

Confidentiality and Mandatory Reporting

Why is confidentiality and mandatory reporting important to consider in GBV case management?

Survivors have the right to keep information about themselves private, and protecting a survivor's right to confidentiality is a key guiding principle that case managers are expected to uphold. Confidentiality is an important aspect of restoring the dignity of the survivor and reducing social stigma and blame. Maintaining confidentiality requires that case workers collect information in safe ways, protect all information and agree to share only with informed consent and/or informed assent of the GBV survivor and/or their caregiver.¹ Without confidentiality, survivors are less likely to seek help and it is important for their wellbeing and physical safety that information is kept confidential. However, in some contexts mandatory reporting on certain issues may be in place.

Confidentiality, while respected, can be limited by any existing mandatory requirement to report specific cases like child abuse, in accordance with local protocols. These limits to confidentiality must be clearly explained to and understood by survivors (and their caregivers) prior to obtaining informed consent to proceed with GBV case management. Survivors can then make an informed decision to disclose information about incidents that could fall under mandatory reporting requirements.

'Limitations to confidentiality' refers to situations in which there may be legal or other obligations that override the individual's right to confidentiality. In these situations, organizations need to be clear on what the inter-agency protocol is and inform the survivor as to whom the case would be reported, what information would be shared and when, and what the expectations would be regarding the survivor's involvement (e.g. will the survivor have to file a report, and if so to whom; will the survivor have to be interviewed, and if so by whom?).² Ensuring that there is a good understanding of these limits to confidentiality among clients is critical. The best interests of the client and their immediate safety should be the primary consideration in all decisions. Information should also be conveyed in a timely manner, so that survivors are not left out of the loop about what information is being shared about them.

The need for confidentiality must be adhered to throughout a SEA response. While certain people *need* to know about a case, those involved should be restricted to those who need to know this information in order to perform their specific roles. Survivor's names should be shared only with essential personnel – investigators and persons coordinating the victim assistance. Breaches of confidentiality can lead to stigma, retaliation, threats, physical and psychological harm and even death by perpetrators, their colleagues and other community members.

Duty to Warn

A comprehensive understanding among case workers of mandatory reporting requirements, procedures, documentation and sharing of information is required so that they can effectively share this information with clients. Case workers must balance confidentiality against the interests of disclosure and need to make informed and careful decisions about whether to share information in a given situation. In humanitarian situations, it can become even more challenging due to breakdowns in government and social support systems, a lack of confidentiality and trust in formal reporting mechanisms and fear of retribution or risks to survivor safety. Even when mandatory reporting mechanisms are followed, it is vital that the survivor is consenting to share this information and is made aware of the limits to confidentiality from the beginning of the case management process, so that they are cognizant that the disclosure of certain types of information can trigger mandatory reporting.³ Case workers must inform clients (and/or their caregivers) of mandatory reporting requirements and potential limits to confidentiality and must explain:

- What confidentiality means with regards to the case worker sharing information about the survivor's case;
- What the limits to this are, including any mandatory reporting laws;
- What you will do if/when you have to break confidentiality.⁴

The 2017 Interagency Case management Guidelines provide guidance to explain confidentiality and its limitations.

"It is important for you to know that I will keep what you tell me confidential, including any notes that I write down during our meetings. This means that I will not tell anyone what you tell me, or share any other information about your case, without your permission. There are only a few situations when I may have to speak with someone else without asking your permission. If you tell me you that you may hurt yourself, I would need to tell my supervisor or others who could help keep you safe. If you tell me that you plan to hurt someone else, I would have to tell [relevant protection authorities] so we could prevent that action. If a UN or humanitarian worker has hurt you, I would need to tell my supervisor and report what this person has done, so he/she can't hurt anyone else. If... [Explain mandatory reporting requirements as they apply in your local setting]. Sharing information during

these times is meant to keep you safe and get you the best help and care you need. Other than these times, I will never share information without your permission.”⁵

Case workers must be able to explain the limits of confidentiality to children and should have the language skills to communicate with children of different ages and respect the fundamental truth that children’s experiences and stories belong to them. *“This means that service providers respect children’s stories and experiences by including them in decision-making about how, what and with whom to share information with, in line with existing protocols.”* Children, particularly older children (adolescents), and caregivers should be part of the decision-making process on how to address mandatory reporting in the safest and most confidential way. This means service providers should seek and consider their opinions and ideas on how to draft the report. This does not mean the caregiver and child can decide whether or not a report is made; rather, they can help decide how and when the report is made. Service providers who are equipped with in-depth knowledge about mandatory reporting procedures will be best positioned to work with children and family clients to manage this procedure as necessary.⁶

When to discuss mandatory reporting

Mandatory reporting must be explained **at the very beginning** during the introduction and *before* the survivor has shared their story. This provides an opportunity for the survivor of GBV to understand the limits of confidentiality, the mandatory reporting requirements that apply in that location and the potential consequences of sharing information before providing their informed consent to participate in GBV case management. If mandatory reporting policies and laws are in place and practiced, service providers are required to explain these to the survivor (and caregiver) what their reporting responsibilities are at the beginning of services. This can be done in conjunction with the initial informed consent procedure for the services being offered. If a mandatory report is required, service providers should share the following information:

- The agency/person to which/whom the case worker will report;
- The specific information being reported;
- How the information must be reported (written, verbal, etc.);
- When this information will be shared;
- The likely outcome of the report;
- The client’s rights in the process.

A core principle of GBV is ‘do no harm’. Actions taken should not create further harm to a survivor. This requires thinking through unanticipated consequences that could arise from an intervention, anticipating possible risks and working to prevent these. Depending on the situation, do no harm may mean not taking action.

Case workers should seek support from their supervisors if they need guidance and support on specific cases or in understanding the mandatory reporting requirements in their location.



¹ IRC and UNICEF (2011) Caring for Child Survivors of Sexual Abuse

² (2017: 51) Interagency GBV Case management Guidelines

³ <http://www.health-genderviolence.org/training-programme-for-health-care-providers/role-of-health-professionals-and-health-facilities/conf>

⁴ IRC and UNICEF (2011) Caring for Child Survivors of Sexual Abuse

⁵ (2017: 51) Interagency GBV Case management Guidelines

⁶ IRC and UNICEF (2011) Caring for Child Survivors of Sexual Abuse