

Guideline:
Disclosures of Confidential Information

All participants in research have the right for their participation to remain confidential as only the researchers should know who has participated. In general all data will be anonymised in any final publications so that nothing can be attributed back to an individual participant. However, there are exceptions such as where a participant wishes to be identified or cannot realistically have their identity kept confidential.¹ In addition, from time to time, researchers may find themselves in situations where they receive information that raises concern about risk or harm to others, or about the safety and wellbeing of parties referred to by research participants. In such situations the researcher may find themselves confronting the dilemma of balancing the right to confidentiality of participants against the public good because a participant makes a disclosure about criminal behaviours, events or intentions they have engaged in or have knowledge of. The types of disclosures participants may make that present challenges to researchers include:

- Disclosure that someone they know is at risk of harm or abuse;
- Disclosure of a past offence they have knowledge of or have committed ;
- Disclosure of serious danger to unsuspecting third parties;
- Disclosure of the commission of a criminal offence;

These are problematic because they raise questions about when the researcher has an obligation or right to disclose confidences made to them, and to whom should these disclosures be made?

¹ All participants should be fully informed and written consent should be obtained from each participant in advance.

To determine whether there is a duty or right to breach confidentiality the researcher needs to consider the following issues:

- Does the public good override or trump the right to privacy of the participant? While the participant's personal life is protected in law, this right is not absolute. In deciding to disclose a confidence to an appropriate authority the researcher needs to keep the breach of privacy to a minimum - to what is needed to reduce the risk or harm and no more. In this way the public good is served while limiting the damage of the disclosure to the participant.
- Is harm to the participant a likely consequence of the researcher's breach of privacy? In deciding to disclose a confidence to an appropriate authority the researcher should ensure that all consents obtained from the participant were based on having outlined such harmful consequences to them in advance. In this way the participant has been informed up-front of the potential of certain disclosures to cause them harm and agrees to participate in the research in full knowledge of the consequences.
- To whom should the researcher make their disclosure? Disclosures of confidential information by the researcher must be limited to those who have the right to hear that information for example, the Gardai.

It is generally accepted in codes of practice that guide most professional behaviour that confidential information may need to be disclosed if there is clear evidence that someone is at risk of harm or abuse. For example, the Children First Guidelines and the Registered Medical Practitioner Guidelines both emphasize that the caregivers first concern is the welfare of the child or the patient. Similarly, if research participants disclose intentions to harm unsuspecting third parties then current best practice guidelines available suggest that researchers should err on the side of the public good. Also, if a researcher is told in the clearest terms of a past event or behavior that constitutes a serious offence under the criminal code, or if they are told of plans to engage in criminal behaviour then they may come under a duty to report it.

How to deal with disclosures

If as a researcher you suspect that the nature of your research is likely to increase the occurrence of the types of disclosure noted above, it is best practice to proceed as follows:

- a) *Let the participant know about the limits of confidentiality:* It is important that research participants receive adequate warning from the researcher in advance of disclosure of confidences, that there are limits to the researcher's ability to keep matters confidential.
- b) *Let the participant know the types' of confidences you have to disclose and whom you must disclose them to:* In particular, where the researcher is told of a clear and serious danger to unsuspecting third parties, where the researcher is told in clear terms of the commission of a criminal offence, these events may require reporting to the Gardai on this country.

These warnings should be made to the research participant in all the information given to them describing the nature of the research being undertaken by the researcher.