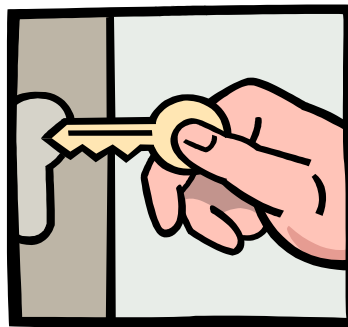


Confidentiality Policy



2004

(2006 comment – this policy will be reviewed linked to youth work being delivered in future via locality teams)



Welcome

Acknowledgement

We gratefully acknowledge Gloucester Youth and Community Service for permission to draw on their Confidentiality Policy in the preparation of this document.

Thanks also go to those County Youth Service staff who helped in the development of this policy.

Introduction

Somerset county Youth Service upholds the rights of young people using the service to receive a professional and respectful response to their needs, and believes that a policy of confidentiality is integral to this.

Youth workers are aware of the importance of the relationship they have with the young people they work with. Young people may discuss problems or pass on information about others, trusting that the information will go no further. The relationship that exists between youth worker and young person depends a good deal on such trust. Youth workers must have a clear understanding of the nature of a 'confidential' relationship and the responsibilities that such a relationship imposes on the adult.

Purpose

Youth workers are sometimes unclear about their responsibilities with respect to confidentiality. For example, what information are staff legally obliged to disclose to others? Under what circumstances should a line manager be informed? What if a young person does not wish their parents/guardians to know what they have disclosed?

This policy has therefore been written in order to give those working with young people support in terms of:

- Clarification of the legal situation:

- Guidelines for good working practice:

- Enhanced confidence in their work with young people:

- Clarification of their own rights to confidentiality.

The Legal Situation

The concept of a 'confidential relationship' is recognised in law, although English law does not define when a confidential relationship arises. Certain professions have an obligation to confidentiality, by nature of the relationship that exists between the worker and the client.

“..it is generally accepted that a duty of confidence arises where confidential information comes to the knowledge of a person (the confidant), in circumstances where that person has notice, or has agreed, that the information is confidential..”

Hamilton 1998, p23.

Article 8 of the European Convention on Human Rights provides that everyone has the right to respect for his private and family life. The law in this area is still developing, both in Europe and in the UK, following the incorporation of the Convention into UK law in October 2000. It is

not clear whether Article 8 will affect the present law relating to a confidential relationship between a child and an adult or to what extent.

While there is no legal duty to pass on confidential information to other agencies, even where there is a high risk that the child is at risk of significant harm, it appears that as a matter of good practice, there is a moral duty to pass information.

There is no hard and fast rule as to when there should be disclosure of information, each case will have to be judged on its individual circumstances.

A young person, however has the right to expect to have their confidence respected, and youth workers have an obligation to maintain and respect that right whenever possible.

There exist 'exceptional circumstances' where confidentiality cannot be maintained, and a young person's wishes must be overridden. These are defined as where:

- A young person is in a life-threatening situation (including self harm);
- Inaction may put a young person or adult in a life-threatening situation;
- A young person is threatened by an abuser;
- The rights of young people who have not been consulted would be infringed;
- Someone else could be harmed;
- The law requires that information is disclosed.

These circumstances may involve disclosure to line management; other youth work staff, an outside agency, or parent/guardian. Youth workers have a statutory duty to inform Social Services of 'suspected or identified abuse', whether sexual, physical or emotional: this includes information disclosed about other young people. Whenever possible, this should be done with the permission of the young person, who may need a lot of support from the youth worker to be able to make this decision. However, with or without the permission of the young person involved, the information must and should be passed through line management to Social Services. The Somerset County Youth Service Duty Officer briefing provides guidelines and information about this process (see Appendix 1.).

In order to avoid losing the trust and confidence of a young person by having to break their confidence, youth workers should whenever possible try to pre-empt disclosure of, for example, abuse and inform the young person of the restrictions that have to be imposed on the confidence should they disclose it.

Youth workers do not have a duty to disclose information about young people's
drug use
sexual behaviour
criminal activity.

Except where the criteria for 'exceptional circumstances' are met.

Guidelines for Good Working Practice

Information about young people

The collection and storage of information about young people should always be carried out on a need to know basis, and with the consent of the young person concerned. It is not

envisaged that in a club or project a youth worker would need to keep any information about a young person other than:

- Name
- Date of Birth
- Address/telephone number
- Sex
- Ethnicity
- Relevant medical details (e.g. health conditions a worker may need to be aware of)

In addition, youth workers are required to keep:

- Attendance records for each session
- Evaluations of each session

Young people should be informed of who will have access to the information and what the information will be used for, i.e. the reason for its collection.

Any information disclosed in evaluations, e.g. about conversations held with young people, information given, problems, activities etc. should, wherever possible, not include any name or other information that could lead to identification.

Young people have the right to access information about themselves at any time.

Records should be protected from unsupervised or unauthorised access by being kept in a secure, locked place.

Information stored on computer should be secure, and kept in accordance with the Data Protection Acts 1984 and 1998. Consent forms should include notification that any information will be stored in accordance with the Data Protection Acts.

Records should be kept no longer than necessary (see Somerset County Council Archive policy).

Any correspondence carried out with respect to a young person (e.g. to other agencies) that names the individual should, wherever possible, be done with the knowledge and consent of that individual. Copies of letters and correspondence sent and received should be kept secure.

Statistical and case history information may be extracted from records for monitoring, evaluation and funding purposes, but should not include any identifying information.

The same guidelines of anonymity apply to workers keeping records of young people for their personal use, for example training and professional development.

Where consent forms for activities and trips away are taken with the party, they should be kept securely by the responsible worker.

Information imparted as confidential should remain so even when there is no longer any contact with the young person.

Information about youth workers

Line management should circulate to all staff members a list of worker's contact details unless there is a reasonable request not to do so. Medical information about workers should be shared within staff teams on a need to know basis, and only with the individual's consent.

A youth worker's home address and/or telephone number should not be passed to other relevant individuals or organizations and if at all, only with the individual's express consent.

Personal information about staff members should not be given to young people without the individual's permission.

Any information about staff member should be kept secure, and in accordance with the Data Protection Acts 1984 and 1998.

Disclosure of information by young people

Confidences made to a youth worker

Young People have a right to expect that their confidence will be respected and youth workers have an obligation to maintain and respect that right. However, this right is not encased in law. Circumstances could arise whereby a youth worker is obliged to break that confidence. Reference has already been made to exceptional circumstances but also circumstances may arise from police enquiries (Ref: Police and Criminal Evidence Act 1984 – PACE) and/or requests/demands from parents, which result in the disclosure of information. Therefore it is important the boundaries of the confidential disclosure be agreed with the young person as early as is possible.

It is also advisable that if the young person needs or asks for counselling or advice relating to a medical matter e.g. contraception/pregnancy/drugs that the youth worker persuade the young person to approach an appropriate medical or counselling advice service. The role of the youth worker would then become one of an accompanying support.

It should be noted that even if a young person is deemed competent to consent to counselling without the parents being informed or providing their consent, there may still be need to be parental consent if the young person attends counselling off the club/project premises during club/project hours.

A youth worker should assume that any information disclosed by a young person is confidential, unless specifically stated that this is not the case.

Where a youth worker is in doubt about an appropriate course of action resulting from a young person's disclosure, advice should be sought from line management.

Disclosure of information to others

A youth worker should recognise that a young person has chosen to confide in them as a particular individual, and not as a representative of the County Youth Service. With this in mind, the youth worker should seek to secure the permission of the young person if they wish to pass on or discuss the information with any other person including:

line management

other staff members or the staff team as a whole
parents/guardians
members of management or advisory committees
other agencies
another young person.

Wherever possible, a young person's wishes should be respected. However the greater good of the young person is of the highest priority. If a youth worker feels they need to discuss an issue, they may do so providing they do not disclose any identifying information about individual young people.

Disclosure of information between youth workers

Right to confidentiality

The right to confidentiality amongst youth workers has to be balanced against the constraints that this can put on the sharing of information. It must also balance the responsibilities of the informer and the listener in determining the confidential nature or otherwise of the information disclosed.

A youth worker has the right to expect any information given in confidence to another worker to be treated as such. A youth worker has a duty to respect any confidential disclosure made to them.

In any circumstance it should be assumed that personal information disclosed is confidential, unless specifically agreed, or the setting demands otherwise (Supervision, Review and Development etc.).

Youth work staff should make every effort to secure the consent of the other party before disclosing confidences; consent should not be assumed. Simply asking to have a private word implies a desire for confidentiality.

Breaching confidentiality

Youth workers have the right to confidentiality where it has been agreed between the two parties, except where there are overriding concerns and responsibilities for another individual, the organisation or in relation to the law.

If a worker is given a confidence by another that leads to 'overriding concerns and responsibilities for another individual or the organisation' then they have a duty to breach that confidentiality to whatever person/outside agency is deemed appropriate.

The right not to know

Youth work staff need to recognise their own limits when it comes to keeping confidences. It should not be felt that is a strict requirement of the job to accept any and every confidence offered.

Youth work staff may feel insufficiently skilled or experienced, worried that their own beliefs or experiences may interfere with their ability to keep a confidence; or unable to give the commitment to a young person that the disclosure may require.

Youth work staff should try to decide their limits in advance of a confidence being made, in order to avoid putting themselves in a difficult position, breaking the trust of the young person or letting them down. It is important that staff seek to inform the young person of these limits before the disclosure takes place.

Disclosure to young people

Although it can be valuable when working with young people for staff to share some of their own life experiences, it is unreasonable and unfair to expect a young person to keep a confidence. If a youth worker is not happy for everyone to know, information should not be disclosed. Unless it can be clearly demonstrated (and linked to educational outcomes) that disclosure of personal information by a worker to a young person is in the young person's best interest, disclosure should not take place.

When is information confidential?

Youth workers cannot treat every item of information they receive as confidential; it would be a restrictive way to work. A certain amount of discretion must be exercised. However; if a young person makes any attempt to restrict the environment or the audience of the disclosure, it should be assumed that information given is confidential. For example, if a young person asks to talk in private, moves away from others before talking, talks in a whisper or watches the whereabouts of others, there is an implied desire and need for confidentiality.

Remember, a confidence may appear trivial, but it does not mean it should be treated with any less discretion. It is not for the youth works staff to judge what is personal information.

Informing parents

It is important to support a young person in deciding to confide in a parent or guardian. However where a young person makes the decision not to confide in a parent or guardian, the young persons views and reactions, a summary of the professional assessment of the situation and decisions reached as a consequence should be recorded and securely filed.

Parents may seek disclosure of confidential records or information relating to a young person. The parent should not be given access to the records of a young person, who was competent at the time the record was made, without the young persons agreement. Even where the young person was incompetent at the time that the record was compiled the parent does not have an automatic right of access to records: the professional may still owe a duty of confidentiality to the young person not to disclose without the young person's consent.

Particular care should be taken when a youth worker personally knows the parent of a young person. Young people still have the right to expect that anything that they say or do within the club would not be passed on. A youth worker's first responsibility is to young people, not their parents.

Where a worker is in doubt as to the appropriate response to a parent's request for information, advice should be sought from line management.

Keeping things confidential

Youth work staff should be careful when talking about those with whom they work. A change of environment, for example to a social gathering or training event, does not remove their responsibility to respect the confidences given.

A young persons right to confidentiality form other agencies

Under the Data Protection Act a young person has the right to access their education files, their Social Services file, their health records and other computerised records. These rights are subject to certain restrictions. If a young person is under the age of 16 the record holder must be satisfied that the young person understands the nature of the request. Certain information can be restricted, if it is felt would result in serious harm to the young person, or if the information was given by a third party who withholds their consent to disclosure. For further information the relevant agency should be contacted.

A young person has the right to confidential medical advice and in some cases treatment, including contraception advice and prescriptions. Again, certain restrictions apply to those under 16. Further information can be found in the SCYS Sexual Health Policy.

Reference and further reading

Hamilton, C. (1998): Working with young people; legal responsibility and liability. Children's Legal Centre, Colchester.

Gloucester Youth and Community Service: Confidentiality Policy for those working with young people. Gloucester.

The Children's Legal Centre: Offering children confidentiality: Law and guidance.