

CONFIDENTIALITY AND DATA PRIVACY

Minnesota Sex Offender Program

Issue Date: 12/1/15 Effective Date: 1/5/16 Policy Number: 135-5100

POLICY: Policies on confidentiality and data privacy apply to all staff, students, volunteers and persons or agencies under contract – paid or unpaid. Data privacy refers to all information on clients/participants gathered for program purposes. Preserving confidentiality and protecting data privacy refers to written, electronic, and verbal exchanges.

AUTHORITY: Minn. Stat. §13, “Government Data Practices”
 Minn. Stat. §144.651, subd 16
 Minn. Rule 9515.3040, subp. 2 (A).
 Minn. Rule Chap. 1205
Minnesota Department of Human Services (DHS) Data Practices Manual
Minn. Stat. §246.014, subd. (d)

APPLICABILITY: Minnesota Sex Offender Program (MSOP), program-wide

PURPOSE: To ensure compliance with the Department of Human Services (DHS) requirements and the laws governing client/participant information and data collected and maintained by the Minnesota Sex Offender Program (MSOP). To meet data privacy laws and professional confidentiality standards, especially regarding the use and results of physiological examinations and the reporting of previously undisclosed and unreported criminal behavior. To provide procedures allowing for optimal therapeutic relationships, while complying with legal requirements for reporting criminal acts.

DEFINITIONS:

Data on individuals – data on individuals is defined as government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data is not accessed by the name or other identifying data of any individual.

Client/participant record – set of comprehensive documents created in the course of client/participant care from admission through discharge.

Confidential data – data about individuals to which even the individuals themselves cannot have access, e.g., information from an investigation about welfare fraud or in adoption records. Individuals retain the right to know whether an agency is maintaining confidential data about them.

Private – data about individuals allowed to be disclosed only to the subject of the data or to government entities and employees whose work assignments reasonably require access to the data.

Protected health information – private information on individuals that is identifiable health information as described in the Health Insurance Portability and Accountability Act (HIPAA) (1996).

Public – data about individuals allowed to be disclosed to anyone for any purpose, e.g., state employee names and salaries of state employees.

Welfare data – data on individuals collected, maintained, used or disseminated by the Minnesota Sex Offender Program pursuant to Minn. Stat. [§13.46](#), “Welfare Data.”

Data not on individuals – data about non-individuals, such as organizations, facilities, corporations, associations, etc.

Protected nonpublic – data not on individuals made not accessible to the public by statute or applicable federal law.

Security information – (Minn. Stat. 13.37, subd. 1(a)) government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury. Information qualifying as security information under Minn. Stat. §13.37 is considered nonpublic data or private data and may not be released to the public. This may include data relating to the client/participant, such as impressions, perceptions, observations and/or opinions. Examples of security information include certain incident reports, policies or procedures.

Staff – for the purposes of this policy, includes MSOP employees, contractors, interns and volunteers.

PROCEDURES:

A. Client/Participant Information

1. All data on clients/participants, including information in the client/participant record, is considered private or confidential data and may not be released without written consent or as otherwise authorized under state or federal law. This includes records such as property, grievances, etc. (Refer to MSOP Policy 500.190, “Health Information Management Services” and MSOP Policy 106.300, “Health Information Record Designation.”)
2. Information determined by clinical staff to be detrimental or harmful to the physical or mental health of the client/participant is considered confidential data. Refer to MSOP Policy 500.190, “Health Information Management Services.”
3. Information that is related to an active or open investigation is confidential data until the investigation is closed.

B. Requests for Information Stored at MSOP. Refer to MSOP Policy 106.170, “Data Request and Copy Costs.”

C. Safeguarding Information

1. Staff may only discuss and have conversations about clients/participants in the performance of their duties. Client names are not public information.
2. If staff members question the appropriateness of sharing information or if the information is protected, they must consult a supervisor.
3. Staff must request, access, use or disclose only the minimum amount of information necessary to provide services and benefits to clients/participants.
4. Staff must participate in annual training regarding confidentiality and data privacy.

5. As part of new employee training, the MSOP Record Manager provides a copy of and the employee is required to sign the DHS MSOP Confidentiality Agreement (135-5100a, attached). MSOP Human Resources maintains a copy of each employee's signed agreement in the employee's personnel file.

E. Confidentiality within Treatment

1. MSOP staff may only share information disclosed by clients/participants during treatment to MSOP staff who need the information to perform their job duties and may share the information with individuals outside of MSOP under the following circumstances:
 - a) Staff may share information on a client/participant as part of the judicial commitment process (Minn. Stat. §§253B.23, subd. 4 and 253D.03).
 - b) Staff members must immediately report information related to maltreatment of minors to the local welfare agency, police department, or county sheriff. (See MSOP Policy 302.110, "Reporting Maltreatment of Minors.")
 - c) Staff members having knowledge or reason to believe that an identifiable vulnerable adult has been neglected or abused must immediately report that information to the local welfare agency, police department, or county sheriff, consistent with Minn. Stat. §626.557 and MSOP Policy 202.058, "Vulnerable Adults."
 - d) The program or staff may disclose private client/participant data as otherwise authorized under state or federal law. Questions regarding otherwise authorized disclosure may be directed to the MSOP Records Manager or MSOP Legal/Records Director.
2. Each client/participant is provided a copy of the Notice of Privacy Practices (202.100F-DHS-6136-ENG, attached) upon admission.
3. MSOP staff or contracted assessors initiating clinical or other treatment program assessments must first discuss the limits of confidentiality with the client/participant and inform the client/participant information disclosed during the assessment will be documented in the completed report.
4. As part of treatment, each client/participant is expected to disclose a complete accounting of his or her offense history. The name(s) of the victim(s), date(s) of the offenses, and other information leading to the identification of the victim are not required for participation in therapy or psycho-educational groups or treatment progression.

REVIEW: Annually

REFERENCES: DHS Data Practices Manual
MSOP Policy 500.190, "Health Information Management Services (HIMS)"
MSOP Policy 106.300, "Health Information Record Designation"
MSOP Policy 106.170, "Data Request and Copy Costs"
MSOP Division Policy 210-5058, "Vulnerable Adults"
MSOP Policy 302.110, "Reporting Maltreatment of Minors"
DHS Policy 5.5, "Remote Access to DHS Networks or Systems"
DHS Policy 5.1, "E-Mail Use and Administration"
DHS Policy 2.0 - 2.8, "DHS Privacy Policies Concerning How DHS Employees Handle Protected Information"

45 CFR Parts 160 and 164 – Health Insurance Portability and Accountability Act (HIPAA)
Rules of Criminal Procedure

ATTACHMENTS: DHS MSOP Confidentiality Agreement (135-5100a)
Notice of Privacy Practices (202.100F-DHS-6136-ENG)

SUPERSESSION: MSOP Policy 106.100, “Confidentiality and Data Privacy,” 11/4/14.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

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Minnesota Sex Offender Program