

Confidentiality and Release of Consumer Information/Records

Chapter 2

- 2.00 **Confidentiality** is the legal and ethical responsibility of vocational rehabilitation professionals to safeguard individuals (including applicants) from unauthorized disclosures of information. Except as noted elsewhere in this Chapter, the Division of Vocational Rehabilitation (DVR) employees:
1. shall not discuss an individual's information or records with non-DVR personnel, including the individual's attorney, or attorney's employee;
 2. shall not permit the inspection by, or provide copies of an individual's records to, non-DVR personnel, including individual's attorney, or attorney's employee;
 3. shall not testify about an individual's records or information at any hearing, trial or deposition.
 4. shall not discuss, permit the inspection by, or provide copies of an individual's information or records to DVR personnel who are not directly involved in providing or securing services for the individual.
 5. shall provide only as much information as is necessary, to other DVR personnel who are involved in providing or securing services for the individual.

2.01 **General Rules**

1. Under Florida Statute 413.341, release of information/records except as consistent with this policy and the statute constitutes a misdemeanor.
2. Confidentiality includes both applicants and individuals determined eligible for services.
3. DVR will release only as much information as is necessary to accomplish the purpose stated in the release. Providers, including the VR Workers' Compensation provider, will be given only the pertinent information needed to adequately provide their services. If information is requested by a law enforcement entity or is subpoenaed, only information that is requested or subpoenaed will be provided. [Reference 2.10, 2.14, 2.15]

- 2.02 **Handbook of Services.** The Handbook of Services contains a detailed description and a statement on confidentiality of personal information. It describes the conditions for accessing and releasing information/records.

2.03 **Release and Waiver Forms.**

1. In order to obtain or release confidential information, DVR shall use only one of the following forms:

- a. **Authorization for Release of Information** (DOE/VR-VCMT004) for the purposes of obtaining confidential information from external entities.
- b. **Individual's Waiver of Statutory Confidentiality Rights** (DOE/VR-VCMT066) is required for purposes of obtaining the authorization from the applicant, eligible individual, or representative, for release to designated person(s). Waivers from outside sources are not acceptable.
- c. **Waiver of Confidentiality for Release of Information to Potential Employers** (DOE/VR-VCMT153) for the purposes of releasing the individual's name and resume to potential employers.

2.04 **Disability Rights Florida's Client Assistance Program (CAP):** DVR personnel may discuss information regarding the individual's records with CAP when the individual has requested CAP's assistance. Signature on the Handbook of Services constitutes this consent. DVR shall not release written or electronic documents without the written consent of the individual/applicant as stated in 2.03(1)(b).

2.05 **Copy Fees**

1. The first copy of records shall be provided free of charge to:
 - a. The individual or the individual's representative or other persons or parties to whom the individual has given DVR written permission to release the records; and
 - b. The Client Assistance Program if the individual has given DVR written permission to release the records. The Rehabilitation Act requires the State to have a CAP to provide information, assistance and advocacy for DVR applicants and eligible individuals.
2. New information prepared or received since the original request may be provided at no cost for the first copy. The case notes shall document the provision of the first copy provided, date, and requester.
3. Subsequent requesters shall be charged \$.15 per page, payable in advance of receipt of the copy and in the form of check or money order to DVR. Mail the copy charge with a Cash Receipts Transmittal Form to the Bureau of Financial Management at the address reflected at the top of the form.

2.06 **Mailing Costs**

1. Postage may be added to a copying charge if the requestor asks that records be mailed.

2.07 **Request for Case Record Amendment**

1. If an applicant or individual believes that information in the case record is incomplete, inaccurate or misleading, the applicant or individual may request in writing that DVR amend the information. The request for the amendment shall be documented in the case record.

2. DVR shall accept additional information for inclusion in the case record to the extent it determines such information to be reasonably material to providing or not providing rehabilitation services to the applicant or individual.
3. Any such additional information shall be identified as produced by the applicant or individual.
4. DVR shall not alter the existing case record in any other way.
5. If the additional information is not accepted for inclusion in the case record, DVR shall document in the case record both the request and its denial of the request.

2.08 Release to Applicant/Individual or Individual's Representative at the Request of the Individual.

1. When an applicant/individual or the individual's representative requests the individual's records in writing, DVR shall make all requested information in the individual's case record accessible and shall release the information in a timely manner.
2. DVR shall provide the following to the applicant/individual or the individual's representative exceptions are provided in Section 2.08(3):
 - a. a copy of only the documents paid for or produced by DVR, a copy of the applicant/individual's expenditure summary and a statement that third party information exists but cannot be provided by DVR, if applicable.
 - b. upon receipt of a subsequent request DVR may provide all expenditure documents (copies of the individual's invoices) and a list of the names, addresses, telephone number and a brief description of the information provided by third party providers. The Social Security Administration is to be included in this list if information has been received from that office.
3. Exceptions and HIV/AIDS Information.
 - a. Information that may be harmful to the applicant/individual may not be released directly to the individual, but instead must be provided through the individual's designated representative, physician or a licensed psychologist.
 - b. HIV/AIDS test and any related information shall not be released unless release is specifically requested by the applicant/individual or the individual's guardian (if the individual is incompetent).
 - c. The release of HIV/AIDS information to the individual or the individual's guardian must be made in a face-to-face meeting during which DVR is prepared to offer counseling to the individual (and guardian, if appropriate) regarding such information.
 - d. All references to HIV/AIDS information in case file documents must be stricken unless the foregoing conditions are met (do not mark up the original documents in the file; only

mark up the copy provided). The area medical and psychological consultants can provide guidance on which information to release.

- e. **HIV information shall not be released without the individual's written consent except to a medical provider who will be performing services that would put such provider at risk of contracting HIV/AIDS from the individual. Clearance to release such information under such circumstances must be received from the unit supervisor. The unit supervisor should contact the Bureau Chief of Field Services if it is unclear whether such information should be released.**

2.09 Release to Person or Entity Other than Individual or the Individual's Representative at the Request of the Applicant/Individual.

1. Upon the written request of the individual, DVR may release the same information to third parties that it could release to the applicant/individual or the individual's representative.
2. HIV/AIDS information shall not be released (and references thereto must be stricken from such copies) unless such release is specifically requested in writing by the applicant/individual or the applicant's or individual's representative.

2.10 Release in Administration of the DVR Program

1. Under Section 2.01(3), DVR may give providers only as much information as they need to adequately provide services. It must be pertinent information as it relates to the services requested and the entire case file may not be necessary.
2. Records (including third party records) may be released to agencies, including the Office of Disability Determination, or providers only as required to administer the DVR program, provided:
 - a. The recipient agency or provider has given DVR an assurance that it will not release the information or records to any other party unless compelled to do so by applicable law; and
 - b. Only pertinent information necessary to administer the DVR program with regard to such agency or provider is released.
3. The DOE Legal Office is available to answer questions on what records may be released.

2.11 Release to Agency or Political Subdivision of the State of Florida

1. If another state agency or a political subdivision of the State of Florida requests records or information in the performance of its duties, such records or information may be released.

2.12 Release Based on Declared Intent to Harm Persons or Property Based on Potential Harm by or to the Individual with a Disability

1. If the individual has declared any intention to harm other persons or property, that declaration shall be disclosed to law enforcement or to another appropriate person or entity. If the

applicant/individual poses a threat to his/her own safety or to the safety of others DVR should release necessary records and information to law enforcement or to another appropriate person or entity.

2. The individual's consent is not necessary to release information or records under this heading.

2.13 Release to Report Abuse, Neglect, or Exploitation of an Elderly Person, Person with a Disability, or a Child

1. DVR shall release information as necessary to report abuse, neglect or exploitation of an elderly person, person with a disability or child.
2. The applicant/individual's consent is not necessary to release information or records under this heading.

2.14 Release to Law Enforcement Agencies Investigating the Commission of a Crime, Fraud or Abuse

1. DVR shall release information in response to investigations by local, state, or federal authorities in connection with law enforcement, fraud, or abuse.

2.15 Release Based on Attorneys' Request or Subpoena or Court Order

1. A copy of all attorneys' requests, subpoenas and all court orders should be faxed immediately upon receipt to DOE Legal Office, at 850-245-9379 (Fax) and no actions should be taken until the DVR Counselor has received approval and direction from the DOE Legal Office.
2. If records are requested by an attorney, are subpoenaed or DVR counselor is subpoenaed to testify, and the applicant/individual has consented to a release of records/information in writing on the Legal Office's Waiver form which is available through the DOE Legal Office, the records may be inspected and DVR Counselor may testify after consultation with DOE Legal Office. **No records/information or testimony may include HIV information unless expressly included in the individual's consent to the release.**
3. If there is no release in the file, no records should be inspected, copied or released and no testimony should be given until the DVR Counselor has received approval and direction from the DOE Legal Office.
4. If the DVR Counselor is unable to testify or furnish subpoenaed records due to foreseeable reasons, the DVR Supervisor must be prepared to testify and/or deliver the requested or subpoenaed records. If for some reason the Supervisor is unavailable, the DOE Legal Office must be contacted immediately.
5. In the case of subpoena, a list of all providers of information subject to release only under the condition established by the provider (third party information) not paid for, but provided as a courtesy (including the address and telephone number of the providers and a brief description of the information) will be provided. While the federal regulations are more restrictive than state

law regarding the release of third party information, it is considered a good faith effort to provide the source of third party information.

2.16 Third Party Information

Third party information may not be released except as described in 2.08(2)(b), 2.10(2)(a)(b), 2.15(5). This includes any reports, evaluations and summaries related to services provided by the third party that were not paid for by DVR.

2.17 Release for Research, Evaluation or Audit

1. Information may be released to an individual or agency engaged in an audit, evaluation or research, only for purposes directly connected with the administration of DVR or for purposes which would significantly improve the quality of life for persons with disabilities.
2. Prior to release of any information, the Chief of the Bureau of Field Services must review and approve any request for information.

Stevens Amendment

The Florida Department of Education, Division of Vocational Rehabilitation (VR) is an equal opportunity employer. It is against the law for VR as a recipient of Federal financial assistance to discriminate against any individual in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief. The application process used by VR to determine eligibility for services, any subsequent services and the entire VR process are subject to these non-discrimination requirements. Auxiliary aids and services are available upon request to individuals with disabilities. VR program receives 78.7 percent of its funding through a grant from the U.S. Department of Education. For the 2021 Federal fiscal year, the total amount of grant funds awarded were \$176,836,896. The remaining 21.3 percent of the costs (\$47,860,557) were funded by Florida State Appropriations. Revised October 2021.