

Case Example #1

You are working with a 47-year old woman who was laid off from a local company and who has been receiving unemployment benefits for 7 weeks. The individual has not been successful in scheduling very many job interviews despite attending several career center workshops, sending out 150 resumes and cold calling companies that employ workers in the same job as her former position. She has told you that she has begun to feel depressed and is becoming less enthusiastic about her employment future and has curtailed most of her job search activity. She is also concerned because, as a single mother she tells you that the \$325 that she receives as her weekly benefit amount barely covers her family's expenses. Because of her depressed state, her physician has prescribed medication that she is now taking. You wish to refer her to the clinician from the Department of Mental Health who provides counseling services at your career center two days per month.

In making the referral to the counselor can you:

- identify the individual as a UI recipient?
- discuss with the counselor the specific amount of her unemployment benefits?
- discuss with the counselor that she is currently taking medication?

Case Example #1 Discussion

The need to identify her status as a UI recipient would not be relevant to making the referral to the clinician. The discussion with the clinician could involve a general summary of the issues underlying the need for the referral: her job loss, her lack of job search success, the pressures of her status as a single parent, etc. The discussion should not include a specific identification of her status as a UI recipient and must never identify the amount of her benefit. While these may, in fact be contributing factors to her need for the referral, these should be more appropriately posed in a generalized way as "issues related to her financial situation". Neither should you discuss with the clinician the fact that the woman is taking medication for her condition.

Any discussion of the specific personal information regarding the woman's status as a UI recipient, the specific amount of her UI benefit and her medication should only be provided to the clinician by the customer, herself.

Case Example #2

You are a staff person of a non-profit, community based organization (cbo) that is an approved ITA (Individual Training Account) provider of training services under Title I of WIA. The cbo has MOSES access and you are a registered MOSES user. In the course of carrying out your responsibilities as designated by your superior, one of your responsibilities is to search the MOSES database each day to identify individuals who have newly registered as job seekers with three career centers located in your area. The search is designed to develop a list of individuals who may be in need of training services. The search provides each new registrant's name, address, telephone number, age, gender, veteran status, educational background, employment history (including prior salary/wage) and UI recipient status and amount of weekly UI benefit (if applicable). You provide this list to the Marketing Director of the cbo, who will review the list and decide which individuals will receive direct marketing materials regarding the specific training services offered by your organization.

- Must you sign the Confidentiality Policy form?
- Must the Marketing Director of the cbo also sign the Confidentiality Policy form?
- Can the information derived from MOSES be utilized for the purpose described?

Case Example #2 Discussion

All users of MOSES must register as a MOSES user and be assigned a unique MOSES user ID number. All MOSES users must sign the Confidentiality Policy form.

In order to use (access) personal information provided by an individual in the course of registering as a customer of a Massachusetts One-Stop Career Center (whether or not the personal information is generated through MOSES or another information source), the user of the information must have signed the Confidentiality Policy form.

A staff person of an organization that is part of the Massachusetts workforce development system (such as an approved ITA training provider) may, generally, use the personal information of a customer of the Massachusetts workforce development system (such as a One-Stop Career Center Operator customer) in carrying out his/her official functions. However, the staff person is entitled to use only information or data elements that are pertinent to satisfactorily completing the specific task at hand. For instance, in this case where the information is generated by you directly through MOSES, in a discussion you might have with the organization's Training Services Director regarding the potential registration of a career center customer into one of your organization's training courses, it would likely be pertinent to discuss the person's name, the town of residence, highest level of education completed and work background.

It would not necessarily be pertinent to discuss the individual's age, full street address, or telephone number. In some cases it may be pertinent to discuss the individual's general status as a UI recipient (but not the amount) in cases where enrollment in a training program within a specified time frame is a requirement of maintaining the person's benefit eligibility. Discussion of either the specific amount of the individual's weekly UI benefit rate (if a UI recipient) and/or the number of weeks the individual has remaining on his/her claim may be relevant in cases

where there is a question regarding the individual's ability to complete the course based on its length and/or the lack of other, necessary financial support available to the customer.

It must also be noted in the instance described above, that the Training Services Director would had to have also signed the Confidentiality Policy form.

Case Example #3

You are a counselor at a local One-Stop Career Center. After attending his orientation and learning about training opportunities available through the center, a young man who is a first-time customer of the center discusses with you his strong desire to attend a specific technology training course offered by one of the local training providers. Based on his previous work history you believe that he has skills that are currently in demand in the local area and suggest that he needs to explore the current job market before it can be determined that he is in need of training services. He becomes very agitated and relates to you that when he becomes angry he sometimes resorts to force. He tells you about the guns that he owns and in a threatening manner states that he "knows to use them." Based on his reaction you suggest he might want to discuss the situation with the clinician who schedules sessions at the career center. You offer to initiate a referral, but he refuses. You ask that he speak with the center director which he does. After the discussion with the director, the individual leaves and never returns to the career center. .

- Should you inform other staff of the center about this individual and his implied "threat"?
- Should other career centers be informed about the individual in case he should choose to pursue assistance through another center?
- What information about the individual should you enter in MOSES regarding this individual?

Case Example #3 Discussion

In the case of any customer (or non-customer) who makes threatening statements you should follow the policies and procedures as described in your career center's written Safety Plan.

While uttering a personal "threat" would not be considered personal information protected by "confidentiality" statutes and referencing the threatening statement in the Notes section of MOSES would be allowable as long as it relates only the "facts" of what was said and observed, caution should be taken with respect to transmitting the specifics of what occurred to third parties (in this example to other career centers).

Case Example #4

You are a counselor at the One-Stop Career Center. At her initial counseling session, after having been referred to the Title I program, a woman customer relates to you that her husband is a functioning alcoholic who has become more and more abusive. She tells you that she is afraid of him and that she buys his beer so he will drink at home and not be driving on the road. He holds a full time job. She tells you she wants help, but has too many issues that need to be resolved before she can be job ready, and she wants training.

- How should you document the counseling session in her MOSES record?

Case Example #4 Discussion

While stating the specific facts of the discussion in MOSES Notes is allowable and as the issues with her husband may, in fact be relevant to both her ability to undertake either job search activities or participate in and complete a training program, summarizing the potential barriers to her successful participation in these career center services under the general category of “domestic issues” may be a more prudent approach. Such an approach would provide another counselor/staff person who may be working with the woman in the future with sufficient information relevant to potential barriers that may affect her capacity to undertake and complete training (or other career center services) so as to assure that such issues will be identified and potential solutions discussed so as to mitigate their effect on her successful participation as a career center customer.

Case Example #5

A man attends the Career Center Seminar and subsequently meets with you, the career center counselor, for WIA Title I assessment. The session goes well. He would like to attend training as a Class A truck driver, and meets all criteria for training approval. At the end of the session, just before leaving, he lets you know that he was fired from his last job. After some further discussion he admits that he was fired because he beat up a co-worker. No criminal action was taken against the man as a result of the altercation and he has no other history of violence.

- What information should you note in his MOSES record?
- What information may you provide to other workforce development staff in servicing the customer’s employment and training needs?

Case Example #5 Discussion

While it is permissible to state the specific facts of the discussion in MOSES Notes (with appropriate MOSES confidentiality restrictions engaged), the basis for the firing from his previous job would not be relevant to a discussion you have with the career center training coordinator as to the customer’s potential referral to providers of Class A truck driving training courses in the area and would, therefore, not be permissible.

Case Example #6

You are the Director of a Massachusetts One-Stop Career Center. A private employment agency would like to use space in your career center to recruit workers for 250 temporary positions for the area's local agricultural exposition. The agency has a contract to provide the temporary help and the recruitment would be conducted on a daily basis over a two week period. The exposition lasts for a full month and would provide full-time employment opportunities for up to 6 weeks. The workers will not be charged a fee.

The agency will advertise the openings and the recruitment process in the newspaper and will provide signage in your career center to generate interest among your center's walk-in traffic. As they anticipate that between 800 and 1,000 people will apply for the positions, they are asking for career center staff to perform pre-screening services as part of the recruiting effort. In conjunction with the recruiting effort, the agency also requests that it be provided with a list of currently unemployed career center customers in order that its staff can conduct direct marketing of the positions to them.

- As part of the pre-screening services can you discuss the personal information of pre-screened candidates with the staff of the private employment agency when referring the candidate to the next screening level?
- Can you provide the private employment agency with a list of currently unemployed customers for direct marketing purposes?

Case Example #6 Discussion

There is no prohibition against career center staff providing relevant information to representatives of a private employment agency in carrying out referral related duties in conjunction with a mutually agreed upon recruitment initiative. (Remember, there is a general prohibition against working with private employment agencies if the job seeker will be charged a fee by the agency for its "service"). Under such agreements, staff must always be cautious to assure that only *relevant* customer information be provided. In this case, an applicant's name, city/town of residence and work history may be pertinent to the agreed upon pre-screening and referral process, whereas the applicant's UI status, specific street address and telephone number may not be relevant. An individual's age may be relevant for certain specific positions, such as the Commonwealth's statutory age limitations for operating certain machinery or serving alcoholic beverages (it must be remembered that any age qualifications placed on the hiring of an individual by an employer must be for a *bona fide* reason).

While sharing of relevant information among career center staff and representatives of the private employment agency as part of a referral procedure is allowable, the request to provide a list of the center's unemployed customers for use by the private employment agency's staff for direct marketing purposes is not allowable.

In working with private employment agencies (or any other outside entity desiring to partner with a career center for recruiting initiatives), it is strongly recommended that the allowable information sharing parameters be included in negotiating the specific agreement between the

career center and the private employment agency or other entity in order that all parties understand and are in full agreement as to any limitations regarding what information and data can and can not be shared.

Case Example #7

You are an employer account representative at a One-Stop Career Center. One of your primary responsibilities is to develop relationships with and market career center services to companies in the bio-technology sector, which has been identified as an “emerging” industry in your workforce area. You are particularly focused on developing relationships with new “start-ups” who have small administrative staffs and limited resources.

During an initial visit with the Operations Director of a prospective business customer, a new start-up, the Director had indicated that during the fourteen months since the company had begun operations, he was having difficulty retaining technical staff. He had told you that of the fifteen technicians that he had hired and trained, seven had left the company to join ACMEGen, Inc., a more established competitor in a nearby city. You had informed him that ACMEGen was also a customer of your career center who had recently been adding employees as it geared up to bring a new product to market. The competitor had regularly been listing job openings with your center and had even used space in your center to recruit a number of production workers.

A week following your initial visit you receive a telephone call from the Operations Director. He indicates that he has thought more about the retention issue and has concerns that while he believes his company offers competitive starting salaries, there may be an issue of the competitive level of the pay increases offered to employees after the probationary period and after the first year anniversary date. He does not have the resources to conduct either an in-house wage survey of his competitors or to hire an outside consultant to conduct a survey. He asks if you would be able to help by providing copies of the competitor company’s job orders so that he could compare how the competitor’s wage and salary levels compare to his own.

- Can you comply with the Operations Director’s request?

Case Example #7 Discussion

No, you may not provide a company with hard copies of the specific job orders of another company without written authorization from the company. Neither may you relate in oral or written form the wage/salary amounts of specific job openings or job titles of another company (without written permission). Based on your experience with local employers, you may provide informal or anecdotal information about the general wage ranges for similar positions in the local area as long as the information can not be used to identify specific employers or you may provide specific industry level wage and salary data from formal surveys as long as the generalized information or data is insufficient to identify specific companies.

If your center has the resources and expertise, it may offer to conduct formal wage/salary surveys of local industry sectors on either a no-cost or fee-based service, but data specific to a particular company’s wage levels derived from the company’s “business” dealings with your career center

must not be directly provided to another company, unless formally authorized by the company itself.

Additionally, it was improper to identify the named competitor, ACMEGen as a customer of your career center. Such information of the business is covered under the statutory requirements. Without expressed official authorization from the company, its status as a customer or non-customer of the center should not be divulged.

Case Example #8

You are the Director of a Massachusetts One-Stop Career Center. The Human Resources Director for a local manufacturing company with whom you have a personal relationship through membership in the local PTA calls you to inform you that she has received formal notice from the parent company in Illinois that it plans to move one of the company's production lines to a subsidiary in California within eight months and that she had been instructed to prepare an outplacement plan for the 150 affected workers. She asks your assistance as she is interested in integrating your career center services into her overall outplacement plan. She will send you (informally) a summary of the workers' job titles, pay levels, ages and place of residence in order that you might begin to develop a plan for serving the needs of the workers. She also asks that you keep the information confidential as no formal notice to the employees will be issued for several months. She will submit the required WARN Notice to the appropriate state-level personnel, but again, per corporate instructions it will be coordinated with the formal notice to the employees.

Subsequent to the call from the HR Director, you are contacted by the Local Workforce Investment Board Director who asks you about rumors he has heard from a WIB member that the manufacturing company in question will be having a significant layoff. The WIB Director asks for a detailed written summary of the situation in order to determine the potential for his developing and submitting a National Emergency Grant (NEG) proposal on behalf of the affected workers.

Several weeks later you are contacted by the business reporter for the local newspaper who has been a strong supporter of your career center over the years, promoting the center's services in his column on numerous occasions. He asks what you know about potential layoffs at the manufacturing company.

- What information can you provide to the WIB Director
- What information can you provide to the reporter?

Case Example #8 Discussion

As the Director of a Massachusetts workforce development entity, the LWIB Director is authorized to access/receive information regarding the planned layoff at the manufacturing company in order to carry out his/her official responsibilities that may include developing NEG proposals for submission to the U.S Department of Labor. It is strongly recommended that in discussing any potential, but "officially" unannounced layoff activity with a representative of an

affected company, that workforce development system staff will provide the company representative with information regarding other workforce development personnel (such as the local Rapid Response Team representative, WIB Directors, etc.) he/she may need to share the information with in order to formulate an appropriate response to the particular situation, but also assuring the representative that the information will not be shared with unauthorized individuals or organizations.

Regarding the request from the local reporter, the layoff information that you have received from the HR Director, whether received via the telephone conversation or the written summary, may not be provided to the reporter as he is not authorized to receive such information from you.

If, however, the request from the reporter came after a WARN Notice had been received from the company, the information in the WARN Notice could be provided as the WARN Notice is considered to be public information, not subject to confidentiality requirements. Local workforce development organizations are notified of the submission of WARN Notices by the Commonwealth's Rapid Response Unit's published list. It should be noted, that in practice most companies coordinate the submission of the WARN Notice to the designated state and local officials with the 60-day employee notice period. Under the rare circumstance that you gain access to a copy of a WARN Notice in advance of the date the affected employees are officially notified, contact your local Rapid Response representative for instruction as it is not consistent with state policy that general public notice of a WARN related layoff event should precede official notice to the affected workforce.

Case Example #9

You are a counselor of a private, non-profit community service organization providing counseling and referral services to the local community. You are working with a young man who dropped out of the local high school in the 11th grade to help pay expenses for his child. Your client is currently working part-time at a local gas station/convenience store, but would like a full-time job. Your client is not married to the child's mother and they do not live together. He tells you she is receiving Transitional Assistance for Needy Families benefits. He also tells you she has gotten a restraining order against him, but he tells you that he made no threat against her but she got it because she was mad at him for not watching the baby as much as she wanted him to.

You call a contact you have at the local One-Stop Career Center to make a referral. Your organization is not a formal partner with the career center (no MOU) but you have worked with the counselor of the career center in the past to assist your clients with their job search. Your organization does not have a policy requiring clients to sign an information "release" form in order to provide client information to other service organizations.

- What information about your client can you provide to the career center counselor?
- Is the One-Stop Career Center counselor prohibited from receiving/accessing any specific information regarding your client?

Case Example #9 Discussion

Generally, the information that you may provide to third party organizations in servicing your client's needs would be covered by the policies of your organization. The statutes referenced in WIA Communication No. 76 specifically cover information held by state agencies and their agents and by contractors and subcontractors of state agencies that gain access to the information in carrying out the formal duties and responsibilities on behalf of a state agency. In this specific case it would appear that there would be no formal prohibition against your providing any of the information told to you by the client to the career center counselor. Information pertinent to making a referral may be shared. This may include name, address telephone number, educational and work background, known barriers to employment (such as lack of a high school diploma or lack of transportation), if any. While there would not be a statutory prohibition against informing the career center counselor of the restraining order, your organization's policy and discretion should dictate whether you need to share that information instead of suggesting to the client that he, himself, provide that information to the career center counselor at the time of their meeting.

If, in this case, the client had signed an information release form the policy that is the basis for the release form should dictate the level of information that may be shared. It should be pointed out, that while use of a release form may provide some level of legal protection to an organization, the level of protection may be lessened in direct proportion to the lack of specificity regarding the information elements described on the release form, itself.

Case Example #10

You are a career center case manager conducting follow-up activity on your customers. You have been unable to reach one individual and despite having left three messages on her voicemail she has not returned your calls. You ask the UI Walk-in claims taker to look up the customer's record on QDOR to see if she is now working.

- May the UI Walk-in claims taker comply with your request?

Case Example #10 Discussion

No, QDOR may only be used in taking an unemployment claim. Any other use of QDOR is prohibited.

Case Example #11

You are a UI Walk-in claims taker. A woman comes to you and requests a printout of her husband's UI payments as he needs them for tax purposes.

- May you comply with her request?

Case Example #11 Discussion

No, an individual's claim information may only be provided to either the individual or to an individual with documented proof that he/she has been authorized by the individual to have access to such information.

Case Example #12

You are a job specialist in a One-Stop Career Center. While interviewing a customer for employment opportunities in your cubicle, the customer begins to tell you in a loud voice about his criminal history.

- Are you required to inform the customer that he can not tell you his criminal history?
- Are you required to move the discussion to a more soundproof location in the career center?

Case Example #12 Discussion

Nothing in the statutes referenced in WIA Communication No. 76 specifically requires you to move to a more soundproof, secure location in the career center in a case where the customer is, him or herself, relating sensitive personal information to you. It is up to each local workforce investment area and/or organization to develop policies and procedures to cover such circumstances. However, it is strongly recommended that staff should inform the customer that in such circumstances privacy may be an issue and you should suggest moving the interview to a more private setting.

In the situation where you, the job specialist subsequently discusses the customer's case with another staff person in the career center, all due care must be taken to maintain the confidentiality of the customer's personal information. If that means moving the discussion to a fully enclosed, private office or meeting room, such precautions should be taken.

Case Example #13

You are the intake person for the One-Stop Career Center. You sit at an open reception desk in the main foyer of the career center which has a waiting area with seating for up to 12 individuals. As a matter of regular procedure, it is one of your responsibilities to ask each person who enters the center for his/her social security number in order to check the MOSES database to determine if the individual is already registered as a customer.

- Does this practice violate any statutory requirements for protecting the confidentiality of personal information?

Case Example #13 Discussion

While the practice, itself, is not a technical violation of the statutes, it is a very poor and suspect business practice. If an individual who has been victimized by identity theft is able to demonstrate in a legal action that the practice contributed to the identity theft, both you and your employing organization may be vulnerable to the available legal sanctions. All due care must be taken to protect the personal information and data (such as social security numbers) of customers. Local policies and procedures should be reviewed with regard to any unintended contribution to potential unauthorized disclosure of personal information and revised as necessary.