid using standardized language, including rules about how long the release will be in effect. A survivor-led conversation about the release of information can help determine the right amount of time the service provider needs to do what the survivor has asked. The release should also include information about what the survivor should do if they wish to withdraw permission to share information.

The best way to ensure clarity about the release is to execute it in writing, and written permission is also required by the Violence Against Women Act, or VAWA. Sometimes this can be challenging because frequently the survivor and the advocate are not in the same room. Although not ideal, text messages or email can suffice. When relying on electronic communication, however, it's important to ensure that the communication is actually from the survivor and that all of the

VAWA confidentiality and other requirements are adhered to. The Safety Net project from the National Network to End Domestic Violence has more information about tech options.

If it's necessary to execute a release of information electronically and your agency doesn't yet have a protocol in place for this, the best approach is for the survivor to write down their wishes on paper, sign it with an expiration date and send you a snapshot.

### **Slide 10 – Confidentiality and Housing**

This series on housing has focused a great deal on Continuum of Care, or CoC, and Emergency Solutions Grant, or ESG, funding, which require a victim service provider, or VSP, to collect and enter very detailed information about program participants into a database comparable in most respects to a CoC system-wide database called Homeless Management Information System, or HMIS. Although the comparable database is owned by the VSP and its contents shielded from other providers, it still contains a lot of detail about program participants, some of which the survivor might find intrusive. Much of this content contains personally identifying information, as described earlier in this presentation.

If your program is a Department of Housing and Urban Development, or HUD, grantee or subgrantee, you will be required to ask survivors for a great deal of detailed information to be entered into the comparable database. It is very important to explain that there are many questions you are required to ask and to be clear about what your program is legally required to disclose.

Be sure that the survivor knows that their information will be kept within the agency, with the exceptions we've already talked about. The survivor should also be informed that your agency will be required to report on services you provide, but it cannot include any information that would identify them.

Every person requesting services has the right not to answer specific questions or provide information about themselves or their household. VSP advocates and other staff should make clear to survivors that the decision to provide information is optional and that you will continue to provide services regardless.

Be clear about information that might be required to determine eligibility for specific housing programs so that the survivor can weigh those factors when deciding whether to share information. Do not pressure the survivor to make a

forever decision about what information to share. Provide multiple opportunities to disclose.

## **Slide 11 – Confidentiality and Coordinated Entry**

One place where attention to survivor confidentiality is paramount is access to the coordinated entry system, or CES. The CES is the way in which the Continuum of Care, or CoC, manages its response to homelessness. Its stated goals are to ensure fair and equitable access to services that are culturally competent and person-centered, and to ensure that people with the most need are prioritized for help. The process includes a lengthy intake and assessment designed to elicit information that will help the CoC achieve these goals and help connect unhoused people to housing.

- People fleeing or attempting to flee violence are identified by HUD as one of the groups having priority in access to housing through the CoC. Advocates must be positioned to help them do so safely, and in a way that ensures confidentiality.
- CoCs can designate more than one point of access for intake into the coordinated entry system. They are also permitted to establish alternate points

of access for certain groups, including people fleeing violence. Some CoCs in Minnesota refer everyone who identifies as fleeing violence to a special point of access, usually a VSP. Other CoCs have not designated a VSP as a point of access, and points of access to the CES will be found in mainstream programs that might not specialize in providing services to survivors.

- Not all mainstream programs are aware of who is eligible for coordinated entry under the “fleeing or attempting to flee violence” criteria. Survivors do not need to provide additional documentation to “prove” that they are fleeing violence. They can self-certify or can certify with the assistance of a staff member or volunteer of a VSP. They do not need to prove anything about the severity of the abuse. HUD’s position is that simply experiencing this violence is sufficient. It is very important that advocates support survivors who do not wish to disclose more details about the violence.
- If a survivor would like to complete a coordinated entry process from a mainstream service provider, the VSP should ensure the survivor understands the related risks and potential benefits of having their name listed in the system and how this may affect their safety plan. And per continued guidance

from HUD, anyone has the right to refuse to share personally identifying information and must still have access to housing resources for unhoused people. If the survivor chooses this option, the CES intake worker should be able to work with the individual to make an anonymous entry if they choose. Advocates should work with mainstream programs in their community to ensure that survivors' personally identifying information will not be entered into any shared database without the written, informed consent of the survivor.

- All households, regardless of whether they are fleeing violence, have the right to refuse to share their information among providers within the CoC. All service providers are prohibited from denying assistance to program applicants and program participants if they refuse to permit the provider to share their information.
- However, some information may be required by the project, or by public or private funders to determine eligibility for housing or services, or to assess for needed services. Everyone has the right to refuse to give information, but they

must be made aware that certain information is required to determine eligibility so they can make an informed decision.

- We will cover the coordinated entry system in more detail in Part 8 of this series.

### **Slide 12 – Working with Housing Providers**

- Covered housing providers, which generally means providers that are federally-funded, have specific obligations to their tenants under VAWA. Advocates should have a working knowledge of these obligations to assist survivors in maintaining confidentiality, safety, and privacy in their housing.
- Housing providers are required to maintain the confidentiality of information that a person is a survivor of domestic violence, dating violence, sexual assault, or stalking.
- Any information a survivor provides under VAWA's housing protections, including the fact that they are a survivor, must be kept confidential by the covered housing provider. These obligations include keeping any such information out of a shared database and not disclosing it to others unless



the survivor consents in writing, it is required for use in an eviction proceeding, or the law otherwise requires it.

- Survivors have the right to request an emergency transfer if they reasonably believe they are at risk of imminent harm or have been sexually assaulted at the address in the past 90 days. The housing provider is required to keep the request confidential and not disclose where the survivor has moved without written permission.
- Survivors have the right to request lease bifurcation if they believe it is unsafe for them to continue to live with someone who has harmed them. The housing provider must not disclose where the survivor has moved.
- And, while not specifically related to confidentiality, survivors in covered housing have a right to report crime and ask for law enforcement assistance without fear of retaliation by the housing provider.
- This is not a comprehensive list of VAWA protections in housing. For more information, visit the resource page connected to Part 6 of this series.

## **Slide 13 – Going Further: Protecting Survivor Information Internally and**

### **Externally**

Confidentiality covers many other aspects of work with survivors not directly related to housing that we have not covered here. This can include decisions about paper vs. electronic files, internal agency documentation, record-keeping and record retention, responding to subpoenas, database file management and more.

Be familiar with your agency policies and procedures and consult with supervisor or agency leaders if you have questions or concerns. If the requirements are unclear, or if you think your agency could be doing more, bring your questions to their attention and try to promote discussion. Agency supervisors should ensure appropriate and necessary training of new staff and volunteers, periodic review of agency policies, and should provide regular in-service training for all staff.

VAWA and the other federal statutes we have cited include specific confidentiality requirements for all agencies receiving grant funds under those acts. Even if an agency does not receive any of these funds, it is best practice for all to embed these requirements in their policies and practices.

VSPs also recognize the jeopardy that survivors can experience if partner agencies in the community do not understand the unique circumstances faced by survivors if their information is not protected. There are particular concerns in the area of housing, which includes a great deal of data collection and information sharing. It is vital that VSPs engage with community partners to help improve confidentiality protections for survivors within housing systems.

Many CoCs are open to training from VSPs on confidentiality, trauma-informed practice, and survivor-centered service provision. VSPs should seek opportunities to provide training if they have the capacity or be prepared to refer to other VSP experts who can do so.

At the same time, it's important to recognize that training is insufficient. CoC stakeholders need the expertise of VSPs to help them ensure that their policies and practices reflect the confidentiality requirements of HUD, VAWA and other federal statutes.

### **Slide 14 – Resources**

Other resources can provide more comprehensive information about survivor confidentiality, or for additional information on confidentiality in relation to

housing systems. These include Standpoint here in Minnesota, the Confidentiality Institute, and the National Network to End Domestic Violence Tech Safety Project, to name a few. You will find numerous resources on the attached page.

### **Slide 15 – Gratitude**

Thank you so much for joining us today, and thanks to Alicia Aiken of the Confidentiality Institute for her invaluable advice in the development of this session. We hope the information was a helpful introduction to the confidentiality laws that apply to housing systems.

Part 7 will focus on the topic of HUD data collection requirements for victim service providers and the use of comparable databases. We hope you can join us for that session as well.

### **Slide 16**

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