

Confidentiality Institute, Inc.

Protecting Privacy, Securing Safety

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VAWA 2013 Update to Confidentiality Laws Regarding DV, SA, Dating Violence & Stalking Victims

VAWA grant conditions as of October 1, 2013

(new and changed language is italicized below):

Section 3 of VAWA, 42 USC §13925(b)(2) provides, in relevant part:

(A) IN GENERAL. In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

(B) NONDISCLOSURE.—Subject to subparagraphs (C) and (D), grantees and subgrantees shall not —

(i) disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed or otherwise protected; or

(ii) disclose, reveal, or release individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of legal incapacity, a court-appointed guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

(C) RELEASE.—If release of information described in subparagraph (B) is compelled by statutory or court mandate—

(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and

(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(D) INFORMATION SHARING.—

(i) Grantees and subgrantees may share—

(I) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;

(II) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and

(III) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(ii) *In no circumstances may –*

(I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee;

(II) any personally identifying information be shared in order to comply with Federal, tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, tribal, or State grant program.

(E) STATUTORILY MANDATED REPORTS OF ABUSE OR NEGLECT – Nothing in this section prohibits a grantee or subgrantee from reporting suspected abuse or neglect, as those terms are defined and specifically mandated by the State or tribe involved...

(G) CONFIDENTIALITY ASSESSMENT AND ASSURANCES – Grantees and subgrantees must document their compliance with the confidentiality and privacy provisions required under this section.

“Personally identifying information” or **“individual information”** is generally defined in VAWA 2013, 42 USC §13925(a)(20) as:

(a)(20) PERSONALLY IDENTIFYING INFORMATION OR PERSONAL INFORMATION.—The term ‘personally identifying information’ or ‘personal information’ means individually identifying information for or about an individual including 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*, including—

- (A) a first and last name;
- (B) a home or other physical address;
- (C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
- (D) a social security number, *driver license number, passport number, or student identification number*; and
- (E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, ~~in combination with any of subparagraphs (A) through (D)~~ would serve to identify any individual.

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FVPSA on Confidentiality with FVPSA-funded Services to Family Violence, Domestic Violence & Dating Violence Victims

Family Violence Prevention and Services Act, 42 USC 10401 et seq.

§10402 (7) Personally identifying information. The term “personally identifying information” has the meaning given the term in section 13925(a) of this title [Violence Against Women Act].

§10406(c)(5): Nondisclosure of confidential or private information

“(A) IN GENERAL. In order to ensure the safety of adult, youth, and child victims of family violence, domestic violence, or dating violence, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of such victims and their families.

“(B) NONDISCLOSURE.—Subject to subparagraphs (C), (D) and (E), grantees and subgrantees shall not —

“(i) disclose any personally identifying information collected in connection with services requested (including services utilized or denied), through grantees’ and subgrantees’ programs; or

“(ii) reveal personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal or State grant program, which consent —

(I) shall be given by —

(aa) the person, except as provided in item (bb) or (cc);

(bb) in the case of an unemancipated minor, the minor and the minor’s parent or guardian; or

(cc) in the case of an individual with a guardian, the individual’s guardian; and

(II) may not be given by the abuser or suspected abuser of the minor or individual with a guardian, or the abuser or suspected abuser of the other parent of the minor.

“(C) RELEASE.—If release of information described in subparagraph (B) is compelled by statutory or court mandate—

“(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the release of the information; and

“(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

“(D) INFORMATION SHARING.—Grantees and subgrantees may share—

“(i) nonpersonally identifying data, in the aggregate, regarding services to their clients and demographic nonpersonally identifying information in order to comply with Federal, State, or tribal reporting, evaluation, or data collection requirements;

“(ii) court-generated information and law enforcement-generated information contained in secure, governmental registries for protective order enforcement purposes; and

“(iii) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(F) Statutorily permitted reports of abuse or neglect

Nothing in this paragraph shall prohibit a grantee or subgrantee from reporting abuse and neglect, as those terms are defined by law, where mandated or expressly permitted by the State or Indian tribe involved.