



## **PHA Guidance Note Provision of Client Notes/Information Held (to Client)**



*This Guidance Note is provided to Practitioner members of PHA Inc. This does not constitute PHA Policy. Each member should be aware of this Guidance and based upon own/individual circumstances, determine whether or not this guidance is applicable to their individual practice of hypnotherapy*

There is no specific legislation directly applicable to release of hypnotherapy client records; either to the client or to third parties. It is a matter of principal for most hypnotherapists that client records and information pertaining to clients will be respected and treated with the utmost confidentiality and this expectation is captured in the PHA Code of Ethical Conduct. However, this ethical requirement is, for the most part, included for protection of client information/records as far as third parties are concerned. This, of course, does not reflect advice or guidance should client records be subpoenaed and provision of subpoenaed records are adequately covered by existing legislation.

It is conceivable that, from time to time, a client may request a copy of information held and client notes completed for that individual. This PHA Guidance Note is provided to inform Members if/when a client requests copies of information. This guidance could also be consulted if a client requests access to view records held, however it is specifically targeted toward the provision of copies of client records/information etc.

Client Notes can refer to:

- Forms completed by the client,
- Notes taken/compiled during consultation/treatment
- Observations noted by the hypnotherapist
- Audio or Video recordings of client sessions.

It is, in all instances, the decision of the practitioner as to whether or not client notes can/should be released and/or copies provided to the client. Requests for access/copies from any third party should only be considered after the explicit and implicit authority is received from the client.

In considering the release and provision of client information to the client, PHA advises each practitioner to consider the advice issued by the Commonwealth Government's **Office of the Australian Information Commissioner** relating to access and correction of records (in particular, Principle 6) - see link: <http://www.privacy.gov.au/index.php> and link: <http://www.privacy.gov.au/materials/types/infosheets/view/6583#npp6>. Paragraphs 6.1(a) to (k) (inclusive) provide the specific guidance on the grounds that a request can be denied. An extract of Paragraph 6 below.

Principle 6 states:

## **6. Access and correction**

6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:

- (a) in the case of personal information other than health information providing access would pose a serious and imminent threat to the life or health of any individual; or
- (b) in the case of health information providing access would pose a serious threat to the life or health of any individual; or
- (c) providing access would have an unreasonable impact upon the privacy of other individuals; or
- (d) the request for access is frivolous or vexatious; or
- (e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or
- (f) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
- (g) providing access would be unlawful; or
- (h) denying access is required or authorised by or under law; or
- (i) providing access would be likely to prejudice an investigation of possible unlawful activity; or
- (j) providing access would be likely to prejudice:
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
  - (iii) the protection of the public revenue; or
  - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or
  - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;
- by or on behalf of an enforcement body; or
- (k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.

6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

6.4 If an organisation charges for providing access to personal information, those charges:

(a) must not be excessive; and

(b) must not apply to lodging a request for access.

6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.

6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up-to-date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, the organisation must take reasonable steps to do so.

6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

PHA considers it proper that, in the case of the practitioner deciding to not to provide copies to the client upon client request, the requirements of Paragraph 6.7 be observed and a reason for the denial be provided to the client.

PHA – 4 Dec 2014