

# Confidentiality

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## Related policies:

- Data Protection, Information Governance Policy, Safeguarding: Children (Youth) & Vulnerable Adults Policies, Case Recording & Information Policy & Procedures, Whistleblowing & Duty of Candour Policy, Monitoring and Evaluation Policy and Procedures

## Related legislation:

- UK Data Protection Act, Working Together to Safeguard Children, Online Safety Act



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## 1. About this policy

### a) Aims of this policy:

This policy relates to confidentiality with respect to personal and sensitive information held by the organisation that may be in relation to staff, volunteers, students, trustees, members, young people, supporters, donors or those contracted by 42nd Street.

#### **d) What triggers a review of this policy:**

42nd Street will monitor this policy to ensure it meets statutory and legal requirements including those outlined in legislation relating to data protection, safeguarding, employment and the prevention of terrorism.

**Commented [SL1]:** Aside from the regular review dates, are there any instances or events that might trigger the early reviewing of this policy?

## **2. Introduction**

### **a) Our services**

Providing a confidential service is essential to our work and the presumption of confidentiality is essential in developing trusting and therapeutic relationships with young people.

### **b) Our duty of confidentiality**

42nd Street has a general duty of confidentiality to young people who use the service and to protect the confidentiality of personal and sensitive information shared by staff, volunteers, students, trustees, members, supporters, donors and others involved with 42nd Street services.

### **c) Who this policy covers**

All members of staff, students, volunteers, trustees and agents conducting business for 42nd Street are bound by this Policy.

### **d) Legislative framework**

42nd Street will at all times operate within the principles of the Data Protection Act (1998) and General Data Protection Regulation (2018) in the collection, storage, processing and destruction of personal and sensitive information.

In addition, the developing Online Safety Act and associated guidance from Ofcom is being actively monitored and will inform this policy as the implementation and guidance develops.

## **3. Authorisation & Access**

### **a) Staff responsibilities**

All those working for or on behalf of 42nd Street in whatever capacity must at all times ensure that confidential information and especially that containing personal and sensitive information is held securely and that all responsible measures are made to prevent unauthorised access.

### **b) Requirements to access information**

No member of staff, students, trustee, volunteers, partners or visitors to 42nd Street may have access to any confidential files or systems unless they have signed a statement or a formal contract in which this is included that they are bound by the Confidentiality Policy.

### **c) When information should be accessed**

42nd Street staff and students will have access to confidential information relating to young people as part of their work or student placement.

Such information (e.g. case files) should only be accessed on a 'need to know' basis and for the purposes of fulfilling their role.

### **d) Sharing information**

Confidential information should only be shared within the team on a 'need to know' basis and the rights and needs of young people should be at the forefront of any such decisions.

### **e) Operational responsibility**

Operational responsibility for compliance with data protection legislation is held by the Chief Executive.

## **4. Young people's consent**

### **a) Recording consent**

Our Management Information System allows for the recording of all individual consents on case records.

### **b) Grounds for consent**

42nd Street will provide a confidential service to young people under 16 years of age in line with the Fraser Principles i.e. where it is deemed that the child is competent to consent to receive the service (without the consent of parents / guardians) and where the provision of a confidential service is in the best interests of the child. The consent of parents / carers will be encouraged where appropriate.

### **c) Consent to be referred**

All referrals must state that a young person has consented to a referral prior to its acceptance.

### **d) Consent to contact**

Specific consent is required with regards to communication methods.

### **e) Consent to contact a young person's GP**

Our referral and assessment processes provide young people with the opportunity to identify that that they do not wish their data to be shared with their GP.

### **f) Consent to share information**

42nd Street understands confidentiality to mean that no personal information regarding a user of its services (including the fact that the young person has contacted 42nd Street) will be shared with any third party without that young person's explicit prior consent.

### **g) Consent for data flow**

Young people's consent to flow data is optional.

#### **h) Exceptions to consent**

Exceptions to sharing information in any way not covered by the above are where there is risk of harm, as outlined below

## **5. Working with third parties**

#### **a) Partnerships with third parties or other agencies**

42nd Street is involved in partnership work with other agencies in order to meet the needs of young people.

#### **b) Obtaining consent**

42nd Street will ensure that any user of such additional services has given their express consent for their details to be shared with the other organisation and that the organisation in question has a confidentiality policy which will protect the user's privacy, and the confidentiality of any information shared.

#### **c) Contractual agreements**

Where 42nd Street delivers services with or on behalf of another agency (e.g. a school) prior agreement will be made about arrangements with respect to confidentiality and set out in the Service Level Agreement or contract.

#### **d) Storing information**

42nd Street will not normally hold information shared by another agency that the agency does not wish to be accessed by a named young person. Decisions about specific circumstances will be made by the Head of Services.

## **6. Sharing young people's information**

#### **a) When confidentiality must be broken**

Confidentiality will normally be assured to any user of 42nd Street's services. However, there are exceptions to this general principle, notably when safeguarding concerns arise.

It may be necessary for 42nd Street to disclose information to a relevant statutory service (or other e.g. parents or carers) without consent if:

- We have reasonable cause to believe that a child is at risk of significant harm
- We have reasonable cause to believe that a vulnerable adult is at risk of significant harm

- Where there is risk of harm to third parties (e.g. where we have reason to believe that a service user may pose a risk to other professionals, etc.)
- Where we receive information that relates to a terrorist threat, a legal request and lawful requests relating to court proceedings

## **b) Safeguarding considerations**

42<sup>nd</sup> Street follows the UK DPA (section 1.2.18), relating to safeguarding concerns that can trigger sharing someone's as including

*“protecting an individual from neglect or physical, mental or emotional harm, or protecting the physical, mental or emotional well-being of an individual, and the individual is aged under 18, or aged 18 or over and at risk”*

Alongside the UK DPA definition of a person at risk as having

*“reasonable cause to suspect that the individual as needs for care and support, is experiencing, or at risk of, neglect or physical, mental or emotional harm, and as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it”*

42<sup>nd</sup> Street will endeavour to follow the appropriate local multi-agency procedures in relation to safeguarding children and vulnerable adults. Safeguarding policy and practice are set out within the 42<sup>nd</sup> Street Youth (Child) Safeguarding Policy and the 42<sup>nd</sup> Street Policy for the Safeguarding of Vulnerable Young Adults (18-25 years) from Abuse Policy and the Mental Health Capacity Act.

## **c) Who information might be shared with**

Relevant statutory services may include local authority children's services, adult social care, GPs, mental health services, schools and the police. This is not an exhaustive list, but it is essential to 42<sup>nd</sup> Street that anyone with whom information is shared with is in a position to meaningful impact and improve the wellbeing and safety of young people involved.

## **d) Who makes decisions to break confidentiality**

Any decisions relating to sharing of information without a service user's consent will be made by the Duty Manager, ideally in conjunction with the Head of Service or the Chief Executive.

## **e) Gillick Competency**

Gillick Competency (along with 'Fraser Guidelines') is a way of determining whether a child (someone under 18) is able to consent to something.

Gillick Competency considers a person's maturity, experiences, general intelligence, understanding of consequences & risk and their decision making so far to determine if they can knowingly give consent for something to happen.

This is an essential principle allowing young people to access support directly without unnecessary barriers.

Gillick competency is a concept that may be relevant for sharing of information, such that we will always involve young people in decisions and listen to young people's thoughts on what ought to happen, because young people are likely to have proven themselves Gillick competent by way of assessment and in their continued access of support with the organisation.

#### **f) Including young people in decisions**

Where a young person makes a disclosure which gives us reasonable cause to believe that they, or someone else, is suffering from, or is at risk of significant harm, every attempt will be made to inform the young person of any action we intend to take, including any sharing of information.

#### **g) Mental Capacity Act**

The Mental Capacity Act acknowledges people over 16 have more capacity to make decisions than younger children, unless it's proven that they lack this capacity.

Legally speaking, having 'capacity' means that someone understands the information relevant to the decision, can retain that information, use or weigh that information as part of the process of making the decision, and communicate this decision.

The act specifically mentions those over 16 having the 'mental capacity' to make decisions about their own healthcare (such as medical treatments) and when it comes to these decisions, it also says that

"it is unfair to expect someone to make a decision without providing all practical support available"

Lastly, the act makes it clear that people over 16 have the right to "make unwise decisions" and that these cannot be used as evidence that they lack the capacity to make different ones.

For 42<sup>nd</sup> Street, this means that if all provisions of support have been offered and all the information needed to make a decision has been given, so long as there is no reason to believe any lack of capacity is present, then 42<sup>nd</sup> Street will respect young people's wishes around sharing information, except for when safeguarding situations require it, as outlined above.

#### **h) Recording decisions**

The circumstances and reasons for any such sharing of information should be fully and accurately recorded in the young person's case file and the safeguarding log (or other required location).

#### **i) Any other circumstances**

In any circumstances not detailed above in which confidential information may need to be shared with a third party without the consent of the person concerned, this must only happen with the authorisation of the Chief Executive or other identified manager or Trustee with delegated authority.

## **7. Keeping young people's information secure**

#### **a) Organisational responsibilities**

42<sup>nd</sup> Street will seek to ensure that no breach of confidentiality occurs. Procedures for maintaining confidentiality for users of the service and information about them have must be followed at all times.

#### **b) Staff responsibilities**

All staff have a responsibility to ensure that confidential information relating to service users, staff, volunteers, trustees, etc. is stored securely in line with the requirements set out the relevant policies

including those relating to use of ICT equipment, recording and case notes, monitoring and evaluation, etc.

### **c) Related policies**

Further information around data security can be found in the organisation's Data Protection Policy and Information Governance Policy

## **8. Accessing young people's records**

### **a) Young people's rights to see information**

All young people have a right to see any records held by 42nd Street containing personal information about them. Young people have a statutory right to make a Subject Access Request and can access data held about them.

In accordance with GDPR article 15.1, young people are afforded the right to see

- any personal data held
- the categories of data held
- the reasons why their data is being stored
- who their data has been, or could be, shared with
- how long their data will be held for
- how they can have any inaccuracies corrected
- how they can make a complaint about the handling of their data
- any points at which automated decision making was involved in how their data was handled and the consequences of this

### **b) Responding to requests**

The charity has a statutory responsibility to respond to any young person's requests sensitively and appropriately.

In accordance with GDPR article 12.3, when receiving a request, information must be provided within 1 month (unless there's significant complexity, in which case 3 months)

Where the request is made by electronically, the information should be provided by electronically where possible, unless otherwise requested.

### **c) Requests from third parties**

Police and Solicitors may make a formal request for information held about a young person and the support they accessed at 42nd Street.

We comply with such requests upon suitable checks on the identity of the individual/organisation making the request and upon sight of consent given by the young person, unless there are safeguarding or legal reasons where consent is not required.

#### **d) Exemptions**

The following exemptions may apply to any request to see information held about themselves:

- Information relating to others (*UK DPA schedule 2.3.16*)
- Information would be likely to cause serious harm to the physical or mental health of any individual (*UK DPA part 2.5.1*)
- Information relating to child abuse where the information involves someone under 18 who is, or may be, at risk of non-accidental physical injury, physical and emotional neglect, ill-treatment or sexual abuse and the request has come from someone with parental responsibility or a court appointment carer and complying with the request would not be in the best interests of the child. (*UK DPA part 3.5*)

#### **e) Who responds to requests**

The first point of contact for a young person making such a request is their case manager who must involve a Head of Service.

Third party requests are managed by the Leadership Team with oversight by the Safeguarding Lead.

#### **f) Related policies**

Access to records is in line with the procedures set out in the 42nd Street Recording and Case Notes policy.

## **9. Staff confidentiality**

#### **a) Retaining applications**

All applications for jobs at 42nd Street are confidential and held securely for a period of one year for unsuccessful candidates in line with our Data Retention schedule.

Successful candidates' applications form part of their employee records and are stored securely and confidentially on site.

When the employee leaves the organisation, they are held in secure storage for a period of 25 years.

#### **b) Viewing your staff record**

Staff have a right to see their personnel file and such requests should be made to their line manager.

#### **c) Access to staff records**

Staff records must only be accessed by the Senior Management Team and the authorised member of the Admin Team.

Personnel records should only be accessed on a 'need to know' basis.

#### **d) Sharing with third parties**

Personal details of job applicants and staff must not normally be disclosed to third parties without the prior agreement of the individual concerned.

#### **e) Exceptions**

In exceptional circumstances (such as those relating to serious criminal proceedings or safeguarding investigations), information about employees, trustees, students, etc. may be shared with third parties without their consent.

In such cases the person concerned will be informed unless to do so would hinder any investigation. Such circumstances are detailed within the 42nd Street Whistleblowing and Duty of Candour policy.

## **10. Breaches of confidentiality**

#### **a) Commercially sensitive information**

Information deemed to be commercially sensitive can only be shared with the permission of the Chief Executive or other identified manager or Trustee with delegated authority.

#### **b) Accidental breaches**

Any accidental breach of confidentiality (or near miss) should be reported immediately to the Duty Manager and to a member of the Senior Management Team.

#### **c) ICO compliance**

42nd Street complies with external reporting procedures both in relation to reporting to service commissioners and national regulators such as the Information Commissioners Office (ICO).

#### **d) Disciplinary action**

Unauthorised breaches of confidentiality or failure to follow this or other policies relating to confidentiality or data protection may result in disciplinary action.