

Confidentiality Policy

Policy version: 1.0

Acceptance Certificate:

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Authorised by: SWOP Committee | Document Owner: Chief Executive Officer | Original Issue: 17/11/16 | Current Version: 17/11/16
| Review Date: 17/11/18 | www.swop.org.au

Last printed on: 11 November 2016

Table of Contents

1. Background.....	3
2. Policy statement.....	3
3. Confidentiality at SWOP	3
3.1. Information pertaining to HIV	4
2.1 Duty of Care Limitations to Confidentiality	5
2.2 Reporting of children and young people at risk	6
4. Miscellaneous.....	6
5. Review of this Policy & Procedure.....	6
6. Related Documents	6
7. Policy History	6
Appendix A: Questions to Ask About Confidentiality	8

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1. Background

Confidentiality is the protection of personal information. It means keeping a person's information between you (or SWOP) and them, and not telling others including your partner, friends, family etc. Our service users need to know that they can trust us not to share their personal and/or sensitive information without their consent.

The principle of confidentiality is well known to most health care, welfare, youth workers and counsellors. However, it is especially important at SWOP due to the stigmatised nature of sex work, where even being seen to be associated with SWOP may have negative impacts on our service users' lives. On top of this, other information about our service users' lives may expose them to stigma or discrimination, such as their gender, sexuality, alcohol or other drug use, visa status or disability.

Due to the importance of confidentiality, this matter is addressed via clauses in SWOP's employment contract, in various professional codes of ethics, and in agreement/s between SWOP staff and service users (e.g. the Confidentiality & Consent form for counselling clients). If you breach confidentiality, you may be subject to disciplinary proceedings by SWOP and/or a professional association. It is also possible that a service user may take legal action against you if they have suffered harm as a result of your breach of confidentiality.

2. Policy statement

This policy provides helpful information for staff on confidentiality at SWOP, and the limitations of confidentiality. It forms a part of SWOP's goal to provide high quality service provision while protecting the privacy and anonymity of individuals seeking our services. It should be read and implemented in conjunction with the Code of Conduct, the Privacy Policy, Service User Rights & Responsibilities and the Service User Database Policy. All these documents are available on the *Salesforce* database and in M:\SWOP Internal Policy and Procedure.

This policy applies to all SWOP employees, including part-time, full-time, casuals and contractors, and to all SWOP volunteers including members of the Executive Committee. In the remainder of this policy, these groups will be collectively referred to as 'staff'.

3. Confidentiality at SWOP

Given the nature of SWOP's work and the communities it serves, it is essential that all employees respect the confidentiality of all SWOP service users, employees/contractors and SWOP material and information.

Specifically, **staff must not reveal to any other person, any confidential information about:**

- a) the business of SWOP (such as SWOP's list of sex services premises)
- b) SWOP employees or volunteers
- c) SWOP service users

which comes to the knowledge of an employee during the course of their employment, and has not been authorised by SWOP for release into the public domain, or specifically authorised by the service user/staff member/volunteer to whom the information relates.

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Confidential information can be provided to other staff and volunteers only when it is relevant and necessary for the service user's care/support. This obligation:

- is subject to any legal obligation to disclose the information; and
- applies both while the employee is employed by SWOP and after the employee ceases to be employed by SWOP.

Breach of this provision may result in legal proceedings against the employee(s), past employee(s), volunteer(s), or past volunteer(s) concerned.

Staff must always be aware of service user confidentiality and anonymity while providing services, discretion and confidentiality are essential to SWOP's work. Some examples of how this could apply in practice are below:

- If a sex worker comes into the SWOP office to pick up a worker's pack and this expands into a longer conversation as they have a question or need further support, staff should move the service user into a private room to talk. This should be standard practice, but is even more important if there are other service users nearby.
- On outreach, staff should be conscious of discretion, especially when visiting sex services' premises that may not have development approval. This could involve parking the car in a discreet location, and ensuring that condoms/other supplies are not visible through the rear window.

Furthermore, staff must endeavour to maintain the confidentiality of other staff and service users' connection with the organisation – which has the potential to out them as a sex worker. For example:

- Mail should only be sent to service users with prior consent. SWOP should not be identified as the return addressee on envelopes and being careful to fold letters so the logo is not visible through the envelope.
- Staff should ask permission to call or text a service user before doing so, permission should also be sought before leaving voicemail messages.
- If staff see a service user outside of SWOP, they should not initiate contact or communicate recognition (e.g. by waving), but rather wait for the service user to do so. This is especially important if the service user is with other people. If contact is initiated, and they are with another person, staff should still be mindful of confidentiality, e.g. they may avoid using the service user's name (as this could be a pseudonym).
- Publishing photos of service users anywhere (including on social media) should only be done with their explicit consent – preferably through a signed model release form. Staff consent should also be sought before publishing photos in any format. For more information, see the Acceptable use of Email, Internet and Social Media policy.

3.1. Information pertaining to HIV

All SWOP employees should be aware that under Section 17(2) of the Public Health Act 1991 (NSW), where a person acquires information, in the course of providing a service, that another person:

- has been, or is required to be, or is to be tested for HIV; or
- is, or has been, infected with HIV,

a person must take all reasonable steps to prevent disclosure of this information. Particular care should be

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taken when communicating by email or post with or about service users in relation to their HIV status or SWOP HIV related activities e.g. avoid using the terms 'HIV', 'AIDS' or 'SWOP' in subject lines of emails.

Breach of this provision is an offence. As an offence SWOP will not indemnify an employee against breach of this provision. This means that if you disclose someone's HIV status, you may be held personally liable.

Further, a staff member must not disclose similar such information about any other SWOP staff member who:

- has been, or is required to be, or is to be tested for HIV; or
- is, or has been, infected with HIV.

Though a person's status as a sex worker is not covered by legislation in the same way, SWOP sees revealing this information without consent or legal obligation as a serious breach of confidentiality. This protection applies to both staff and service users. See the Discipline Policy for details on the procedure/s for dealing with breaches of confidentiality.

2.1 Duty of Care Limitations to Confidentiality

There are a number of circumstances which might lead to confidentiality being acceptably breached, and some of these are listed below. There are additional protections related to children and young people, and these are addressed in the following section. SWOP takes breach of confidentiality very seriously, and will only do so when required by law.

Examples which **override** confidentiality protections include:

- Where there is consent from the service user
- Under compulsion of law (e.g. if records are subpoenaed by a lawyer or court), but only after consultation with CEO
- Where the service user is a danger to themselves or others
- Where there may be an obligation to warn a third party who is in danger (e.g. where their safety appears to be threatened). It may also be appropriate to notify the police in these circumstances

Note that the duty exists between the organisation and the service user, not between the individual worker and the service user.

Any employee considering such a breach must discuss it with their line manager before taking any action.

Appendix A includes a list of questions to ask regarding confidentiality, which can aid line managers and other employees to make an informed decision around breach of confidentiality.

If, for example, a counsellor assesses that a service user presents as being at risk to themselves or to others, the counsellor has a professional responsibility to intervene by referring to the relevant Acute Mental Health team in the local area health service. In making this referral it might be necessary to disclose information that has been shared in confidence to assist the service user. It will be the counsellor's aim to try and attain consent from the service user to contact and share information with the Mental Health team. However, where this is not given, the counsellor still has a Duty of Care to the service user which requires breaching

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confidentiality.

2.2 Reporting of children and young people at risk

There are some exceptions regarding the reporting of service user information particularly in relation to child abuse. SWOP does not work with children or young people very often, however there are people in specific roles that may come in contact with people under the age of 18 (e.g. performing outreach at a youth organization). The [NSW Children and Young Persons \(Care and Protection\) Act 2012](#) covers the reporting of children and young people at risk. There is also more information available from the [Australian Institute of Family Studies](#). Due to the complexity of this area, and the fact that laws tend to change semi-regularly, SWOP staff that are working with young people and all line managers should complete training in this area. Advice on suitable courses may be requested from HR.

The reporting of children and young people at risk should only occur after receiving line manager approval.

4. Miscellaneous

Any questions relating to this policy should be addressed to your line manager

5. Review of this Policy & Procedure

This policy will be reviewed at least once every two years by the CEO.

6. Related Documents

- Code of Conduct
- Privacy Policy
- Service User Rights & Responsibilities
- Acceptable use of Email, Internet and Social Media
- Discipline Policy
- Service User Database Policy

7. Policy History

Date	Reason for Change	Change Description	Author	Issue No:
02/11/2016	Creation		Michelle Wood / Tori Powell / Jackie McMillan	0.1

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11/11/16	Editing	Incorporated addition of past employees and past/present volunteers to section 3.	Michelle Wood	0.2
17/11/16	Approved		Cameron Cox / SWOP Committee	1.0

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APPENDIX A: QUESTIONS TO ASK ABOUT CONFIDENTIALITY

Going through these questions, together with information about the service user's decision making ability, will help you and your line manager determine if you need to breach confidentiality.

- Do I have any reason to suspect that the service user will experience any harm or injury?
 - Why do I think this? Can I verify this?
- How great are the risks involved?
- Are the risks indisputable, or are they only risks from the perspective of my own personal values?
- Are there ways in which I can support the service user to learn from these risks and decide for themselves what action to take?
- Might other people be at risk?
- Do I owe a duty of care to any of these people?
- Whose rights am I protecting?
- Whose, and which, rights am I violating?
- Do I have a legal mandate to do this? E.g. under confidentiality, privacy and mental health legislation in your state/territory.
- Do I need to breach confidentiality to warn others of risks or to help minimise the risk of harm?
- Can I demonstrate that this breach of confidentiality is necessary and reasonable?

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