



Policy No: YCAC-063	Privacy, Confidentiality and Decision-making Policy
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ASES Standard	<p>Standard 2: Governance</p> <ul style="list-style-type: none"> Requirement 2.3: Data and Knowledge Management <p>Standard 6: Communication</p> <ul style="list-style-type: none"> Requirement 6.1 Communication Standard <p>Standard 8: Consumer Outcomes</p> <ul style="list-style-type: none"> Requirement 8.1: Consumer and Community Engagement Standard
Contractual Obligation(s)	NSW DCJ Specialist Homelessness Services Funding Agreement: Lead Entity and/or Joint Working Agreements
Related Policies	<p>Case Management</p> <p>Case Notes</p> <p>Communication</p> <p>Information Management</p> <p>Notifiable Data Breaches</p> <p>Professional Ethics and Code of Conduct</p> <p>Staff Induction Policy</p> <p>Complaints Management</p> <p>Records and Data Retention</p> <p>Staff Recruitment and Selection</p>

Applies to: This policy applies to the Management Committee, volunteers and all employees of Young Crisis Accommodation Centre including temporary, permanent and contract employees.	Version: 3
	Date Approved: 26/05/2023
	Review Date: May-25

1. Scope

This policy applies to all employees, volunteers, students and consultants who are engaged to work with clients directly and who have access to information pertaining to clients.

2. Purpose

This policy provides guidance regarding how the organisation collects, uses, discloses and otherwise manages personal information. It also provides guidance regarding legal obligations and ethical expectations in relation to privacy and confidentiality.

The aim of this policy is to:

- facilitate the provision of quality services for which information is collected, stored, used and disclosed in a manner that complies with both legislative requirements and ethical obligations.
- inform all staff and Management Committee members about their privacy and confidentiality responsibilities in relation to personal and organisational information about YCAC, its clients, staff, volunteers, students and stakeholders.

3. Policy

YCAC is committed to ensuring that information is used in an ethical and responsible manner and recognises the need to be consistent, careful and thorough in the way that information about clients, staff, Management Committee members, students and volunteers⁶ is recorded, stored and managed.

All individuals, including clients, stakeholders, staff, Management Committee members, volunteers and students have legislated rights to privacy of personal information. In circumstances where the right to privacy may be over-riden by other considerations (for example, child protection concerns), staff act in accordance with the relevant policy and/or legal framework.

All staff, Management Committee members, volunteers and students are to have an appropriate level of understanding about how to meet the organisation's legal and ethical obligations to ensure privacy and confidentiality.

In terms of information, YCAC:

- collects personal information in private environments, as private as possible, to protect the privacy and dignity of individuals
- collects and uses personal information only to fulfil its functions and purposes, or for another acceptable reason with the relevant person's consent (unless exceptions covered in Section 6 in the Procedures Section apply); acceptable purposes for collection and use include
 - for clients—service provision, referral, consultation, advocacy, reporting aggregate data for funding bodies, external audits and research
 - for staff, volunteers and students—recruitment, selection, employment, induction, payroll and tax, leave, supervision, development, performance management and review, and any other legitimate work-related purpose
 - for consultants and contractors—tendering, contract creation, monitoring and execution
- ensures that all persons about whom personal information is being obtained are informed why the information is being collected and how it is and will be used, stored and administered
- stores personal information securely, protecting it from unauthorised access

- provides clients and other stakeholders access to their own information and the right to seek its correction
- provides information to clients about their rights regarding privacy in ways that clients find accessible and understandable to them.

YCAC has a legal obligation to comply with the Privacy Act 1988 (Cwlth) and with the Australian Privacy Principles.

YCAC respects clients' rights to acknowledge or refuse their consent for the various purposes it seeks to collect personal information and share information. Clients who acknowledge their consent for any purpose also have the right to withdraw their consent at a later time.

YCAC documents clients' consent, which is preferably provided in writing. If clients give their verbal consent for any purpose, this must be recorded by the worker taking consent and then placed on file.

When a client refuses or withdraws his or her consent for any purpose that inhibits or prevents effective service provision, the implications of this should be explained and explored with the client—with the goal of overcoming any concerns that have led to the withholding of consent. The use of formal or informal advocacy may be helpful in such situations.

4. Definitions

Privacy provisions of the privacy Act 1988 govern the collection, protection and disclosure of personal information provided to YCAC by clients, Management Committee members, staff, volunteers, students and stakeholders.

Confidentiality applies to the relationship of confidence. Confidentiality ensures that information is accessible only to those authorised to have access, and is protected throughout its lifecycle. Confidential information may be marked as such or deemed confidential by its nature e.g. it is information that is not available in the public domain.

Consent means voluntary agreement to some act, practice or purpose. Consent has two elements: knowledge of the matter agreed to and voluntary agreement.

Individual means any person such as a client, staff member, Management Committee member, volunteer, student, contractor or a member of the public.

Organisational information includes publicly available, and some confidential information about organisations. Organisational information is not covered in the Privacy Act 1988 but some organisational information may be deemed confidential.

Personal information means information or an opinion (including information or an opinion forming part of a database) about an individual. It may contain information such as names, addresses, bank account details and health conditions. The use of personal information is guided by the Privacy Act 1988 and the Privacy Regulation 2013.

The **public domain** in relation to confidentiality is “common knowledge” i.e. information that can be accessed by the general public.

5. Procedure

The purpose of collecting information

YCAC collects personal information if it is reasonably necessary or if it directly relates to the client's circumstances in the context of service provision.

Privacy statement

After engaging with YCAC, all clients receive a privacy statement. This is provided to them by/through a physical copy or via electronic means if preferred. The privacy statement includes the following:

- the purpose of collecting information
- how the information will be used
- the type of information that is collected
- limits to the privacy of personal information
- how a client can access or amend his or her information
- how a client can make a complaint about the use of his or her personal information.

How information is collected

YCAC collects personal information through several different mechanisms, including:

- client information management system (CIMS)
- face-to-face meetings
- telephone and email communications
- case conferences.

Type of information collected

YCAC collects and holds personal information about a client when the information is relevant to providing services to the client. The type of information collected includes the following:

- client names, addresses and contact details
- intake, assessment and reassessment documentation
- client case management plans and plan revisions
- referrals to other agencies
- consent to collect and exchange information
- feedback and complaints from clients
- reports from other agencies
- case closure and service exit documentation.

YCAC will only use client information for the purpose of service promotion when the client has provided written consent.

Collection principles

The following principles guide data collection practice:

- YCAC will only collect information that is necessary for the performance and primary function of the organisation.
- YCAC will explain to clients the purpose of collection and how the information is used.
- YCAC will advise clients that any data collected are accessible to the individual.
- YCAC collects personal information from the clients themselves whenever possible.
- If the information was collected from a third party, YCAC will notify the clients and advise them the purpose of the collection.
- YCAC will ensure that the client has provided consent to the collection of sensitive information. Sensitive information includes information about mental health, religious beliefs and ethnicity.

Pre-collection tasks

Prior to entering information into the CIMS, it is important to complete the following:

- YCAC will provide new clients the SHS Charter of Rights and Responsibilities and ensure that the information in this document is explained to them. The Charter should be signed by YCAC staff, and clients should also be asked to sign.
- YCAC explains to each person the purpose of collecting data.
- YCAC ensures that the CIMS levels of consent are explained to all new clients, and that consent is obtained.
- When clients have difficulty reading or speaking English, YCAC takes the time to read the information to them and checks that they have understood the information. If there is doubt regarding whether the client has understood the information, the YCAC worker will arrange interpreter services prior to requesting the client's signature.

Consent and decision-making

A client's personal information should only be collected with his or her informed consent. When the client does not have the capacity to provide informed consent, personal information is collected through appropriately supported decision-making or substitute decision-making processes.

Informed consent

Informed consent refers to advising clients of several matters before obtaining their consent. These matters include:

- why the information is being collected
- what will happen to the information being collected
- clients' rights to be told about the support they will receive
- what the likely outcomes of the support might be
- the provision of information to and from other services with which the clients are involved, or to which clients are to be referred
- what the consequences are for the client (if any) if he or she does not provide the information.

Supported decision-making

If a person does not have the capacity to provide informed consent, and they have family, friends, advocates or other support people, then you should work with the person's informal network to assist them in a collaborative way. If needed, refer the person to an advocacy organisation. The NSW Government's publication, the Capacity Toolkit,¹ provides a framework that assists workers with the issues of capacity and consent in decision-making. The NSW Information and Privacy Commission has also developed the Privacy and People With Decision Making Disabilities Guide² to assist workers in this area.

Substitute decision-making

If the person has a formal guardian, with a current guardianship order, and if the order covers the areas of person's life that are in scope for service provision, then you should work with the guardian and the person to obtain necessary consent.

If you are still unsure if the person can provide informed consent, and they do not have support persons, advocates or guardians, then you should seek advice from the Guardianship Division of the NSW Civil and Administrative Tribunal.³

Personal information integrity

YCAC takes steps to ensure that the personal information collected, used and disclosed is accurate, current, complete and relevant.

YCAC takes reasonable steps to protect the personal information it holds. These include steps against loss, interference, unauthorised access, modification or disclosure and other misuse of information. All information is protected by the following mechanisms:

- locking filing cabinets and unattended storage areas
- physically securing areas in which the personal information is stored
- not storing personal information in public areas
- positioning computer terminals and fax machines so that they cannot be observed or accessed by unauthorised people or members of the public
- securely disposing, destroying or de-identifying information that is no longer required by the organisation.

The following technical safeguards are used to protect information:

- using passwords to restrict computer access, with regular changes to passwords required
- establishing different access levels so that not all staff can view all information
- using electronic audit trails
- installing virus protection and firewall software.

For more information, refer to the Professional Ethics and Code of Conduct Policy.

Access to personal information

Individuals have a right to access to personal information under the Privacy Act 1988 (Cwlth) and may request access to information held about them.

Situations in which access to information may be withheld include that:

- access may threaten the life or health of an individual.
- access may leave an unreasonable effect on the privacy of others.
- the request is clearly frivolous or vexatious, or that access to the information has been granted previously.
- the information is relevant to existing or to anticipated legal proceedings.
- denial of access is required, either by legislation or law enforcement agencies.

YCAC is required to respond to a request to access or amend information within one week of receiving a request from a client and 30 days of receiving any other request.

Amendments may be made to personal information to ensure it is accurate, relevant, up-to-date, complete and not misleading, taking into account the purpose for which the information is collected and used. If the request to amend information does not meet these criteria, YCAC may refuse the request.

If the requested changes to personal information are not made, the individual may make a statement about the requested changes which will be attached to their record.

The Manager is responsible for responding to queries and requests for access / amendment to personal information.

Authority to exchange information and information sharing Confidentiality and consent

Information pertaining either to an individual or to the organisation is generally considered confidential. YCAC ensures that a client signs an 'authority to exchange information form' (or similar document) prior to releasing information to other persons or organisations, such as through referral to another service. The client's consent is sought for different types of information exchanges separately. The 'authority to exchange information form' will list each specific type of information to be exchanged, without generalisations. A client has the right to provide or refuse consent for each specific type of information that the organisation wishes to exchange. A client can also withdraw the consent that they had previously provided.

Reporting non-identifying information

An organisation may be required to report to funding bodies, or to other government departments, on large scale. This generally involves non-identifying data collections (e.g.,

minimum data sets). When this is the case, a person's consent to share their data should not be taken for granted on the grounds that the data is non-identifying. Consent from the person should be sought—which can be refused or withdrawn—to participate in data collections of this nature.

The Client Information Management System (and its link to the Australian Institute of Health and Welfare (AIHW) SHS data collection) creates an alpha code that is formed by using the second and third letters of the first given name and the second, third and fifth letters of the family name. This alpha code is used by the AIHW to create a completely unidentifiable code, or Statistical Linkage Key. This is done so that, as far as possible, each individual client has a unique code.

Wherever it is lawful and practicable, individuals will have the option of not identifying themselves or requesting that YCAC does not store any of their personal information.

As required by the Privacy Act 1988, YCAC will not adopt a government assigned individual identifier number e.g. Medicare number as if it were its own identifier / client code.

Providing access to personal information for service audits

When an organisation undertakes accreditation against any service standards that involve external auditors reviewing client files, it should obtain client consent in writing. (However, this is unnecessary if client consent for this purpose was previously obtained.)

Sharing information without consent

Australian privacy legislation allows for sharing information without consent if failing to share information is believed to lead to certain risks. The disclosure of personal information without consent to government agencies, other organisations or individuals is permitted if:

- it is authorised or required by law
- it is unreasonable or impracticable to seek consent
- consent has been refused
- the disclosure is reasonably necessary to prevent or lessen a serious threat to the life, health or safety of a person or group of people
- the organisation is a mandatory reporter and it is legally obliged to release information to relevant authorities when making a report about a child who is believed to be at risk of significant harm.

The decision to share information without consent must be based on sound risk assessment and then approved by the Manager of YCAC.

Data Quality

YCAC takes steps to ensure that the personal information collected is accurate, up to date and complete. These steps include maintaining and updating personal information when we are advised by individuals that it has changed (and at other times as necessary), and checking that information provided by another person about an individual is correct.

Professional Ethics and Code of Conduct

All staff are required to abide by the YCAC Professional Code of Ethics and Conduct in relation to privacy and confidentiality.

Complaints

Clients have a right to make a complaint if they feel that there has been a breach of their personal information. YCAC will:

- inform clients of their right to make a complaint
- make the complaints procedure available to clients at the initial interview log complaints about information handling in the complaints register and act to rectify problems.

Participants in Research Projects

People being invited to participate in a research project must be:

- given a choice about participating or not
- given the right to withdraw at any time

- informed about the purpose of the research project, the information to be collected, and how the information they provide will be used
- given copies of any subsequent publications.

The collection of personal information will be limited to that which is required for the conduct of the project. Individual participants will not be identified.

Organisational participants in research projects will generally be identified in YCAC research, unless the nature of a particular project requires anonymity, or an organisation specifically requests it.

Breach of Confidentiality

If staff are dissatisfied with the conduct of a colleague with regards to privacy and confidentiality of information, the matter should be raised with the Manager.

If a service user or other stakeholder is dissatisfied with the conduct of YCAC staff or Management Committee member/s, a complaint should be raised as per the Complaints Management Policy. Information on making a complaint will be made available to clients and stakeholders and will be found on the YCAC website.

Archiving and destruction

YCAC has a legal obligation to appropriately store and destroy information within time frames. For specific periods for the retention of information, refer to the Records and Data Retention Guidelines.

6. Responsibilities

Responsibility	Delegation
Obtain consent to collect information	All staff working with clients
Obtain consent to disclose information	All staff working with clients
Secure storage of information	All staff working with client documents or information
Manage information	All staff
Archive information	Manager
Destroy information	Manager

7. Legislation

Further information about legislation can be found in the following sources:

Australian Privacy Principles

<https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles>

Privacy Amendment (Enhancing Privacy Protection) Act 2012

<https://www.legislation.gov.au/Details/C2012A00197>

Health Records and Information Privacy Act 2002 (NSW)

http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/hraipa2002370/

Privacy Act 1988 (Cwlth)

<https://www.legislation.gov.au/Details/C2018C00034>

Notifiable Data Breach Scheme

<https://www.legislation.gov.au/Details/C2017A00012>

8. Related Documents

- Authority to disclose information
- YCAC Privacy Statement
- Australian Privacy Principles
- SHS Charter of Rights and Responsibilities

9. References

(1) New South Wales Government. Capacity toolkit [Internet]. Attorney General's Department of NSW; 2008 [cited 2019, February]. Available from:

https://www.publicguardian.justice.nsw.gov.au/Documents/capacity_toolkit0609.pdf

(2) Information and Privacy Commission of New South Wales. Privacy and people with decision making disabilities guide [Internet]. 2004 [cited 2019, February]. Available from:

<https://www.ipc.nsw.gov.au/privacy-and-people-decision-making-disabilities-guide>

(3) Guardianship Division of the NSW Civil and Administrative Tribunal [Internet]. NSW Civil and Administrative Tribunal; 2020 [cited 2019, February]. Available from:

<https://www.ncat.nsw.gov.au/Pages/guardianship/guardianship.aspx>

10. Other Resources

Notifiable Data Breach Scheme

<https://www.legislation.gov.au/Details/C2017A00012>

Australian Privacy Principles

<https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles>

11. Review

Reviewing and approving this policy		
Frequency	Person responsible	Approval
2 years	Manager	Management Committee

Policy review and version tracking			
Version	Date approved	Approved by	Next review date
2 Previous policy number 1.17	6/7/2021	Management Committee	Jul-23
3	26/05/2023	Management Committee	May-25
4			