

ADVISORY STATEMENT

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Providing Clients Access to and Releasing Occupational Therapy Information

Occupational therapists safeguard the confidentiality of information acquired in the context of professional relationships, to protect their clients' right to privacy. — COTBC Code of Ethics

Purpose

This advisory statement focuses specifically on the responsibilities relating to access,¹ disclosure and release of information gathered as part of occupational therapy service provision.

Occupational therapists collect and record client's personal information as a regular part of their service provision. With this collection comes the professional and statutory responsibility to protect the confidentiality of the information recorded. By doing so, occupational therapists protect the client's right to determine how, when, to whom and for what purposes any personal information is disclosed. This reflects the privacy obligations set out for public bodies in the *Freedom of Information and Protection of Privacy Act* and for private organizations in the Personal Information Protection Act. Both acts regulate the collection, use and disclosure of personal information. Personal information is considered any information about an identifiable individual collected from a client in the course of the delivery of occupational therapy services.

Both the COTBC Bylaws Part 7 and *Practice Standards for Managing Client Information* detail occupational therapists' responsibilities regarding client records.

Guiding Principles

Use the following principles to help guide decision making when requests to access occupational therapy information are received:

1. Occupational therapists should use personal information only for the purposes for which such information was collected unless clients consent in writing to another use;
2. Occupational therapists should understand their organization's policies and procedures with respect to records so they are able to help clients access their occupational therapy information; and
3. Occupational therapists should provide an opportunity for clients to see and correct their personal information if there are any concerns that it is not complete or accurate.

¹ "access to" means the opportunity to examine or make copies of the original record.

It is also important to consider the following questions when a request is made by someone other than the client:

1. Is the access request governed by the *Freedom of Information and Protection of Privacy Act* (for public bodies) or the *Personal Information Protection Act* (for private organizations)?
2. What is the authority to disclose the personal information? Both Acts set out the requirement for clients' consent to disclosure of their own personal information except in limited circumstances.
3. Who is the person making the request and what is his or her relationship to the client?
4. Is there a need to clarify the information that the person is requesting?
5. What is the purpose for which the information is to be accessed (if not authorized by the client), and how and when it will be used?

When a Client (or Legally Authorized Representative) Requests Access

Occupational therapists must respond to requests within 30 days by either providing access or partial access to the records, or providing written reasons for the refusal of access in whole or in part to the requester. Consult the relevant privacy legislation and Part 7 of the College Bylaws to determine whether there are grounds to refuse to disclose the personal information. For example, an occupational therapist may refuse access if disclosure of personal information would put any person's health or safety at risk, or if it puts a third party's information at risk of disclosure.

A client under the age of 19 may have access to his or her occupational therapy record if the occupational therapist feels the client is capable of understanding the content of the record. If the record pertains to occupational therapy services provided to the minor client without the consent of the parent or guardian, an occupational therapist cannot provide access and/or release information to the parent or guardian without the written consent of the minor client.

The regulations under the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act* address who may act for others under a legal disability in the context of access requests.

When Another Health Professional Requests Access

To release personal information occupational therapists must have written consent from the client to disclose the information. It is best to obtain this consent prior to recording any client information. The consent should cover how the information will be used by the health professional involved in the client's health care and when it can be disclosed.

Requests to Restrict Access

Occupational therapists may be asked by organizations that contract their services to restrict client access to information. Occupational therapists cannot agree to contractual provisions which are inconsistent with their statutory obligations under privacy legislation or Part 7 of the College Bylaws. It is important for occupational therapists to avoid signing contracts that are not consistent with those obligations.

When a Client Disagrees with Recorded Information

Once the clients access their information they have the right to request corrections to their occupational therapy records but they do not have the right to demand that the correction be made. If the occupational therapist does not agree that there is an error or omission, he or she must record the client's request for the correction in the record with details of the requested correction. To correct an error, the occupational therapist should make a new entry recording the correction rather than correcting the original entry.

Releasing Information Without A Client's Consent

Part 7, Section 78 of the College Bylaws lists when occupational therapists may disclose relevant personal information when consent has not been obtained. Occupational therapists should also review the relevant privacy legislation which governs disclosure of personal information.

When releasing information without consent, occupational therapists are advised to consult a privacy portfolio officer at the Office of the Information and Privacy Commissioner. It is also important to inform the client in writing of the reasons regarding the obligation and/or the occupational therapist's decision to disclose the information, and advising the client of his or her right to request a review by the Office of the Information and Privacy Commissioner. Documenting this process is also advised.

With the collection of personal information, occupational therapists carry the professional and statutory responsibility to protect the confidentiality of the information recorded. Being familiar with these responsibilities may prevent a breach of confidentiality.

Resources

COTBC. (2014). *Practice standards for managing client information*. Victoria, BC: Author.

COTBC. (2017, October 2). *College of Occupational Therapists of British Columbia Bylaws*. Victoria, BC: Author.

Province of British Columbia. (1996). *Freedom of Information and Protection of Privacy Act*. Victoria, BC: Queen's Printer.

Province of British Columbia. (2003). *Personal Information Protection Act*. Victoria, BC: Queen's Printer.

Westmacott, A. (2006). An overview of the requirements for management of client records under part 6 of the college bylaws, *COTBC InStep*, Fall, 2-5.

Websites

College of Occupational Therapists of British Columbia www.cotbc.org

Office of the Information and Privacy Commissioner for British Columbia www.oipc.bc.ca

Advisory statements are published by the College of Occupational Therapists of British Columbia to increase registrants' awareness of important issues relevant to the practice of occupational therapy.