

**C. Privacy and Confidentiality**

1. Personal Information and Records

**Policy Statements:**

1. PLEA is committed to protecting the privacy of the personal information of its program participants and residents, personnel, contractors and partners in delivering services. The organization values the trust of those we work with, and recognize that maintaining that trust requires that all information in our control or custody be carefully protected.
2. PLEA ensures that all individuals the organization serves are informed of why and how the organization collects, uses, and discloses their personal information. All program participants and residents must provide their informed consent before any personal information is collected from them.
3. PLEA expects all personnel to comply with the requirements of the *Youth Criminal Justice Act* and the *Child, Family and Community Service Act* relating to the protections of privacy and confidentiality.
4. PLEA observes the principles and procedures set out in the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act* unless other applicable laws or specific contractual agreements require higher standards.
5. PLEA expects all personnel to make reasonable efforts to ensure that personal information that is created, received or maintained is accurate and complete.
6. PLEA respects the rights of program participants and residents to read the records and reports about themselves that the organization has created, request corrections and submit their own statements into their case records. PLEA will refuse to disclose information that might reasonably be expected to lead to harm to individual or public safety, including the individual it is about.
7. PLEA discloses information to other parties only as required by law or contractual obligations. Where permitted by law, personal information will be disclosed, only if informed consent to disclosure has been given in writing by the person concerned or, if incapable of providing informed consent, his/her legal representative.

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8. In the event that there are questions about the propriety of releasing any personal information, there will be no disclosure unless a manager has approved it. PLEA expects all managers to consult as necessary with a Program Director when these issues arise. The Executive Director or designate will seek legal counsel or other professional advice as required.
9. PLEA evaluates its Privacy and Confidentiality Policies on a regular basis, and implements changes as required ensuring that they are consistent with all applicable laws, legislation and best practices.
10. PLEA routinely assesses sensitivity to the issue(s) of information and privacy when interviewing prospective personnel and in developing contracts for services.
11. PLEA requires all personnel, contractors and students to be informed of and agree in writing to observe these policies and procedures.

### References:

- Legal requirements under applicable federal and/or provincial laws governing the protection of privacy and access to information, including requirements to allow people access to records about themselves and to permit them to request corrections of inaccurate information;
- The provisions of Section 110 of the Federal *Youth Criminal Justice Act* that “no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act”;
- The provisions of Part 5 — Confidentiality and Disclosure of Information of the Provincial *Child, Family and Community Service Act*;
- Requirements set out as conditions of contracts to provide services; and
- Professional ethical responsibilities.

### Reason for Policy:

The *Freedom of Information and Protection of Privacy Act* (FOIPP Act) regulates most public bodies including provincial government ministries, local governments, universities, colleges, public school boards, regional health authorities, hospitals and Crown Corporations. It contains provisions dealing with access to personal and general information, opportunity to correct information,

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protection of privacy including that of third parties with an interest in the information, time limits for response, and fees. The provisions of this Act cover all personal information in the custody or control of a ministry.

The *Personal Information Protection Act* (PIPA) governs how all organizations in British Columbia's private sector (including not-for-profit societies) must collect, use, disclose and manage personal information. It recognizes the right of individuals to protect their personal information and regulates what organizations must do to ensure that this occurs.

All contracts that PLEA holds define what information the ministry or funder retains control and custody of (subject to FOIPP Act) and what constitutes client records, which PLEA is entirely responsible for (subject to PIPA). Although it can be difficult sometimes to determine which legislation applies to the personal information in question, the same principles apply. Program participants and residents have the right to privacy and must provide informed consent before their personal information is collected, used or disclosed.

Personal information means information that can identify an individual (for example, name, home address, home phone numbers) and information about an identifiable individual (for example, physical description, health status, education).

The British Columbia *Freedom of Information and Protection of Privacy Act* defines records as including "books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records".

The same law sets out guidance on what constitutes "personal information" by establishing that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information:

- a. relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- b. was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- c. relates to eligibility for income assistance or social service benefits or to the determination of benefit levels;
- d. relates to employment, occupational or educational history;

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- e. was obtained on a tax return or gathered for the purpose of collecting a tax;
- f. describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- g. consists of personal recommendations or evaluations, character references or personnel evaluations about the third party;
- h. is disclosed, it could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation;
- i. indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations; or
- j. consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

### **Definitions:**

Control includes an organization's authority or ability to decide how to use, disclose and store personal information, how long to keep it and how to dispose of it. (*A Guide for Businesses and Organizations to the Personal Information Protection Act*; Office of the Information and Privacy Commissioner; 2005)

Custody includes the keeping of personal information by an organization in its offices, facilities, file cabinets or computers. (*A Guide for Businesses and Organizations to the Personal Information Protection Act*; Office of the Information and Privacy Commissioner; 2005)

Disclosure includes the showing, sending or giving of personal information to some other organization, government or person. (*A Guide for Businesses and Organizations to the Personal Information Protection Act*; Office of the Information and Privacy Commissioner; 2005)

Document includes a thing on or by which information is stored, and a document in electronic or similar form. (*A Guide for Businesses and Organizations to the Personal Information Protection Act*; Office of the Information and Privacy Commissioner; 2005)

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### C. Privacy and Confidentiality

#### 2. Informed Consent

##### **Policy Statements:**

1. PLEA is committed to only collecting the personal information that is necessary to ensure a high standard of services to our program participants and residents. All individuals served by the organization are informed about what personal information will be collected and why, how it will be used and in what situations it will be disclosed. The amount and type of personal information the organization requires from individuals differs among programs. It is determined by both the established goals of the program, and contractual obligations.
2. PLEA expects all personnel to discuss with program participants and residents their rights to privacy and the circumstances where disclosure of confidential information may be required without their consent. Personnel are responsible for ensuring that these discussions occur as soon as practically possible, and are sensitive to the individual's needs and capacities.
3. PLEA requires that all program participants and residents give their informed consent before personal information is collected from them. They can provide their consent orally if personnel are confident that they understand what they are agreeing to, and there are no obligations to obtain informed consent in writing. The particulars of obtaining informed consent must be documented in program participants'/residents' case records.
4. PLEA will only use or disclose personal information where necessary to fulfill the purposes identified when program participants and residents provided their consent. The organization will not use or disclose their personal information for any additional purpose unless we obtain consent to do so.
5. When program participants/residents provide their consent in writing they are provided with a copy of the form and the original is filed in their case records.

**Please Note:** PLEA generally deems youth referred to our services as capable of consenting for themselves. Refer to: 2. Standards of Practice; E. Research Projects.

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### Procedures:

1. PLEA recognizes that there are circumstances when program participants or residents want us to share personal information about them and their participation in our services with other individuals of their choosing – for their own reasons. When these requests are made, workers are expected to consult with their Program Manager. PLEA requires that a *Request to Share Personal Information* form be completed in all cases.
2. All personnel are expected to assist the program participant or resident making the request in understanding and completing the form. It is particularly important that they understand that they can identify the specific personal information that they do not want shared with others and that this will be respected. They are also entitled to change their minds and withdraw the request at any time
3. A copy of the completed form should be provided to the individual and the original must be filed in her or his case file.

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### C. Privacy and Confidentiality

#### 3. Disclosing and Accessing Personal Information

##### **Policy Statements:**

1. PLEA supports its personnel sharing information about program participants and residents with others involved in the same PLEA program, whether PLEA personnel or not, only on the basis of their “need to know”.
2. PLEA personnel are permitted to disclose information to persons who have a legal or contractual right to receive the information and/or who have a legally recognized and demonstrable need to know the information in order to carry out their duties. This includes: routine case reports, case summaries, reports of unusual and/or critical incidents involving program participants or residents, and other reports as required by contractual obligations or professional duty.
3. PLEA requires all personnel to have the approval of their manager before they share information about participants or residents with colleagues who work in other PLEA programs, or with those who provide other services to PLEA participants or residents. All information provided must be based on a careful assessment of their “need to know”.
4. With the written approval of their manager, PLEA personnel may disclose information to other persons who have an interest and a legal right to receive the information. This includes the personal information about the person making the request except personal information about the applicant, if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health, or interfere with public safety<sup>1</sup>.
5. When individuals, after reviewing their personal records, seek to have any correction made, the information must be in writing, signed and delivered to a PLEA manager. The manager will file the request on the relevant record(s), and correct any fact that is demonstrably in error or, where there is an unresolved dispute about the validity of the correction, mark the record so as to refer future readers to the detail of the dispute.
6. With the written approval of their manager PLEA personnel may disclose personal information to a third party, where permitted by law, providing that the person whose information will be released (or legal representative, if

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<sup>1</sup> See Section 19 of the *Freedom of Information and Protection of Privacy Act*.

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incapable of providing informed consent) has given informed written consent<sup>2</sup> to the specific release<sup>3</sup>.

7. In the event that there are questions about the legality or propriety of releasing any item(s) of information, the manager will consult with the Executive Director or designate who has the authority to seek legal or other professional advice as required.

### Procedures:

1. The following procedures must be followed when responding to all requests to release personal information.
2. Obtain the detailed request in writing and ensure that it contains:
  - the date of the request;
  - information identifying the applicant and his/her relation to the records being requested, including facts relating to the time when the records were made if the records are not current (name, address or other identifying information for the period covered by the records);
  - a mailing address;
  - an original signature; and
  - sufficient detail to allow PLEA to determine whether it has care or custody of all the relevant records, and to identify and retrieve them.
3. Assess whether the person making the request has a right to the records:
  - Are the records his/her personal information or is the request for general information about PLEA or personal information of a third party?
  - Is there any contractual or legal impediment to the release of the records, notably provisions of the *Youth Criminal Justice Act* or the *Child, Family and Community Services Act*?

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<sup>2</sup> The *Infants Act* establishes the principles governing the right of children and youth to provide informed consent.

<sup>3</sup> Separate written consent will be sought for each and every release of information to a third party after reviewing the content of the records in detail with the person concerned. PLEA personnel will respect the right of an individual to deny or withdraw consent.

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- Are there any compelling reasons, (see the *Freedom of Information and Protection of Privacy Act*) to deny access
4. Retrieve the relevant records and review in detail to assess:
    - Are there any reasons (as set out in the *Freedom of Information and Protection of Privacy Act*) to deny access to any or all of the records or sever information from the records?
    - Sever any information as necessary
    - If the request is from a third party for access to personal information, review the records in detail with the person concerned and determine whether he/she understands the records and the possible consequences of permitting release. If he/she agrees to the release, get the consent in writing, dated and containing a clear reference to the records covered by this consent.
  5. Prepare copies of the records to be released and a covering letter that contains:
    - The reference to the original request
    - An itemized list of the records being released
    - An itemized list of any documents being denied or information being severed and the reason(s) for each denial or severing.
  6. Review the request and proposed response with your manager and ensure that the manager's written permission to proceed with the release is placed on file.
  7. Notify the applicant that the response to the request is available:
    - By letter if access is being denied; or
    - If information is to be released, make arrangements for its pick up or delivery upon receiving proof of the applicant's identity. (Note: matching the applicant's signature with one on the record may be sufficient.)
  8. Ensure that detailed information about the release itemizing the records released is recorded on the records in question and in administrative records.

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### C. Privacy and Confidentiality

#### 4. Duty to Report

##### **Policy Statements:**

1. PLEA expects all personnel to consult with their manager as soon as practically possible whenever they are concerned about their obligation to protect the confidentiality of information. This includes situations when they suspect an individual is being harmed (sexual or physical abuse), may harm themselves (suicide), or may harm others (physical violence).
2. PLEA personnel have a duty to disclose confidential information immediately to their manager and to follow their instructions when they have reason to believe that a child has been, or is likely to be, at risk for child abuse or neglect.
3. PLEA personnel have a duty to disclose confidential information immediately to their manager when an individual's actions or intentions pose a risk to the life, health or security of themselves or others.
4. PLEA's obligation to protect the confidentiality of personal information does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a program participant or resident, or other individual or when laws or regulations require disclosure without a program participant's or resident's consent.

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### C. Privacy and Confidentiality

#### 5. Safeguards

##### **Policy Statements:**

1. PLEA expects all personnel to take every precaution necessary to ensure that information and records, including any displayed on computer terminals, are not left unattended where others might have access to them, even accidentally.
2. PLEA expects all personnel to take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines and other electronic or computer technology. Disclosure of identifying information should be avoided whenever possible.
3. PLEA holds all personnel responsible for ensuring that records are stored securely when not in use and that the storage is reasonably protected from damage or loss, and improper disclosure or unauthorized access to information.
4. PLEA expects all personnel to avoid discussing client and case issues in situations where there is a possibility that others could overhear their conversation.
5. PLEA designates a Privacy Officer who is responsible for ensuring the organizations policies, practices and procedures are consistent with the *Protection of Personal Information Act*, and receiving and responding to any complaints that arise.
6. The name and contact information for the Privacy Officer is provided to all individuals we serve, personnel, contractors, referring authorities, and to the public upon request.
7. All personnel are required to report to a manager any incident of damage, loss, improper disclosure or unauthorized access to records or information at the earliest opportunity after becoming aware of the incident.
8. All personnel are required to report to a manager at the earliest opportunity any information that any other PLEA personnel may be failing in their duty to protect information, even if such failure is inadvertent.

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### **Reason for Policy:**

The outreach and decentralized nature of PLEA's operations require that personnel are able to access various kinds of information, including program participants' and residents' personal information, in a variety of locations. Consequently, all PLEA personnel have the responsibility to ensure the physical security of records entrusted to them and to protect against improper disclosure and unauthorized access to the information.

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### C. Privacy and Confidentiality

#### 6. Media Relations

##### **Policy Statements:**

1. PLEA strictly regulates the response to all media inquiries to protect the privacy rights of its personnel and the individuals the organization serves.
2. All personnel are specifically instructed not to speak to the media about any aspect of the organization and to direct all inquiries to the Executive Director or his designate.
3. PLEA expects all personnel who are approached by the media to report the particulars to their manager as soon as possible.
4. PLEA expects all personnel who become aware that a program participant or resident is considering contacting or has contacted the media to consult with their manager as soon as possible. Personnel must not interfere with program participants' or residents' communication with the media.
5. The use of program participants' and residents' photographs is strictly prohibited in all publications that PLEA produces.
6. When a program participant's or resident's artwork or creative writing is used in a publication produced for the organization his or her informed written permission must be obtained beforehand (see the *PLEA Publication Release/Consent Form*). Any information that could potentially identify him or her must be removed or changed to protect their privacy.
7. The use of any information that could potentially identify a program participant or resident is strictly prohibited in all publications that PLEA produces. These include, but are not limited to personal stories and endorsements. When personal stories and endorsements are included in publications exceptional care must be taken to ensure that the personal dignity of the individual is respected.

**Refer also to:** 2. Standards of Practice; A. Ethical Responsibilities; 2. PLEA Publications.

**Please Note:** If you have any questions about these policies or the procedures that must be followed do not hesitate to contact Tim or his designate for advice.

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#### 7. Retention of Records

##### **Policy Statements:**

1. PLEA takes all reasonable measures to ensure the secure storage of all program participant/resident and personnel records.
2. When services to an individual are concluded, PLEA personnel prepare the file for storage by following the PLEA File Closing Procedures. Personnel are responsible for ensuring that all records or copies that have been decentralized for operational purposes are returned and, as necessary, integrated into the central record.
3. Where the file contains records that are the property of government or some other body as set out in law or a contractual agreement, PLEA personnel are responsible for ensuring that such records are retained, destroyed or returned to the government or other body as required.
4. PLEA retains program participant/resident and personnel records for a period of 99 years after the file is closed. This is in order to protect the rights of individuals to initiate civil legal actions and the ability of PLEA to respond to requests for relevant information and/or to respond to such actions.

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