

## ***GUIDELINES FOR INFORMATION SHARING***

### ***MODEL FOR THE COORDINATION OF SERVICES TO CHILDREN AND YOUTH***

#### ***INTRODUCTION***

The Departments of Education, Health, Human Resources and Employment and Justice have entered into inter-ministerial protocols which are intended to facilitate the implementation of the ***Model for the Co-ordination of Services to Children and Youth***. The protocols require the development of a common consent form for the release and sharing of information and the implementation of a uniform policy regarding the sharing of information relevant to the support services planning process. In accordance with this direction, the four partner Departments have agreed to the terms of the ***Information Sharing Protocol***.

The ***Protocol*** will apply to all employees of the Departments of Education, Justice, Health and Human Resources and Employment and all individuals providing professional services under contract to any of these Departments during the individual support services planning process. The ***Protocol*** will also bind all boards and agencies established by, and subject to the jurisdiction of, any of the four partner Departments.

In order to assist parties in the interpretation and application of the ***Information Sharing Protocol Guidelines*** have been developed to provide direction to professionals and others with respect to the sharing of personal information in relation to the individual support services planning process.

The ***Protocol*** and accompanying ***Guidelines*** apply only to information sharing in the individual support services planning context. Normal departmental policies and procedures in relation to consent and information sharing in all other situations will continue to apply.

The ***Protocol*** and ***Guidelines*** represent an effort to balance individual right to privacy , the interests of service providers and the needs of the child-youth through a number of provisions, the essential elements of which are the following measures:

- **Information:** The information which may be shared among service providers is personal information related to the categories of need identified in the Profile. Records will not normally be circulated; rather, service providers will be asked to prepare a synopsis of relevant information. This measure should ensure confidentiality, integrity of records and minimal intrusion into the private lives of clients. While there is a presumption in favor of information sharing among

all parties involved in the individual support services planning process, the manager of an individual support services planning team will retain the discretion to withhold information from a child/parent when the sharing of such information would be detrimental to the child/family relationship.

- **Requirement of Consent:** As a general principle, personal information will be shared only with the voluntary and informed consent of designated individuals (or their surrogates in the event of incapacity). The requirement of consent is subject to three qualifications:
  - first some information related to Crown/police files can never be shared, even with consent
  - secondly, consistent with the provisions of the *Young Offenders Act*, certain information may be shared even without consent
  - thirdly, the Manager of an Individual Support Services Team will retain the discretion to share information without consent when such information sharing is necessary to preserve the life, health or safety of the child or other person(s).
- It is the responsibility of the service provider making the initial referral to the support services planning team to obtain consent. This service provider must explain to the consenting party the purpose for which the information will be shared, parties who will have access to the information, how the information will be kept confidential and the fact that consent may be withheld. The service provider must also assess capacity to consent and if satisfied that the individual lacks capacity must obtain substituted consent or, with the consent of an immediate supervisor, dispense with consent.
- **Forms:** A common consent form has been developed which must be completed before the first meeting of the individual support services planning team. The Form will identify the types of information which may be shared and the individuals/agencies/departments entitled to have access to the information. It is the responsibility of the service provider making the initial referral to the support services planning team to obtain consent. This service provider must explain to the consenting party the purpose for which the information will be shared. Parties who will have access to the information. How the information will be kept confidential and the fact that consent may be withheld. The signed consent form will be kept on file on the originating agency and copies circulated to all members of the team.

## ***PROCEDURES***

### ***When consent must be obtained***

1. The Information Sharing Protocol is triggered by the referral of a child/youth with special needs to the individual support services planning process. It is the responsibility of the service provider who makes the initial referral to the individual support services planning process to obtain the necessary consent(s). The service provider must be prepared to explain all elements of the consent form, the operation of the individual support services planning process and the purpose of information sharing to the client.

### ***Who must give consent?***

2. Consent must be given by:
  - the parent/guardian of a minor child under the age of 19;
  - a youth 19 years of age or older who is the subject of the support services planning process; or
  - a child over the age of 16 but under the age of 19 who has withdrawn from parental care; or
  - in the case of a permanent ward, the Director of Child Welfare
3. Parent means the biological or adoptive parent of the child and his/her legal guardian but does not include a foster parent. If parents are divorced or separated, the only consent required is that of the parent with legal custody. If legal custody has not been determined or if the parents have a joint or shared custody arrangement, the consent of the parent with physical custody for more than 50 per cent of the year is required.
4. The consent to information sharing is in the specified Form.
5. All consent documentation will be kept on file with the originating Department and copies given to all members of the individual support services planning team.
6. Consent may be revoked at any time by the consent giver.

### ***Consent must be informed***

7. Consent must be informed. That is, the service provider must explain the following matters to the person whose consent is required and that person must understand the following matters.
  - the length of time the consent is in force
  - the information which will be shared
  - the use of the information in the planning process
  - that the information will be kept confidential
  - the parties who will have access to the information
  - the conditions under which the information will be shared
  - the ability of the individual to withhold consent
  - the circumstances under which information will be shared without consent
  - how consent can be withdrawn
8. Every effort must be made to ensure that the party in question understands the impact of giving consent and is truly informed.

### ***Consent must be voluntary***

9. Consent must be freely given. Meaningful consent cannot be given by a person who has been determined by a court order to be legally incompetent. Meaningful consent cannot be given by a person who is completely incapable of understanding the nature and consequences of the consent due to developmental delay, or other medical or physical cause. Meaningful consent cannot be given by a person whose judgment is impaired by drugs or alcohol or similar substance. If the disability is a permanent or persistent one which prevents the party in question from completely understanding the effect of the consent, substituted consent may be obtained.

***Rules on Substitute Consent***

10. It is the responsibility of the service provider to determine whether the disability in question prevents the person whose consent is required from fully understanding the nature and consequences of giving consent. If the service provider is satisfied that the person whose consent is required cannot demonstrate such appreciation, then consent may be substituted in accordance with the following rules and diagrammatic scheme:

- If the person has been deemed legally incompetent, the consent of a guardian, trustee or next of kin can be given.
- If the consent required is that of a parent, the consent of the other parent, spouse, next of kin, or any other person exercising care or supervision over the parent can be given. In such cases, the consent of the child should also be obtained if the service provider is satisfied that the child is sufficiently mature to understand the nature and consequences of the consent. However, while the consent of the child is desirable it is not necessary.
- If the consent required is that of a youth over the age of 19, the consent of the parent, guardian, next of kin or any other person with the care and/or supervision of the youth may be substituted. If the youth over the age of 19 demonstrates some limited understanding, then his/her consent is desirable but not necessary

<b><i>Table of Substituted consent Givers</i></b>		
<b><i>Required Consent Giver</i></b>	<b><i>Substituted Consent Giver</i></b>	<b><i>Optional Consent Giver Consent desirable but not necessary</i></b>
Parent	1. Other parent, next of kin, guardian, any other person exercising care of control over the parent 2. Child of sufficient degree of maturity to understand the process if there is no other consent giver available	11. Child who demonstrates sufficient degree of understanding and maturity 11. The parent in question of that person demonstrates a limited understanding of the process.
Youth over the age of 19	Parent, next of kin, guardian or any other person exercising care/supervision over the youth	Youth over the age of 19 who cannot provide valid consent but who demonstrates some understanding of the process

### ***Waiver of Consent***

11. If there is no party available to give substituted consent, then consent may be waived if, in the assessment of the service provider, information sharing is in the best interests of the child/youth.

### ***Procedures for Substitution or Waiver of Consent***

12. In any case in which the service provider seeks substituted consent or a waiver of consent, the required Form must be completed and forwarded to the immediate supervisor or superior. The party whose consent is to be waived or dispensed with must be given an explanation of the reasons and allowed to challenge the decision of the service provider. The supervisor/superior must approve in writing the decision to substitute or waive consent.
13. Information may not be shared without consent or an approved waiver of consent. If a legally competent person refuses to consent, then the requirement of consent will be dispensed with and information will be shared only to protect the life, health or safety of the child or others.

### ***Information which may be shared***

14. In an effort to preserve personal privacy, records will not normally be shared unless consent has been given to the release of complete records. If such consent has been given, photocopies clearly stamped as such may be circulated to Team members and are to be collected and destroyed at the conclusion of the planning process.
15. Team members will be provided with a written synopsis of information which has been approved for release in the consent form. The synopsis shall contain relevant information in relation to the child's/youth's strengths and needs, recommended service areas and any other pertinent information. The relevancy of information is to be determined by the categories of needs identified in the ***Profile*** instrument.
16. All information which is produced by or for, or shared among, members of individual support services planning teams shall be treated as confidential and shall only be shared with other persons on a 'need to know' basis to the extent necessary to give effect to the Support Services Plan.

17 The following information is exempt from the operation of the *Protocol* and the *Guidelines* and cannot be shared even with consent:

- information held by the Crown which is not a matter of public record
- police information which is protected or classified, or which would identify human sources
- information contained in financial or administrative files
- information related to an allegation of or ongoing investigation into child abuse
- any other information deemed secret by the operation of law

18 In the discretion of the Individual Support Services Manager, information which may adversely affect the child or the child/parent relationship may be withheld from the parent/child.

19 Information which is subject to the provisions of the *Young Offenders Act* is subject to certain special rules. These rules which are explained more fully in the Protocol allow information sharing by the Provincial Director, Youth Worker, Peace Officer (and in some cases by any other person engaged in the supervision of the young person) without consent under the following conditions:

- to obtain information necessary to prepare a Report required by the Young Offenders Act
- to ensure compliance with a court order or authorization for temporary release
- to ensure the safety of staff students or other persons

20 Personnel subject to the operation of the *Protocol* and these *Guidelines* are advised to refer to the *Protocol* for fuller description of these rules.