

POLICY: PRIVACY AND CONFIDENTIALITY

LEAD

POLICY NUMBER: A4

POLICY STATEMENT:

Issues of privacy and confidentiality arise during Anglicare’s work in the community, with staff, volunteers, foster carers and other third parties. Anglicare SA acknowledges and respects the privacy and confidentiality of any person with whom the organisation deals and will maintain confidentiality unless specifically given permission to disclose information to nominated parties or otherwise required by law.

Anglicare SA aims to ensure compliance with the Commonwealth Privacy Act 1997 and Australian Privacy Principles (APP). While upholding the privacy and confidentiality of individuals, Anglicare SA must also comply with other legislative requirements that may take precedence at different times, including the State Government’s *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young people and Their Families (Information Sharing Guidelines)*; mandatory reporting; and the identification of criminal activity.

Current version approved	Administrative Committee (date)	25 July 2011
	Chief Executive	Signature: Signed on original Date: 4 August 2011
	Board (date)	4 August 2011
	Chair of Board	Signature: Signed on original Date: 4 August 2011

Responsible Review Officer	Director Governance, Audit and Risk
Next review due	June 2014

1 OVERVIEW

1.1 Background

Anglicare SA's statement of purpose recognises that the organisation seeks to respond to people's needs and issues in ways which enhance and protect the dignity and integrity of clients and residents. Our work requires that we deal with highly sensitive, private and confidential information and as an organisation we have a genuine need to collect this information in our daily work. In respecting our clients and residents it is critical that we ensure privacy and maintain confidentiality. The importance of privacy and maintaining confidentiality also applies to all employees, volunteers and any other entities engaged with Anglicare and to the protection of their personal information.

Together with upholding human dignity and respecting the rights of all engaged with Anglicare, the organisation is also bound by relevant legislation. As the organisation receives both State and Commonwealth funding, the differences between the respective privacy legislation need to be considered and applied relevant to the source of funding. In various circumstances other legislative requirements also apply, and in certain instances will override the need to keep the information confidential. For example, this, includes the State Government's *Information Sharing Guidelines*, mandatory reporting requirements such as under the Aged Care Act 1997 [Cth] or Children's Protection Act 1993 (SA); and identification of or provision of supplementary information in relation to criminal activity.

While interrelated, the terms Privacy and Confidentiality have different meanings and this difference needs to be kept in mind at all times.

1.1.1 Privacy

Privacy applies to personal information that may enable identification, and specifically relates to an individual's ability to control the extent to which their personal information is available to others and themselves, including information about an individual's location, health and body, and communication with others.

For the purposes of this policy, privacy relates to information that is to be kept in a secure setting to protect it from unauthorised disclosure.

1.1.2 Confidentiality

Anglicare also functions within the realm of confidential information and communications. Many interactions with clients are confidential and must remain so to be effective. Confidentiality is distinct from privacy in that it relates to how information is shared. Confidentiality presupposes that there are people who, at certain times and in certain circumstances, are authorised to have access to or to disclose specified confidential information.

Confidentiality gives rise to an obligation which restricts Anglicare from using or disclosing any information in a way which is contrary to the interests of the person or organisation from whom the information was gathered. It is also a mode of managing private information, by the restriction of access to information to authorised persons, entities and processes at authorised times, and in an authorised manner.

1.2 Aim

Anglicare aims to respect the privacy and confidentiality of the individuals it engages within its daily operations. In doing so, it aims to comply with the APP as well as any other relevant legislation and guidelines that relate to the management of privacy and confidential information. This applies to the type of information gathered and the application of processes and practices. This policy seeks to provide clarification and guidance on these matters.

2 SCOPE

This policy applies to all personal information about any clients, residents or anyone who is or has been in receipt of our services, foster carers, donors, and all others engaged with Anglicare.

Also, employees, volunteers and any other entities, both currently and in the past, who are engaged with Anglicare, are both protected and bound by this policy. As such, Anglicare Board members, CEO, all levels of management employees, consultants, contractors, students and volunteers, past and present are bound by this policy.

3 POLICY PRINCIPLES

The following principles establish the framework for all areas of activity within Anglicare:

- 3.1 Anglicare regards having the confidence of individuals as a privilege.
- 3.2 Anglicare will only use the information provided for the primary purpose for which it was collected, unless disclosure is (1) required to protect an individual from harm, or (2) is in the interest of public health or safety or (3) required under law
- 3.3 An individual's access to information concerning or collected about that individual is his/her right. Individuals have the right to request access to information held by Anglicare about them. Anglicare will provide access to the information, unless prevented by law.
- 3.4 Anglicare will not disclose information to a third party, or other institutions without consent, unless lawfully or contractually allowed or required to do so.
- 3.5 The formation of, or expression of a professional assessment or opinion must be recorded with care, (remembering that the relevant individual(s) may request to see their file).
- 3.6 Anglicare will only record sensitive information (see definition) about a client or a resident with the individual consent of the person unless:
 - the collection is required by law
 - the collection is necessary to prevent or lessen a serious and anticipated threat to the life or health of any individual, where the individual whom the information concerns:
 - a) is physically or legally incapable of giving consent to the collection
 - b) physically cannot communicate consent to the collection.

Owing to antidiscrimination law, sensitive information must not be collected and recorded about an employee, except in relation to professional associations and criminal records.

This kind of information is often gathered about residents and clients and it affects the implementation of APP within Anglicare regarding disclosure of information. Any issues regarding disclosure of 'health information' (see definition) should be referred to the Risk and Privacy Consultant.

- 3.7 All individuals have the right to be informed on who has access to their information.
- 3.8 The collection and storage of unnecessary information about individuals is considered a breach in privacy and is inappropriate. Anglicare will remove information from records when it is no longer required (except where archiving is required).

- 3.9** Anglicare will take reasonable steps to ensure information is accurate and up to date. Individuals have a right to challenge the accuracy of personal information recorded about them.
- 3.10** Anglicare will ensure processes are in place to protect information under its control from:
- unauthorised access
 - improper use
 - alteration
 - unlawful or accidental destruction and/or loss.
- 3.11** Individuals have the right to withhold information for privacy reasons except where required by law (eg information pertaining to criminal histories).
- 3.12** Wherever it is lawful and practicable, individuals must have the option of not identifying themselves.
- 3.13** Although the Privacy Act only relates to individuals, Anglicare SA will apply the same principles to the collection of information about organisations and businesses. Where this policy refers only to individuals it applies equally to organisations/businesses.
- 3.14** This policy continues to apply to individuals even when their relationship with Anglicare is concluded. For example, former staff must not disclose information they have acquired about clients, staff or Anglicare business during their engagement once their engagement is terminated.

4 PROCEDURES

4.1 Collection, use and disclosure of personal information

4.1.1 Collection

In accordance with the Australian Privacy Principles a person acting on behalf of Anglicare (e.g. any employee) in the collection of information from another individual will:

- a) only collect information that is necessary
- b) not collect personal information about an individual just because that information 'may come in handy later'
- c) tell the individual why the personal information is collected, how it will be used and disclosed
- d) consider whether the personal information is to be used for a particular purpose and not gathered for reasons other than that purpose
- e) consider whether personal information needs to be disclosed and whether it can be lawfully disclosed before doing so
- f) provide an individual with access to the personal information held about them on request
- g) keep personal information secure
- h) not keep information Anglicare no longer needs or is no longer required to retain
- i) keep personal information accurate and up to date
- j) retain a person responsible for oversight of Privacy issues for the whole of the organization in the role of the Risk and Privacy Consultant.

4.1.2 Notification

At, or before, the time of collection of personal information (or, if that is not possible, as soon as practicable after), individuals will be made aware:

- a) of the nature of the contents of the information

- b) of the purpose for which the information is collected
- c) of the period of time for which the information is kept
- d) any organisation to which Anglicare may be obliged to disclose the information and in what circumstances that obligation arises
- e) of the right to make reasonable requests to access that information
- f) of who to contact within Anglicare to access information, and how best to contact them
- g) of any law that requires the particular information to be collected
- h) of the main consequences (if any) for the individual if all or part of the information is not provided.

4.1.3 Access

4.1.3.1 Client Access

The management of the confidentiality and disclosure of information from client files (including the issue of security of the information), must be done in accordance with the Clients Records Policy and Procedure.

Clients may access their files upon request. Where such a request is made, the employee will inform and discuss the issue with their manager (where practicable) prior to allowing access to the file. This is in order to protect vulnerable clients/residents, employees and volunteers. Third parties referenced in the files must be de-identified prior to access being provided. The Privacy Consultant can also be contacted for queries in relation to this area.

4.1.3.2 Staff Access

Please refer to Section 4.3 for information regarding employee files and accessing them

4.1.3.3 Cost for accessing information

Third parties who request information may be charged for the time and the cost of photocopying where access is granted.

4.1.4 Disclosure

Anglicare will not disclose information to a third party or other institutions without consent, unless allowed to do so lawfully.

In the event that a legal need for disclosure arises in practice, the employee will inform and discuss the issue with their manager to determine if disclosure is appropriate. The Manager may consult with the Risk and Privacy Consultant (in Governance , Audit and Risk Department) during the decision making process.

A record must be made and kept on file, detailing what has been disclosed, to whom and the reason for disclosure.

4.1.4.1 Exceptions

A legal requirement to disclose personal information may override the normal principles of privacy contained in this policy. This means that sometime information may be disclosed without consent from the individual concerned. Situations where this may occur include the following but are not limited to:

- a) when serious criminal acts are known

- b) where there is serious risk of abuse or physical harm to the individual or another person including Anglicare's employees, volunteers or other clients
- c) where there is serious risk that a child or young person will be harmed as envisaged by the *Childrens Protection Act (SA) 1993* and the State Government's *Information Sharing Guidelines*
- d) suspected abuse or neglect, or other cases requiring mandatory reporting.

4.1.4.2 Written Consent

Where confidential information is to be provided to third parties, where possible, the written consent of the individual must be obtained prior to disclosure, unless:

- a) Anglicare is legally bound to disclose the information, eg in the case of mandatory reporting and certain reporting to government funding agencies, or
- b) it is not safe or possible to do so under the State Government's *Information Sharing Guidelines*.
- c) Where Anglicare may use this information in the public domain (e.g. for promotional/marketing purposes, Annual Report, etc) written consent is to be obtained. Individuals will not be photographed or filmed without having had given prior informed consent.

4.1.5 Release of non-identifying information

In some instances information about clients and/or the programmes they are in will need to be reported to the government as a part of the funding agreement. If this is the case, the information must be checked prior to release to ensure it is truly non-identifying.

4.2 Requirement to maintain Privacy and Confidentiality

4.2.1 Signed commitment

Anglicare Board members, CEO, all levels of management, employees, consultants, contractors, students and will sign a Code of Conduct which identifies the need to maintain privacy and confidentiality of information during and after engagement with Anglicare.

4.2.2 Third party access to information

Consultants, contractors, brokered services, students and volunteers who are performing a service for Anglicare SA and have access to personal information (eg access to Anglicare SA database, server, client records) will also be required to sign a confidentiality agreement prior to commencing with Anglicare.

4.3 Employees' Personal Information

Employees are entitled to access their own employee files at a mutually agreed time with a representative of the People and Organisational Development team. Employees are allowed to copy the contents of their file, but not to take the file away from the secure environment.

Records may be kept including the following information:

- a) engagement, training, or discipline of the employee
- b) termination of the employment of the employee, including resignation
- c) terms and conditions of employment of the employee including hours of work
- d) employee's personal and emergency contact details
- e) employee's performance and conduct
- f) employee's salary or wages

- g) employee's recreation, long service, sick, personal, maternity, paternity or other leave
- h) employee's taxation, banking or superannuation affairs.

Information that the APP defines as 'sensitive' (see 6 *Definitions*) must not be actively gathered about an employee without first seeking advice from People and Culture, as gathering it may be a breach of anti-discrimination law, among others.

5 RESPONSIBILITIES

Staff and volunteers

- comply with this policy and associated procedures
- inform and discuss issues arising with their manager
- ensure clients are informed about their rights on client information management matters

Managers and Co ordinators

- comply with this policy and associated procedures
- escalate matters as appropriate

General Manager

- ensure that all managers are knowledgeable and compliant with this policy and its procedures
- escalate matter to the Chief Operations Officer as appropriate

Chief Operations Officer

- final point of escalation in the event of non compliance under the policy or for other reasons relating to this policy and its procedures

Risk & Privacy Consultant, Governance, Audit and Risk Department

- ensure that the policy is up to date
- provide advice as requested
- escalate matters as required to the Director of GARD, the Governance Audit and Risk Committee and/or the Anglicare Board

6 DEFINITIONS

client – any person (individual, group, organisation or business) who chooses to use the services of Anglicare, including but not limited to parents, family or guardians of those receiving services from Anglicare.

collection – is the act of gathering, acquiring or obtaining personal information from any source, including third parties.

confidentiality – an obligation which restricts Anglicare from using or disclosing any information in a way which is contrary to the interests of the person which provided it in the first place. It is also a mode of managing private information, by the restriction of access to information to authorised persons, entities and processes at authorised times, in an authorised manner.

consent – voluntary agreement with another party to gather, use or disclose information that may be private and/or confidential. Consent can be either express or implied. Express consent is given explicitly, either orally or in writing. If given orally, it must be noted on the client or employee file. Implied consent arises where consent maybe reasonably inferred from the action or inaction of the individual.

disclosure – making personal information available to others outside or within Anglicare.

donors – all persons (individual or organisation) who contribute to or support revenue generation activities of Anglicare

employee information – personal information relating to the employment of the employee as per clause '4.3 Employees' Personal Information' above.

NB. For reasons relating to anti-discrimination law, an employee's personal information kept on record must not include any kind of active attempt to gather information that is defined as 'sensitive' with the exception of criminal records. If you are at all uncertain regarding this issue contact the Employee Relations Consultant in the People and Organisational Development team immediately.

health information – information or opinion about:

- the health or a disability (at any time) of an individual
- an individual's expressed wishes about the future provision of health services to him or her
- a health service provided, or to be provided, to an individual that is also personal information
- other personal information collected to provide, or in providing, a health service
- other personal information about an individual collected in connection with the donation or intended donation, by the individual of his or her body parts, organs or body substances.

NB: this kind of information is often gathered about residents and clients and it effects the implementation of APP regarding disclosure of information as 'Health Information' is a form of 'Sensitive Information'.

individuals – are defined by Anglicare as:

- Board members
- Employees
- Volunteers
- Foster carers
- Clients, customers and residents accessing Anglicare services and/or website
- Donors
- Suppliers/contractors
- Job Applicants
- Referees.

Information Sharing Guidelines – *Information Sharing Guidelines for promoting the safety and wellbeing of children, young people and their families* are overarching principles and practice for all relevant South Australian government and non-government organisations for the appropriate sharing of information. [See Flow Chart Attached]

NB: Where possible, written consent should be sought in all circumstances. However it is recognised that in some instances implied consent to disclose information becomes relevant. Such situations should be referred to the Risk and Privacy Consultant for verification prior to disclosure.

Australian Privacy Principles – Principles governing the access, use, disclosure, retention and disposal of private information, as stipulated in the Privacy Act 1988 (Cth).

personal information – information or an opinion (including information or opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent or can be reasonably ascertained from the information or opinion.

privacy – an individual's right to control access to his or her personal information, and whether it is available to others.

sensitive information – is considered to be personal or health information or an opinion about an individual's:

- racial or ethnic origin
- political opinions
- membership of a political association
- religious beliefs or affiliations
- philosophical beliefs
- membership of a professional or trade association, where relevant to employment
- membership of a trade union
- sexual preferences or practices
- criminal record.

NB: Sensitive Information must only be gathered about a client or a resident. Owing to anti-discrimination law it must not be collected and recorded about an employee, except in relation to professional associations and criminal records.

use – in general terms, use of personal information refers to the handling of personal information by Anglicare.

7 RELEVANT LEGISLATION, ANGLICARE POLICIES AND DOCUMENTATION

7.1 Legislation

- *Privacy Act 1988 [Cth]*
- *Information Privacy Principles Instruction 1989 (SA), amended May 2009*
- *Human Rights and Equal Opportunity Commission Act 1986 [Cth]*
- *State Records Act 1997 (SA)*
- *Child Protection Act 1993 (SA)*
- *Aged Care Act 1997 [Cth]*

7.2 Related Policies

- A2 [Standards of Practice and Behaviour Policy](#)
- B1 [Police Check / Certificates Policy](#)
- B4 [Whistleblower and Protected Disclosure Policy](#)
- C2 [Records Management Policy](#)
- D4 [Child Protection Policy](#)
- D6 [Client Records Policy](#)
- F3 [Human Rights and Freedom from Abuse Policy](#)
- F4 [Conducting Research with Human Participants Policy](#)
- E6 [Publications and Communication Policy](#)
- F8 [Knowledge Management Policy](#)

7.3 Documents/Forms

- Confidentiality Agreement
- Authorisation for Third Party to Collect Information
- Consent to Collect Information from Client/Staff/Volunteer
- Consent Form for Taking Photos and/or Videos

7.4 References (to other documents, internal or external)

- [Information Sharing Guidelines for Promoting the Safety of and Wellbeing of Children, Young People and their Families 2010](#): Office of the Guardian for Children and Young People, www.gcyp.sa.gov.au. Government of South Australia

- Privacy Impact Assessment Guide  (1.2 MB)

8 CONTACTS

Risk and Privacy Consultant
Director GARD

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9 POLICY MANAGEMENT PROCESS

This policy is managed in line with Anglicare’s policy framework as documented in its ‘Policy Development Guidelines’. Staff access is provided (1) online, via Anglicare SA’s intranet, The Matrix, and (2) in hard copy via policy folders located at work sites.

10 POLICY HISTORY

HISTORY	
Date approved	Amendments made (<i>summary of major changes</i>)
7 May 2004	New policy
May 2005 August 2005	Reviewed
25 July 2011 (AdminComm)	Major rewrite: <ul style="list-style-type: none"> • reference to the current Privacy Acts • incorporated South Australian Government's <i>Information Sharing Guidelines</i> • title changed from <i>Confidentiality and Privacy</i> to <i>Privacy and Confidentiality</i> • reformatted in line with new template • elevated to a 'Lead' policy (changed from B15 to A4)