

Nova Scotia Board of Examiners in Psychology (NSBEP)

Position on the release of raw psychological data

As per standard 2.3.5: Providers of psychological services shall establish a system to protect confidentiality of their records. A psychologist shall not release confidential information except with the written consent of the user directly involved or his/her legal representative. Even after the consent has been obtained for release, the psychologist should clearly identify such information as confidential to the recipient of the information. If directed otherwise by statute or regulations with the force of law or by court order, the psychologist shall seek a resolution to the conflict that is both ethically and legally feasible and appropriate.

This Standard further notes that raw psychological data (e.g., test protocols, therapy or interview notes, questionnaire returns etc.) in which a user is identified shall be released only with the written consent of the user or legal representative and released only to a person recognized by the psychologist as competent to use the data. Generally speaking, this means that when information is released you should make all reasonable attempts to ensure it goes to another psychologist who can then interpret the data for those requesting its review.

There are concerns related to the importance of protecting psychological test material. Publishers of test materials consider such materials as proprietary, copy righted, and confidential commercial information analogous to trade secrets, and treat and protect them accordingly. Studies confirm that if test items and test protocols were readily available, the integrity of the test and scoring model could be compromised and would harm the public. Test publishers expect psychologists to do all they can to protect material and to protect the items and scoring criteria in response to written requests and/or subpoenas. They state that the Psychologist should secure a court order or protective agreement when faced with such requests/demands and that this should ideally contain the following requirements:

- a. Restricted access to materials and the testimony regarding materials to the most limited audience possible, preferably only to individuals who satisfy the test publishers qualification policy;
- b. Restricted copying of test materials;
- c. Assurance of the return or destruction of the materials at the conclusion of the hearing and confirmation of such return or destruction;
- d. The sealing of and/or removing from the record to the extent any portion of such materials are disclosed in pleadings, testimony, or other documents in order to safeguard the integrity of the assessments. It is crucial that test material does not become part of the public record.

NSBEP is continuing to develop Policy in this area. At present the position taken by the Canadian Psychological Association (CPA) is supportive of the concerns

expressed by test publishers and it is recommended that you familiarize yourself with the CPA position.

In conclusion Psychologists practicing in Nova Scotia are expected to exercise great care in releasing raw data for reasons related not only to confidentiality, but also to the need to protect test materials for the public good and the need to ensure raw data is not accessed by individuals who do not have the skills to interpret it responsibly thus also causing harm.

However, provincial legislation does not support our standards in this regard. When the release of data is Ordered by the Court, psychologists are not expected to refuse compliance. In those cases when ordered by the Court to disclose information inappropriately, your responsibility ends once you have requested that the Court make adequate provision for the ethical handling of the data.

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