



MANUAL: Operational

POLICY: **CONFIDENTIALITY**

GOVERNING BODY: *CCA MAN ORG-HR-2*

*Legislative Reference R.R.O. 1990, Reg. 70 Section 73(1)*

APPROVED BY: Executive Director

EFFECTIVE DATE: 2010

DATE OF REVIEW AND/OR UPDATE: October 2013, February 2018

#### POLICY

All information regarding or pertaining to clients of Sancta Maria House is strictly confidential. Each individual has a legal right to privacy and confidentiality. In providing services to distressed youth and families, the agency is privy to sensitive information. The personal health/client information Sancta Maria House holds is sensitive and valuable to the youth and families we serve. The agency is obliged by ethical codes and by law to treat it carefully.

Sancta Maria House is considered a health information custodian under the *Personal Health Information Protection Act, 2004* ("PHIPA") as we collect information that relates to the physical or mental health of the client including his/her family history.

Sancta Maria House also complies with all the requirements of the *Youth Criminal Justice Act* and the *Child and Family Services Act* with respect to privacy.

Clinical information gathered by the agency is done with the understanding that such information is confidential and to be used in the best interest of the youth. At the same time, it is recognized that aggregate data regarding clients can serve the agency's and community's commitments to analysis, planning, management, research and accountability.

There must be appropriate measures for maintaining the security of all stored client information within the agency. Furthermore, client records will contain only that information which is necessary for the provision of service. Sancta Maria House has appointed the Executive Director as the **privacy officer** to ensure compliance with legislation.

Clients will have access to all records, written by Sancta Maria House staff, which pertains to them and which are not deemed harmful to them or any other person. Refer to *Client Access to Records Policy*.

All staff will be informed of the agency's policies regarding confidentiality and are trained in procedures for implementation.

## PROCEDURES

### **Informing Clients about their Privacy Rights**

- Clients will be informed prior to admission, at intake interview, of the nature and forms of information use and storage, and of their rights regarding this information. Clients also sign a *Consent to Service* form at admission which further outlines their rights to privacy. A summary of the agency policy will be included in the Residents Manual.
- The client's confidentiality policy is posted in the residence and on our website.
- If clients have specific privacy questions that employees or others involved in their service cannot answer, clients should be referred to the Executive Director.
- In the event that observation of clients or audio/visual taping for educational purposes is recommended, it will be done with client consent only. Written consent must be obtained if a tape is to be used for purposes beyond the clients own viewing.

### **Collection of Personal Health Information**

Sancta Maria House collects personal health information for purposes related to:

- Providing client care, services and continuity of service
- Monitoring of program compliance and effectiveness
- Quality assurance initiatives
- Coordination of services (health, education, youth justice)
- Administration and management of programs
- Research
- Teaching
- Statistical reporting
- Reporting requirements for clients
- Meeting legal obligations and as otherwise permitted or required by law.

When case material is to be utilized for purposes of research, public relations, or public education, concealment of client identification is mandatory, unless specific informed consent is obtained.

The amount and type of personal health/client information collected is limited to that which is necessary to fulfill the purposes identified. Information is collected directly from the client, unless the law permits or requires collection from third parties. At time of discharge all unnecessary information is to be returned to the graduate.

Personal health/client information may only be collected within the limits of each employee's or others involved role. Employees or others involved in service should not initiate their own projects to collect new personal health information from any source without being authorized as part of their job description or specifically by their supervisor.

Personal health/client information is not used for purposes for other than those for which it was collected, except with consent or as permitted or required by law. Personal health/client information may only be used within the limits of each individual's role. Employees or others involved in service may not read, look at, receive or otherwise use personal health/client information unless they have a legitimate "need to know" as part of their position. If an employee or other involved in service is in doubt whether an activity to use personal health/client information is part of their position, they should ask their supervisor.

Formal consultations between employees and others involved in service are done as part of treatment planning. Informal peer consultation should be done in a non-identifying manner and care must be taken not to inadvertently include other identifying information.

### **Disclosure**

Personal health/client information is not disclosed for purposes other than those for which it was collected, except with the consent or as permitted or required by law.

Personal health/client information may only be disclosed within the limits of each employee's service role. Employees may not share, talk about, send to or otherwise disclose personal health/client information to anyone else unless that activity is an authorized part of their position.

In general, employees are not to use identifiable information in education sessions, writing or public presentations.

### **Client Consent**

Sancta Maria House requires express consent for the client or an authorized person. Clients are required to sign an *Authorization for the Disclosure, Transmittal or Examination of Confidential Information* form for all parties that Sancta Maria House shares information with during the course of service.

### **Consent by Authorized Persons:**

Who may Consent on Behalf of a Client

When consent is required under this policy, the following people may give consent as "authorized persons":

- 1. The client, if the client is capable**

**NOTE: For capable clients under the age of 16:**

If a client is capable and also under the age of 16, the client may consent AND the client's parent or person who has lawful custody may also consent. BUT the parent or person with lawful custody may not consent if the information to be disclosed relates to "treatment" (as defined under the Health Care Consent Act, 1996) about which the client has made his/her own decision or "counseling" (as defined under the Child and Family Services Act) about which the client who is over the age of 12 participated on his or her own. (That means if a client consented to the treatment or counseling on his/her

own – a parent or legal guardian cannot consent to the release of that information on behalf of the client). **If there is a disagreement between a capable client and the parent or legal guardian about the release of information, the capable client's wishes prevail.**

**2. A substitute decision-maker, if the client is incapable.**

Please refer to section 26 of PHIPA which lists the hierarchy of individuals/agencies that can act as substitute decision-makers:

- The individual's guardian of the person or guardian of property, if the consent relates to the guardian's authority to make a decision on behalf of the individual.
- The individual's attorney for personal care or attorney for property, if the consent relates to the attorney's authority to make a decision on behalf of the individual.
- The individual's representative appointed by the Consent and Capacity Board, if the representative has authority to give the consent.
- A child or parent of the individual, or a children's aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent  
**NOTE:** This paragraph does not include a parent who has only a right of access to the individual. If a children's aid society or other person is lawfully entitled to consent in the place of the parent, this paragraph does not include the parent.
- A parent of the individual with only a right of access to the individual.
- A brother or sister of the individual.
- Any other relative of the individual.
- The estate trustee or person who has assumed responsibility for the deceased person's estate if documented in writing, in the case of a deceased client.

**Assessment of Capacity**

Sancta Maria House may determine a client is incapable upon assessment. In such circumstances a substitute decision-maker will provide consent. The assessment will be documented with the client file and discussed with the client and the substitute decision-maker. This assessment applies only to the services provided at Sancta Maria House. The assessment is revisited throughout service.

**Withholding or Withdrawal of Consent**

Clients may choose not to give consent ("withholding consent"). If consent is given, a client may withdraw consent at any time, but cannot be retrospective. The withdrawal may also be subject to legal restrictions and reasonable notice.

In situations when a client withdraws consent, the direction will be documented on the electronic client information system and the original release of information will have a line diagonally drawn across it. The employee will document on the form that the client has withdrawn consent, the date consent was withdrawn and the notation will be signed and dated by the client and the employee. Withdrawal of consent should also be documented and highlighted in the communication log.

In situations where a client's withdrawal of consent interferes with treatment planning and implementation, the youth may need to be discharged if consent is required in order to meet their treatment needs.

### **Safeguards for Personal Health Information**

Sancta Maria House has put in place safeguards for the personal health information collected, which include:

- Physical safeguards (such as locked filing cabinets and rooms);
- Organizational safeguards (such as permitting access to personal health/client information by employees and others involved in service on a "need-to-know" basis only); and
- Technological safeguards (such as the use of passwords, encryption, and audits).

Identifiable information may only be removed from the premises with permission of the Executive Director or designate. This practice is granted only when absolutely necessary.

Records must be kept for twenty years after the last entry, or for five years after the death of a client.

Sancta Maria House takes steps to ensure that the personal health/client information is protected against theft, loss and unauthorized use or disclosure. Sancta Maria House requires anyone who collects, uses or discloses personal health/client information on the agencies behalf is to be aware of the importance of maintaining the confidentiality of personal health/client information. This is done through the signing of confidentiality agreements, privacy training, and contractual means.

### **Clients Have a Right to Access Their Personal Health Information**

Clients may make requests to have access to their records of personal health information. For details see *Client Access to Records* policy.

### **Youth Criminal Justice Act Publication Bans**

Subject to some exceptions, the Youth Criminal Justice Act limits the publication of identifying information about youth who are accused or found guilty of a crime or their involvement in the criminal justice system. That means Sancta Maria House cannot release such information to the public even with consent. Sancta Maria House can only share this information if court ordered to do so. The appropriate response if approached with requests for such information is: "I am sorry. I am not allowed to confirm or deny that kind of information. Please speak with our Executive Director."

Youth Justice clients may not appear in media stories or public documents (such as annual reports) or online (such as our website) where their face, likeness (such as a drawing), voice, story, physical attributes or markings (like tattoos or piercings) renders them identifiable.

**Privacy Breach**

Any breaches, or suspected breaches, of confidentiality are documented in an Internal Incident Report. Serious breaches of confidentiality, including lost or stolen records, are a Serious Occurrence.

Employees are to report any breach, or suspected breach, of confidentiality to the Executive Director or designate immediately.

A client, or other person named in the client record, who believes that information may have been disclosed without consent may file a complaint with the agency and request a review of the matter by the Children's Service Review Board within twenty days of becoming aware of the possible unauthorized disclosure.

Sancta Maria House will respond to all complaints or inquiries about policies and practices relating to the handling of personal health/client information.

The Information and Privacy Commissioner of Ontario oversees our compliance with privacy rules and PHIPA. Any individual can make an inquiry or complaint directly to the Information and Privacy Commissioner of Ontario by writing to or calling:

2 Bloor Street East, Suite 1400  
Toronto, Ontario  
M4W 1A8 Canada  
Phone: 1 (800) 387-0073 (or 416-326-3333 in Toronto)  
Fax: 416-325-9195  
[www.ipc.on.ca](http://www.ipc.on.ca)

**Consequences for Breach of Privacy**

Failure by employees or others involved in service to adhere to this policy or other related policies above may result in disciplinary measures, up to and including termination of employment or contract.

Sancta Maria House is obliged to notify any affected client(s) of a privacy breach and their rights and will do so in accordance with the requirements of PHIPA.