

# Privacy and Confidentiality

Maintaining confidentiality over workplace sexual harassment complaints is an important part of encouraging workers to come forward with complaints and ensuring a fair process for everyone involved. Workers' rights to privacy must be balanced with the employer's need to collect and use information to keep the workplace safe and healthy. It is also important that a worker who has been reported for sexual harassment is given a fair opportunity to respond to the report, including being provided with details of the report and witness statements.

Here are 10 principles of privacy protection that employers should be aware of:

- 1 Be accountable**  
Make a specific person responsible for ensuring compliance with privacy laws and making decisions about how information should be handled.
- 2 Know the purpose**  
Identify a clear purpose for collecting information before you collect it.
- 3 Get consent**  
Get a person's consent before you collect, use, or share their personal information.
- 4 Limit collection**  
Do not collect information if you do not have a specific need for it.
- 5 Limit use, disclosure, and retention**  
Personal information can only be used for the purpose it was collected for. It should only be kept as long as needed for that purpose.
- 6 Be accurate**  
Personal information should be accurate and complete.
- 7 Use appropriate safeguards**  
Protect information using secure methods suitable for how sensitive the information is.
- 8 Be open**  
Communicate your policies about privacy and personal information to workers.
- 9 Give individuals access**  
People have the right to access their personal information and know how it is used or shared. If the information is incorrect, people have the right to challenge the information and update the information.
- 10 Have a way of handling complaints**  
Organizations should refer any complaints about privacy or personal information to the person in their organization responsible for compliance. Ensure people know how to make complaints about privacy.

## What is confidentiality?

Confidentiality refers to the duty to protect certain information, and to share entrusted information responsibly.

## What is privacy?

Privacy refers to the right to control who has access to our personal information.

## Ensuring privacy and confidentiality in responding to a report or disclosure of workplace sexual harassment:

**1** Have a clear workplace sexual harassment policy that sets out workers' obligations to maintain confidentiality and explains any limits to this. Have a separate privacy policy that explains what workers can expect in terms of how their information will be collected, stored, used, and disclosed. Provide regular policy training to staff at all levels.

Include a statement explaining that information stored on company-owned equipment like cell phones and laptops is not confidential and may be relied on in investigations

**2** Determine whether it is a formal report or a disclosure. Formal reports are made with the expectation that immediate action will be taken to address the incident. Disclosures are informal and made for the purpose of receiving support. Disclosures can be made to anyone in the workplace, but reports should be made to a person in authority, in accordance with the policy in your workplace. If someone shares an incident as an informal disclosure, the person hearing the disclosure should ask the disclosing person whether they would like to make a report or not. If they do not want to make a report, the disclosure should be kept confidential unless the exceptions set out in s.5 below apply. If the person makes a report, the report will be investigated.

**3** When investigating, know the purpose of the information to be collected and limit who will see it. Collect only what is needed.

**4** Prior to collecting information, let all parties know what will be shared and with whom. Explain to the complainant that a version of the written report will be shared with the respondent. Remove any unnecessary personal information of the complainant or witness(es) to allow the respondent to effectively respond to the complaint. When providing the report to the complainant, remove any unnecessary personal information of the respondent. Inform the parties that information may be shared with an outside investigator, human resources, or union representatives.

**5** Explain the legal exceptions to confidentiality, including the employer's duty to disclose information where there is:

- Clear and imminent danger to yourself or others;
- A child or vulnerable adult in need of protection;
- A court order (subpoena, etc.) for disclosure;
- A requirement to report a crime or report to WorkSafeBC and applicable professional regulators.



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Remind any witnesses that the matter is confidential, and that a breach of confidentiality will give rise to discipline. Ensure witnesses are given an opportunity to speak to the investigator. Inform them of the legal exceptions to confidentiality set out above.

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Safely store all documents and evidence of the complaint and investigation, including the initial report and any witness statements or documents on a secured server and/or a locked filing cabinet. Do not store this information on personnel records. If information is accessible to your IT person(s), tell the parties at the outset and ensure the IT person is not involved in the complaint.

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Inform the complainant and respondent of the outcome of the investigation separately, in person if possible. If it was determined that sexual harassment occurred the complainant should be told what action was taken to address it, and any actions taken to prevent it from happening again. The employer may be limited in what details it can share because of the respondent's privacy rights.

### “Confidential listener”:

Employers may provide workers access to a “confidential listener.” This person is independent of the organization and can listen and provide workers with options outside of the formal reporting process. This person will not be required to report internally and can provide support and information to potential complainants



Employers are obligated to protect information collected about any worker under the Personal Information Protection Act (PIPA) in BC. Personal information should always be collected, used, stored, and disclosed in accordance with PIPA.

Remember that a confidentiality or non-disclosure agreement which requires workers not to report future instances of sexual harassment will not be enforceable. Although an employer may ask a complainant to sign a non-disclosure agreement that requires the worker not disclose information about a specific sexual harassment complaint during the settlement process, this will not apply to fresh complaints. **We recommend that employers not require complainants to sign a non-disclosure agreement during the settlement process.** This helps to promote transparency and accountability around issues of workplace sexual harassment, and it aligns with a trauma-informed approach to supporting survivors of gender-based violence.