

## **Considerations to Protect Privacy**

### ***Purpose of this Privacy Backgrounder***

This backgrounder is prepared for Speech-Language Pathologists trained as Communications Intermediaries, to assist persons with a disability that affects communication in police, legal and justice settings.

### ***Constitutional and Human Rights Protections***

Persons who have a disability that affects communication:

- Have constitutional rights to privacy and equality
- Are entitled to access justice without undue invasion of their privacy

In your work as a Communication Intermediary, you should ensure that the constitutionally protected human rights of the person you are assessing and facilitating are respected and protected.

As a Communication Intermediary you may review private and personal medical and other information relating to the witness. Protecting the dignity, privacy and equality of that person means that you should be careful to ensure that only the information that is necessary and relevant to the person's communication needs is shared with justice system actors.

### ***Attention to Privacy and Equality in Assessment***

One of the first steps in your work as a Communication Intermediary is to assess the person to determine what the person needs to understand questions and to communicate his or her responses. This assessment may involve:

- Meeting with the person on one or more occasions to explore the person's understanding of different types of questions, time concepts, emotions and feeling words, and ability to tell a story.
- Exploring the need for communication aids such as visual calendars, maps, pictures and objects.

- Speaking to family members, caregivers, health professionals or others, about the person’s communication needs.
- Obtaining or reviewing copies of various reports such as medical or psycho-educational reports.

These interactions and records may result in the Communications Intermediary having access to highly personal and private information about an individual, that may or may not be relevant to that person’s communication needs.

For example, information that may not be relevant might include:

- Medical conditions that have been fully treated or are no longer present or symptomatic (and/or are not relevant to communication).
- Medical issues that are not relevant to communication.
- Behaviour, fears or anxieties related to a person’s childhood or early adulthood, where that information is dated.
- Intra-family dynamics or relationships.
- Prior traumatic experiences that may not be relevant to the person’s current communication needs.

## **What Should You Do to Protect Privacy?**

You should:

- Be attentive to the individual’s privacy and dignity when you receive, assess and share information from third-parties.
- Be careful in your written assessment to avoid reference to private information about the individual that is not relevant to communication needs.
- Be knowledgeable about the ways in which persons with disabilities may be discriminated against in legal proceedings. This issue is particularly acute for victims/witnesses in criminal sexual assault proceedings.
- In criminal cases, you should list the reports (such as medical, educational reports) you relied on in preparing your assessment, but you should not provide copies of these reports to the police or the Crown. A separate process – called a “third-party records application” – may be involved if either party wish to obtain a copy of these reports. This process includes measures to protect the privacy and equality of the witness.

- If you reviewed a report but did not rely on any information in it, for example because it was dated or otherwise did not contain information relevant to communication needs and supports, you may not need to list this document/report in your assessment report. Alternatively, you may list the report but indicate that you relied on no information contained in it.
- Consult with legal counsel if the individual or family has retained counsel. Legal counsel may review the records/reports in advance of providing them to you and may redact irrelevant/private information.

Finally, in your Communication Intermediary's report, it is often helpful to explain the specific information relevant to communication that the Communication Intermediary relied on from any third-party records reviewed. For example, "I relied on the report of Dr. X for the purposes of confirming the diagnosis of aphasia."

Communication Intermediaries should retain any reports they receive as well as their notes for ten years.