
CLIENT RECORDS & CONFIDENTIALITY

Access & Disclosure

What is a client record?

Client records consist of all documents, files and reports that relate to a client's contact with CHSS. This will include:

- Case notes;
- tape recordings;
- computer files and e-mail;
- photographs;
- financial details;
- and other written records.

Client records/files can take many forms besides those we consider as formal. For example, diary entries, a worker's recollection of contact with a client, comments and notes made about a client in the Residential communication/day book could all be classified as records.

Why have written records?

Written client records are required for both service and legal reasons. They are useful in:

- Assisting the worker in providing continuity in a case and to assist in decision making at later stages; and
- Providing an accurate record when details are needed at a later time, as often a worker's recollections may be unreliable; and
- Providing accountability between the worker and the client – accurate records can also offer some protection from negligence claims against the worker and against CHSS; and
- Assisting in the preparation of court reports, care planning and other official reports; and
- Providing for professional credibility if a worker is subpoenaed to court to give evidence; and

- Assisting to have accurate handovers to new workers.

Who owns client records?

Records are owned by the organisation or agency that created them. Even though records may be written about a client, they are legally owned by the organisation. With this ownership comes responsibility for the handling and treatment of the information. This means for instance, deciding who in CHSS has access to the records and how they are to be kept.

Who can have access to a client's record in CHSS?

The *Information Privacy Act 2000 (IPACT)* and its associated principles provide general and specific guidelines on this issue. CHSS' privacy policy specifies procedures on the handling of client information that require all employees, carers and volunteers to comply with. Attention should be paid to the way records are stored and which staff members need to access them in the day-to-day running of CHSS. CHSS' Privacy policy spells out clearly procedures for correcting/amending client records; recording of information and storage. This policy should be referred to in all instances where staff are unclear about what to do.

Can clients have access to their own records?

This is a very grey area in law. If, for example, CHSS was not linked via a service agreement to DHS – that is, it stood without a funding agreement – then it would not be covered by Victorian Privacy Legislation. However, Federal privacy legislation (*Privacy Amendment (Private Sector) Act 2000 s. 6 (c)*) would require compliance on a number of plains. But even in such a circumstance, there is a lack of clarity and direction.

Notwithstanding this confusion, CHSS does fall within the spectrum of Victorian legislation in some areas of operation. Rather than limit privacy to those specific areas, CHSS' privacy policy was applied broadly (with recommendations from Victorian Privacy Commissioner) to encompass a whole-of-organisation approach. Basically this means that we adopt a practice approach that enables clients to access their records upon request but with strict exceptions and processes in place.

1. Access is denied where it will impinge upon a third party's information.
2. Access only occurs where the program manager is involved. This means that the client must arrange an appointment with the program manager, and the program manager must be present throughout the access session.

3. Part of the Line Manager/Supervisor's role is to properly vet what information is sourced commensurate with the level of consent provided – that is, ensure that only information relating directly to the consenting party is accessible.
4. In cases where DHS involvement occurs with a client, the file belongs to DHS and as such, any requests made to access that file must be directed to the Privacy Officer at DHS (access must occur through Freedom of Information Act).
5. In instances where sharing file information is a concern, the respective worker must consider not only the welfare of the client but also how the decision will impact on the welfare of others. Such decisions will need to consider the harm (if any) that may result from sharing the information. Be clear, the term 'sharing' in this context does not relate to sharing with others – that is a separate consent issue. Where the worker is unsure, guidance should be sought from that worker's Manager/Supervisor, and reference to CHSS' Privacy policy shall be used to guide the decision(s) taken.

When might the law require me to discuss client records?

In certain specific circumstances you may be obliged to disclose information without obtaining consent from the client. Such circumstances are made clear in CHSS' privacy policy but it is worth highlighting a few of those here:

- If the police produce a search warrant requesting specifically named client information;
- If a client informs you of their intention to harm someone, and you believe this represents a danger to an individual or the community in general;
- If you are made aware of details of a serious crime and know these details to be accurate;
- If you or your records are subpoenaed to court;
- As required under mandatory reporting.

In any situation where client information may need to be shared, workers must endeavour to let clients know what has happened and involve clients in the decisions and process.

Can a government department have access to CHSS' client files?

In short, yes. DHS can access under specific legislation. Also, where clients are case contracted, it is arguable that the client file becomes the property of DHS. Also, Centrelink can request client information in order to determine the client's eligibility to receive benefits.¹ All requests should be made in writing with the relevant legislation specified. If staff have concerns about protecting clients' confidentiality, staff should – through Management approval – raise their concerns with the government agency (DHS, Police, Centrelink etc...) in writing before sharing any information.

Can client records be transferred to another organisation?

Yes, in certain circumstances. If a client requests this to happen and CHSS is in agreement, then this can occur. It is CHSS policy for written consent from the client to be obtained before any information is transferred.

Can a third-party (family or friends) have access to a client's records?

Yes, but ONLY with consent of the client. You must obtain a written authority signed by the client before this can occur. Otherwise, no right to access applies. Other mechanisms that allow for accountability and protection of third and subsequent party information are described clearly in CHSS' Privacy Policy. It is sufficient here to state that it is the responsibility of the line manager/supervisor to ensure only relevant information is accessible.

What if I am subpoenaed to court to give evidence or to produce documents that contain client information?

You must obey the subpoena or you could be held in contempt of court for failing to appear and give evidence. However, you can challenge a subpoena.

If there are confidentiality concerns, you can ask the court to excuse you from disclosing client information on this basis. However, this is extremely rare. Probably the only instances where client privilege is applied relates to lawyers, or to sexual assault counsellors who work directly with perpetrators or alleged perpetrators of sexual violence.

But, theoretically, you can question the relevance of the records to the legal case being considered as well as point out the detrimental impact on the client if personal information is revealed. The court will then decide how to deal with this request.

Generally, CHSS complies with subpoenas from defence and prosecution (both as representatives of the court).

¹ *Social Security (Administration) Act 1999*, s. 191, 198.

Recording and Storage:

What information should be recorded in a client file?

Documents relating to a client's personal information should be truthful, accurate, comprehensive and not misleading. The following guidelines may help in deciding what to include in client records.

- Generally, any information that is recorded should be complete, relevant and factual.
- The date, time and any individuals present at the time of contact should be included in the report/file note.
- File notes/records should be made as soon as possible following contact between the worker and the client.
- Only factual information should be recorded.
- Opinions should not be recorded as facts. Rather, they should be noted as such and justified for inclusion, particularly when the person making the notes/record is not an expert on the subject.
- Where possible, involve clients in the recording process. Clarifying the notes in a meeting is a sound way of doing this.

How should records/file notes be stored?

CHSS policy requires that files/records are stored in a secure area that can only be accessed by those workers who need to use them. Files must only be stored in the specific workers' filing cabinet (locked when not in use or worker is away from office space), or in the archive/compactor room allocated. Files are not to be removed from CHSS premises unless with explicit authority of the CEO and/or Line Manager. Even when this is allowed, files must be transported in a securely locked satchel or bag.

How long should records be stored for?

(in the context of client files only) CHSS policy stipulates that client files are to be stored for a period of 7 years since the last contact made with the client.

Disclaimer: This practice note is intended to give information about the topic. While every effort has been made to ensure its accuracy, the law is complex and constantly changing. Legal exactness is not always possible in a publication of this nature. This information should not be used as a substitute for legal advice. It is a CHSS policy related document and is educative in intent and nature.
