

The legal grounds for sharing information

The following notes can be used as a guide in situations where it may be necessary or desirable to share information with other agencies. Information about adults, children and young people at risk should only be shared between agencies:

- where relevant and necessary, not simply all the information held;
- with the relevant people who need all or some of the information; and
- when there is a specific need for the information to be shared at that time.

This decision-making should be done in consultation with others or with the Information Commissioner's Office helpline: 08456 30 60 60 or 01625 54 57 45.

1. Safety

Consider risk factors – how great is the risk?

- Children – careful consideration should be given to disclosure even about low risks to children
- For an adult, a relatively high risk is necessary before considering over-riding the duty of confidentiality.

2. Consent

With consent, it will always be best practice to try to obtain consent to disclose information and keep the survivor informed of what is disclosed, to whom and for what reason.

Without consent, it will be necessary to make a professional judgement balancing the considerations.

3. Balancing considerations

Do you have the legal authority to disclose?

See list of legal authorities overleaf.

Balancing against

- Duty of confidentiality
- Respective risks to those affected
- Proportionality
- Pressing need
- Need of other agencies to know
- Outcome required

4. Make decision

If a decision is made *not* to disclose

- Record decision, going through the accompanying checklist
- Consider ways to reduce risk to survivor and/or any children, young person or vulnerable adult either in the household or connected to the family
- Consider ways to help the survivor access help from other agencies themselves

If a decision is made to disclose

- Record the decision, going through the accompanying checklist
- Make decisions/enquiries about the amount of information to disclose, how and to whom
- Discuss what will be disclosed and why you are doing so with survivor, if safe and appropriate
- Note when/whether the client was informed and reasons why if not informed (for example increased risk)
- Disclose

5. Finally

- Note a time to review the situation again
- Review professional's safety and the repercussions for the organisation

The legal grounds when considering sharing information without consent

Protection against disclosure

Legal issues	Source
Protection of personal data	Data Protection Act 1998
Duty of confidentiality	Common law
Right to private and family life	Human Rights Act, Article 8

Main lawful grounds for sharing without consent

Purpose	Legal authority
Prevention and detection of crime	Crime and Disorder Act 1998
Prevention and detection of crime and/or the apprehension or prosecution of offenders	Section 29, Data Protection Act (DPA)
To protect vital interests of the data subject; serious harm or matter of life or death	Schedule 2 & 3, DPA
For the administration of justice (usually bringing perpetrators to justice)	Schedule 2 & 3, DPA
For the exercise of functions conferred on any person by or under any enactment (police/social services)	Schedule 2 & 3, DPA
In accordance with a court order	
Overriding public interest	Common law
Child protection – disclosure to social services or the police for the exercise of functions under the Children Act, where the public interest in safeguarding the child's welfare overrides the need to keep the information confidential	Schedules 2 & 3, DPA
Right to life Right to be free from torture or inhuman or degrading treatment	Human Rights Act, Articles 2 & 3
Prevention of Abuse and Neglect	The Care Act 2014
Person lacks the mental capacity to make the decision regarding consent	Mental Capacity Act 2005

Balancing principles

Proportionate response <ul style="list-style-type: none"> • Respective risks to those affected • Pressing need • Need to know of other agencies 	See 'Striking the Balance': Practical Guidance on the application of Caldicott Guardian Principles to Domestic Violence and Maracs (Multi Agency Risk Assessment Conferences) (Department of Health, 2012)
Public interest in disclosure	

Sharing information without consent – a checklist

Decisions on sharing information must be justifiable and proportionate, based on the potential or actual harm to adults or children at risk and the rationale for decision-making should always be recorded. To assist with your decisions use the [Information Commissioner's Office data sharing checklist](#).

Decisions should be **defensible** and not **defensive** decisions; confidentiality must not be confused with secrecy.

1. Record that a decision has been made to share/disclose information without consent.
2. What are the protocols/guidance referred to and which agencies or colleagues have been consulted about this decision? Set these out clearly in recording – for example, Home Office guidance, the Information Commissioner's Office helpline, own protocols?
3. What is the legal basis for sharing without consent in this case? Record it clearly. It will usually be for the Crime and Disorder Act (prevention or detection of crime) or under the Data Protection Act, or the Children Act
4. Be clear exactly what details of the information is to be shared and with whom. Set this out in your records.
5. Think through the balancing exercise undertaken; that consideration of the interest of the other agency/person in receiving the information has been given and the degree of risk posed to any person by disclosure/nondisclosure. Consider the duty of confidentiality, human rights and the public interest. Record this. Record whether the sharing is proportionate, that there is a pressing need and summarise why.
6. What is the amount of information to be disclosed and the number of people/agencies disclosed to? Is this no more than strictly necessary to meet the need for disclosure? Record why this is the case.
7. Set out whether and when the survivor/person affected has been informed that the information will be disclosed and to whom, whether reasons have been given and whether details of next steps explained. Has this been done in advance of the information been disclosed? If the survivor/person affected has not been informed set out reasons why.
8. The Care Act 2014 puts a legal responsibility on Local authorities to make enquiries, or ensure others do so, if it reasonably suspects an adult who has care and support needs and is, or is at risk of, being abused or neglected and unable to protect themselves against the abuse or neglect or risk of it because of those needs. An enquiry is the action taken or instigated by the local authority in response to a concern that abuse or neglect may be taking place.
9. If in doubt, **always** seek specialist advice and **always** consult with your supervisor or line manager.

Further advice on information sharing

[Confidentiality and Information Sharing for Direct Care](#) (Department of Health)

[Making effective use of data and information to improve safety and quality in adult safeguarding](#) (Association of Directors of Adult Social Services and the Local Government Association, 2013)

[What if a person does not want you to share their information? - Adult safeguarding: sharing information](#) (Social Care Institute for Excellence)

[Information: To share or not to share? - The Information Governance Review](#) (Department of Health, 2013)