



Building A Bigger *Wave*

Privacy & Information Sharing FAQs

Written by Pamela Cross, feminist lawyer, advocate and activist | pamelacross.ca

1

Introduction

Finding a way to balance the privacy rights and interests of both survivors of intimate partner violence (IPV) and those who cause harm with the need to share information for the purpose of safety planning is a long-standing challenge.

In particular, communities have struggled with how high-risk teams should be constituted and what information should be shared among members and beyond.

As well, easy to understand information about what privacy legislation permits and prohibits has been lacking, which has made this issue more complicated.

While individuals and organizations share some goals, mandates and authority differ widely, which further contributes to challenges in sorting out issues related to privacy and information sharing.

Despite the challenges, we know that sharing information is an essential component of keeping survivors of IPV safe. As the Ministry of Community Safety and Correctional Services (MCSCS) says:

“Information sharing is critical to the success of collaborative, multi-sectoral risk intervention models and partnerships that aim to mitigate risk and enhance the safety and well-being of Ontario communities. Professionals from a wide range of sectors, agencies and organizations are involved in the delivery of services that address risks faced by vulnerable individuals and groups. These professionals are well-placed to notice when an individual(s) is at an acutely-elevated risk of harm, and collaboration among these professionals is vital to harm reduction.”

This tip sheet provides basic information and tools to assist communities do the best possible job in keeping survivors of IPV safe while also following legislative requirements.

2 What's the relevant legislation?

There are a number of pieces of legislation that regulate what personal information may be shared, with whom and under what circumstances as well as how individuals can get access to personal information about themselves that is being held by an institution or organization.

Freedom of Information and Protection of Privacy Act (FIPPA)

[Freedom of Information and Protection of Privacy Manual: Chapter 1: The Legislation | Ontario.ca](#)

Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

[RSO 1990, c M.56 | Municipal Freedom of Information and Protection of Privacy Act | CanLII](#)

Personal Health Information Protection Act (PHIPA)

[SO 2004, c 3, Sch A | Personal Health Information Protection Act, 2004 | CanLII](#)

Child, Youth and Family Services Act Part X

[SO 2017, c 14, Sch 1 | Child, Youth and Family Services Act, 2017 | CanLII](#)

Other statutes and professional regulations guide how specific professions are to manage privacy and confidentiality of information. For example, the Police Services Act sets out requirements for the police; lawyers are regulated by their Rules of Professional Conduct, health care professionals by their regulations, and so on.

In addition to these very formal regulations, many community organizations, including women's shelters and sexual assault centres, have policies and procedures that set out how staff are to protect the privacy of their clients.

All of these – legislation, professional rules and organizational policies and procedures – share the common value that, generally speaking, personal information that an organization has about a client is to be afforded a high level of privacy. All of them also have exceptions to this rule, most often in the context of safety.

3 What is personal information?

Personal information is any information about someone that is recorded by an agency, organization or institution. It includes:

- The person's name, address, telephone number, website, social media handles
- Their age and sex
- Identification numbers such as social insurance or passport number, driver's licence or health card
- Information about their education, employment or medical history
- Other information that could identify the person

4 What have the courts said?

A 1999 Supreme Court of Canada sexual assault case (<https://www.canlii.org/en/ca/scc/doc/1999/1999canlii674/1999canlii674.pdf>) explored the issue of when personal information can be shared. The accused had been referred by his lawyer to see a psychiatrist, to whom he admitted he had committed the crime he was charged with and also divulged that he intended to rape and kill other women. The court decided that, while this was personal information normally protected by solicitor-client privilege, concern for public safety outranked the accused's right to privacy.

It said that three questions need to be answered when determining whether a situation fits this framework:

1. Is there a clear link to an identifiable person or group?
2. Is there a risk of serious bodily harm or death?
3. Is the danger imminent?

These three questions remain a helpful starting point to this day when we think about what personal information we can share.

5 What are key considerations in VAW situations?

One way to think about this is to consider:

- The person's history of violence and any similarities to the current situation. For example, information that someone has a history of brawling with strangers is not likely to be appropriate for sharing in the IPV context because it is just not similar enough. However, if that same person also had a documented history of abusing previous partners, especially if the abuse tactics were similar, that information might be appropriate to share
- Person's relationship to threatened persons. For example, if a woman's safety is being threatened by her partner's abuse, then his personal information might need to be shared in the safety planning process.
- Person's opportunity to act on the threat. If the abusive partner is in jail, he has little opportunity to act on any threats he has made, so it may not be appropriate to share his personal information.
- Any factors provoking the threat and whether they will continue. We can turn to the lethality high-risk factors identified by Ontario's Domestic Violence Death Review Committee to help think through whether this person's behaviours match any of those criteria.
- Person's response to any intervention taken or attempted. If the person has been ordered into a PAR program but has not attended, this may be relevant information to share.

6 What information can I share, with whom, when and how?

There are few absolute rules about what can and cannot be shared, but we have some guidelines to work with, based on the Supreme Court case as well as work done by the Information and Privacy Commissioner (IPC) and the provincial government.

- Personal information may be shared if it is for a purpose consistent with the purpose for which it was collected. In other words, information about a perpetrator – whether or not they have been found guilty of a criminal offence -- collected by the police or Crown in IPV cases should be able to be shared with community partners, including shelters, if the purpose of sharing it is to develop strategies to enhance survivor safety.
- Where there is a significant risk of harm and sharing information would reduce that risk, the information should be shared.
- It should be shared only with those people directly involved in developing strategies to enhance survivor safety, and only as much information as is needed for that purpose should be shared.

The IPC and MCSCS suggest that organizations use what they call the four filters approach when assessing whether personal information can be shared, when and with whom:

1. **Filter One:** The step takes place within the organization that has the personal information that might need to be shared. That information is screened internally to determine whether the individual is at an acutely elevated risk of harm that cannot be eliminated or reduced without information being shared with a larger group (eg. a high-risk team).
2. **Filter Two:** If the organization concludes that the information might need to be shared after its internal screening, the first discussion with the larger group uses only de-identified information. A wide range of sectors should be involved in the discussion to determine whether the situation is both one of acutely elevated risk AND requiring a multi-agency intervention.
3. **Filter Three:** If it has been decided that information needs to be shared with the larger group, then it should be shared only with those who need to know to plan and implement any safety plan or intervention.
4. **Filter Four:** At this point, a full discussion, including identifying information, will take place among the organizations involved in the intervention. Other agencies may be brought in on an as-needed basis.

“Acutely elevated risk” refers to any situation negatively affecting the health or safety of an individual, family or specific group of people where professionals are permitted to share personal information in order to eliminate or reduce imminent harm to an individual or others.

7 How can we standardize risk assessment?

Building a common language about risk within a community is an important part of conversations about privacy and risk. Your community may want to consider becoming trained to use a standard risk assessment tool so that everyone involved in discussions about risk management and safety planning has a shared understanding of the specific risks. One such tool is B-SAFER, which is Canadian-developed, perpetrator-focused and validated. Using a validated risk assessment tool provides an evidence-base to support information sharing.

8 Are there tools to help me?

Fortunately, there are some good tools to guide and support us in doing this work.

1. Ministry of Community Safety and Correctional Services: Guidance on information sharing:
<https://www.ontario.ca/page/guidance-information-sharing>
2. Information and Privacy Commissioner of Ontario:
<https://www.ipc.on.ca/wp-content/uploads/2019/12/2019-12-04-hipa-summit-situationtable-panel-web.pdf>
3. Centre for Research and Education on Violence Against Women and Children:
Who do you want to sue you? Confidentiality and community risk management:
https://lukesplace.ca/wp-content/uploads/2013/07/Pamela_Cross-Confidentiality_and_Risk.pdf
4. B-SAFER risk assessment tool:
[Protect International | Violence is a fact of life | We can help \(protect-international.com\)](https://www.protect-international.com/)

