



The legal grounds for sharing information

The following notes come from the guidance that SafeLives gives IDVAs on our training course. They can be used as a guide in situations where it may be necessary or desirable to share information with other agencies. This decision making should be done in consultation with others or with the Information Commissioner: 028 9026 9380 or email ni@ico.gsi.gov.uk.

Safety

Consider risk factors – how great is the risk?

- Children – careful consideration should be given to disclosure even about low risks to children
- For an adult, a relatively high risk is necessary before considering over-riding the duty of confidentiality

Consent

With consent, can disclose.

Without consent, must make a professional judgement balancing the following considerations.

Balancing considerations

Do you have the legal authority to disclose?

See sheet of authorities.

Balancing against:

- Duty of confidentiality
- Respective risks to those affected
- Pressing need
- Need of other agencies to know
- Proportionate response

Make decision

If decide not to disclose:

- Record decision, going through checklist
- Consider ways to reduce risk to survivor and/or any children
- Consider ways to help client access help from other agencies herself

If decide to disclose:

- Record decision, going through checklist
- Make decisions/enquiries about the amount of information to disclose, how and to whom
- Discuss with survivor, if appropriate
- Note when/whether the survivor was informed and reasons why if not informed (for example, that it would increase risk)
- Disclose

Finally

- Note a time to review this situation again
- Review the advocate's safety and the repercussions for the project

Sharing information without Consent

Protection against Disclosure

Legal issues	Source
Protection of personal data	Data Protection Act 1998
Duty of confidentiality	Common law
Right to private and family life	Human Rights Act, Article 8

Main Lawful Grounds for Sharing Without Consent

Purpose	Legal authority
Prevention and detection of crime and/or the apprehension or prosecution of offenders	Section 29, Data Protection Act (DPA)
To protect vital interests of the data subject; serious harm or matter of life or death	Schedule 2 & 3, DPA
For the administration of justice (usually bringing perpetrators to justice)	Schedule 2 & 3, DPA
For the exercise of functions conferred on any person by or under any enactment (police/social services)	Schedule 2 & 3, DPA
In accordance with a court order	
Overriding public interest	Common law
Child protection – disclosure to social services or the police for the exercise of functions under the Children (Northern Ireland) Order, where the public interest in safeguarding the child's welfare overrides the need to keep the information confidential	Schedules 2 & 3, DPA
Right to life Right to be free from torture or inhuman or degrading treatment	Human Rights Act, Articles 2 & 3

Balancing Principles

Proportionate response <ul style="list-style-type: none"> • Respective risks to those affected • Pressing need • Need to know of other agencies 	
Public interest in disclosure	

Checklist for when sharing information without consent

If you are in a situation where you feel that you have to disclose information without the consent of the survivor, you must record your decision and the reasons for making it. These are always very difficult decisions and ones where you may be concerned about the impact that they will have on the trust that a survivor has placed in you. Remember, you need to take defensible not defensive decisions, but neither must you put yourself in a situation where you are effectively joining with the survivor to prevent critical information being disclosed.

1. You must record that a decision has been made to share/disclose information without consent.
2. What are the protocols/guidance that you referred to and which agencies or colleagues have been consulted about this decision? Set these out clearly in your records. (e.g. Home Office guidance, OIC helpline, own protocols?).
3. What is the legal basis for sharing without consent in this case? Record it clearly. It will usually be under the Data Protection Act or the Children (Northern Ireland) Order.
4. Are you clear exactly what details of the information is to be shared and with whom? Set this out in your records.
5. Think through the balancing exercise that you have undertaken; that you have considered the interest of the other agency/person in receiving the information and the degree of risk posed to any person by disclosure/nondisclosure; that you have considered the duty of confidentiality, human rights and the public interest. Record this. Record whether the sharing is proportionate and there is a pressing need and summarise why in one or two sentences.
6. What is the amount of information to be disclosed and the number of people/agencies disclosed to? Is this no more than strictly necessary to meet the need for disclosure? Record why this is the case.
7. Set out whether and when the survivor/person affected has been informed that the information will be disclosed and to whom, whether reasons have been given and whether details of next steps explained. Has this been done in advance of the information been disclosed? If the survivor/person affected has not been informed set out reasons why.
8. If in doubt, ALWAYS seek specialist advice and ALWAYS consult with your supervisor.