

CATEGORY:	ORGANIZATIONAL: INFORMATION MANAGEMENT
SUB-CATEGORY:	DISCLOSURE OF INFORMATION
GROUP:	
DISTRIBUTION:	ALL EMPLOYEES/PHYSICIANS
TITLE:	DISCLOSURE OF INFORMATION – LAWYERS

PURPOSE

To outline the process for responding to requests for clients’/patients’/residents’ personal information/personal health information from lawyers.

POLICY

The privacy of all individuals who receive, or have received, services from Western Health must be maintained.

It is also recognized that lawyers may request client/patient/resident personal information/personal health information (hereinafter referred to as information.)

Employees must consult with their manager if presented with a subpoena. In turn, the manager must advise the Regional Risk Manager/Patient Safety Officer of this fact and obtain direction as required.

Receiving the request

Where lawyers are requesting client/patient/resident information employees must:

1. Confirm with the requester that the client/patient/resident is aware of the request and that the requester has obtained appropriate consent. As necessary, please refer to policy [Disclosure of Information – Obtaining Valid and Appropriate Consent](#) (9-02-45) for direction.
2. Obtain a written request that includes the following information:

Only the electronic version of this policy is to be considered current. Paper copies may be outdated. This policy is uncontrolled when printed.

-
- a) The name and date of birth or MCP number of the client/patient/resident whose information is being requested,
 - b) The specific information (including the name of specific programs/services) being requested,
 - c) The contact information for the lawyer who is requesting the information.
3. If the requester indicates that they are entitled to access information without consent, obtain the name and section of the applicable legislation. Following this, the employee must notify the immediate manager who, as necessary, must consult with the Regional Manager Information Access and Privacy or designate.

Preparing information for disclosure to the requester

When preparing the information for disclosure, employees must:

1. Ensure that the written consent of the client/patient/resident has been obtained using the Western Health [Consent to Disclose/Obtain Information](#) form (12-475). Alternatively, the requester may provide a disclosure of information form signed by the client (e.g. from the requester's agency). This is acceptable provided that the form includes the following information:
 - i) name and date of birth or MCP number of the client/patient/resident whose information is being requested,
 - ii) identity of the requester (name, title, lawyer/law firm represented and contact information),
 - iii) signature of client or his/her representative (see definition),
 - iv) signature of requestor, and
 - v) the date the form was signed.
2. Whenever possible, written consent must be obtained. Use verbal authorizations only in urgent or exceptional circumstances (e.g. time restrictions) with the reason for doing so outlined in the record. Employees may also follow up with written consent by forwarding the *Consent to Disclose / Obtain Information* form (12-475) for the client/patient/resident to sign and return to the service provider.
3. Prior to disclosure, review the record to ensure accuracy of the information, e.g. that it does not contain information about another client/patient/resident. As appropriate, remove or redact any such information from the record before it is disclosed to the insurance company, taking care not to alter or inadvertently disclose the original

Only the electronic version of this policy is to be considered current. Paper copies may be outdated. This policy is uncontrolled when printed.

information. Consult with the Regional Manager Information Access and Privacy or designate as needed in such instances.

4. Document the following information in the client/patient/resident record:
 - i) the details of the request,
 - ii) where applicable, the title and section(s) of the legislation under which the information may be disclosed without consent,
 - iii) any direction that was sought,
 - iv) to whom information was disclosed, and
 - v) the specific information that was disclosed to the lawyer.

The manager/director must:

1. As necessary, provide direction to employees with respect to receiving the request and preparing information for disclosure.
2. Consult with the Regional Manager Information Access and Privacy or designate as necessary regarding any concerns relating to receiving the request and preparing information for disclosure.

The Regional Manager Information Access and Privacy must:

1. Provide direction with respect to receiving the request and preparing information for disclosure.

DEFINITIONS

Redact: Censor or obscure (part of a text) for legal or security purpose, e.g. using a black permanent marker or dry line liquid paper.

Representative: In keeping with the *Personal Health Information Act (PHIA)*, a right or power of an individual may be exercised

- (a) by a person with written authorization from the individual to act on the individual's behalf;
- (b) where the individual lacks the competency to exercise the right or power or is unable to communicate, and where the collection, use or disclosure of his or her personal health information is necessary for or ancillary to a "health care decision", as defined in the *Advance Health Care Directives Act*, by a substitute decision maker appointed by the individual in accordance with that Act or, where a substitute decision maker has not been appointed, a substitute decision maker determined in accordance with section 10 of that Act;

Only the electronic version of this policy is to be considered current. Paper copies may be outdated. This policy is uncontrolled when printed.

-
- (c) by a court appointed guardian of a mentally disabled person, where the exercise of the right or power relates to the powers and duties of the guardian;
- (d) by the parent or guardian of a minor where, in the opinion of the custodian, the minor does not understand the nature of the right or power and the consequences of exercising the right or power;
- (e) where the individual is deceased, by the individual's personal representative or, where there is no personal representative, by the deceased's nearest relative, and for this purpose, the identity of the nearest relative may be determined by reference to section 10 of the *Advance Health Care Directives Act*;
- (f) where the individual is a neglected adult within the meaning of the *Neglected Adults Welfare Act*, by the Director of Neglected Adults appointed under that Act; or
- (g) where an individual has been certified as an involuntary patient under the *Mental Health Care and Treatment Act*, by a representative as defined in that Act, except as otherwise provided in this Act.

Subpoena: A legal written order for staff to appear in a court of law to give testimony.

Third party: For the purposes of this policy, third party includes:

- An individual whose personal information/personal health information is included in the record of a client/patient/resident of Western Health.
- An individual/organization that is requesting disclosure of information under this policy.

LEGISLATIVE CONTEXT

Access to Information and Protection of Privacy Act (2015). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/a01-2.htm>

Personal Health Information Act (2008). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.htm>

KEYWORDS

Lawyers, disclosing information to lawyers

FORMS

[*Consent to Disclose/Obtain Information \(12-475\)*](#)

TO BE COMPLETED BY STAFF IN QUALITY DEPARTMENT

Approved By: Chief Executive Officer	Maintained By: Regional Manager, Information Access and Privacy
Effective Date: 26/October/2008	<input checked="" type="checkbox"/> Reviewed: 16/July/2018 <input checked="" type="checkbox"/> Revised: 23/September/2015
Review Date: 16/July/2021	<input type="checkbox"/> Replaces: <i>(Indicates name and number of policy being replaced)</i> Authorization for Release of Information – Standard/Form (RR-A-200), Release of Information from Clinical Records (AD-R-200), Consent to Release/Obtain Information (Form 12-390), Release of Information (Former HCSW policy 18-06-25) <input type="checkbox"/> New

Only the electronic version of this policy is to be considered current. Paper copies may be outdated. This policy is uncontrolled when printed.