

# Confidentiality: To Break or Not to Break?

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## **Abstract**

For professionals working to support the well-being of high school students, ethical dilemmas, particularly those concerned with confidentiality, are a regular occurrence. Challenges arise when determining the level of confidentiality afforded to adolescents, particularly in relation to their guardians. This paper examines a situation in which a school counselling student was faced with the decision of whether or not to break confidentiality whilst working with a 15-year-old girl. To assist with this decision, the Queensland Guidance and Counselling Association's (QGCA) and the Psychotherapy and Counselling Federation of Australia's (PACFA) codes of ethics were consulted, as was the Child Protection Act 1999 (Qld.). Following an examination of these resources in relation to this specific situation, it was determined that not breaking confidentiality was the most ethical decision. This paper thus emphasises the assistance that relevant codes of ethics and legislation can provide when faced with ethical dilemmas in the helping professions.

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## **Introduction**

Counsellors are required to make decisions regarding how to proceed in various situations every day. Sometimes it will be quite clear which option will lead to a more desirable outcome; however, other decisions may take more thought and require research and supervision to ensure the best choice is made. Ethical dilemmas require the latter, as the most effective way to proceed may not be immediately clear. When a counsellor is required to make a decision between two or more options, each with contradictory ethical principles, an ethical dilemma occurs. To make the most ethical decision in these situations, clinical considerations, codes of ethics, legislation, and supervision are required. This essay will discuss an ethical dilemma experienced by a counselling student completing their placement at a high school, and the considerations that assisted in making an ethical decision on how to proceed.

## **Description of Dilemma**

The ethical dilemma discussed in this essay is whether or not to break client confidentiality. A 15-year-old student divulged to the therapist that she had been staying at various friends' houses for the past four nights, instead of staying at her home with her father, who is her legal guardian. The student claimed that her father had locked her out of their house after she had attended a party that he had told her she was not allowed to attend, and would not answer her phone calls or text messages. The student shared with the therapist the name of the friend with whom she was planning on staying with that night but asked the therapist not to pass on the name to anyone else. The student's father contacted the principal, informing her that his daughter refused to come home and that he was going to call the police if she didn't return home that night. Following his conversation with the father, the principal asked the counsellor to inform her of where the student was going to be staying that night, so that she could pass on this information to her father.

The therapist found herself in the midst of an ethical dilemma. Choosing to divulge the name of the person with whom the student was going to stay could prove detrimental to the therapeutic relationship. However, choosing not to disclose this information could have implications for the school's duty of care for the student and for the student's safety.

### **Clinical Considerations**

There are many clinical considerations in making a decision regarding this ethical dilemma. Choosing to break confidentiality can have detrimental consequences for the relationship between client and therapist, including the client feeling a sense of betrayal, which may subsequently lead to the client limiting the information that they share with the therapist, or even early termination of therapy by the client (Glosoff & Pate Jr., 2002). This student had a less than favourable relationship with most adults in her life, therefore her relationship with the therapist was one of her only positive, supportive, safe relationships with an adult. Potentially damaging the relationship through disclosure could bring harm to the client, which contradicts two values of counselling: beneficence and "do no harm" (Glosoff & Pate Jr., 2002; Scaife, 2009).

Working with adolescents and their parents in the school setting increases the complexity of confidentiality issues according to Scaife (2009). When it comes to risky behaviour, such as staying away from home, considering the age and maturity of the client, as well as the seriousness of the situation, can influence the level of confidentiality given to the client (Isaacs & Stone, 2002). According to Glosoff & Pate Jr. (2002), in the school setting it is the student who is the client, not their parents. This assertion may also influence the therapist's decision around breaking confidentiality.

### **Ethical Codes and Laws**

Making ethical decisions can be daunting as they can have significant consequences for the therapist, the organisation, the client and their family; therefore, it is important to be aware of relevant codes of ethics and legislation when making these

decisions (Scaife, 2009). Both the Queensland Guidance and Counselling Association's (QGCA) and the Psychotherapy and Counselling Federation of Australia's (PACFA) codes of ethics will be referenced when analysing this ethical dilemma.

QGCA and PACFA emphasise the ethical responsibility of the therapist to protect the integrity of the therapist-client relationship (PACFA, 2015; QGCA, 1994). This is important when dealing with confidentiality, as disclosing confidential information can damage the relationship. According to the PACFA Code (2015, s.4.1.2), another ethical consideration when working with adolescents is finding the balance between the client's dependence on their parents and their growing independence, which brings with it a right for the client to make autonomous decisions and take responsibility for the consequences of these decisions (QGCA, 1994). According to the QGCA (1994), when faced with finding this balance, the therapist should consider the welfare of the child to be of utmost importance.

Exceptions to confidentiality exist when immediate or potential harm to the client or to others is present (PACFA, 2015, s. 3.2.2 & 4.1.2D; QGCA, 1994, s. 2A). In such circumstances, the therapist should inform the client that they are required to disclose certain information, as per the confidentiality agreement discussed at the beginning of therapy, and should only disclose relevant information to appropriate people (QGCA, 1994, s. 2A).

A thorough understanding of legislation around confidentiality and mandatory reporting is essential when making ethical decisions (PACFA, 2015, s. 3.1.2D). The *Child Protection Act 1999* (Qld.) can be used to define "harm" and a "child in need of protection". Harm is defined as "...any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing" (*Child Protection Act 1999*, pp. 31). To be identified as a child in need of protection, a child must be "... at unacceptable risk of suffering significant harm" and "...not have a parent able or willing to protect the child from the harm" (*Child Protection Act 1999*, pp. 32). The child's age should also be taken into consideration when ascertaining whether they are in need of protection (*Child Protection Act 1999*, pp. 35). An online protection guide is also available to assist with decisions of

whether to report actual/potential harm to a child (see Appendix A) (Department of Communities, Child Safety and Disability Services, 2017).

Any potential or actual harm must be discussed with the school principal and reported on One School (Department of Education and Training, 2016). In addition, when faced with an ethical dilemma with which the therapist has less experience, it is crucial that they consult with their supervisor regarding the most effective way to proceed (Corey, 2013, pp. 51; QGCA, 1994, s. 3B).

### **Risks and Benefits of Potential Solutions**

Potential solutions to an ethical dilemma will always have risks and benefits, and weighing up these risks and benefits is a crucial step in determining the best course of action. In relation to the current ethical dilemma, breaking confidentiality has several risks, including:

1. damaging the therapeutic relationship (Corey, 2013, pp. 41);
2. involving the friend and her family in the domestic dispute;
3. the client choosing to stay at a different, potentially unsafe, unknown location instead; and
4. how the father may respond if he were to be informed where his daughter was staying. (The father was angry about the situation, therefore there was potential for him to approach the family with whom his daughter was staying, in which case there could have been an altercation, perhaps putting others at risk of harm.)

Choosing to keep this information confidential also has risks, including the student's safety, and potential accusations of negligence towards the school. Generally, it is in the best interests of the child that their parents are aware of their location at all times, so choosing to keep this information confidential could pose a risk.

The benefits of choosing to break confidentiality include giving the father piece of mind that he knows where his daughter will be that night and that she is safe. In terms of keeping this information confidential, the benefits include: maintaining a strong,

trusting therapeutic relationship with the client; allowing the student to know she had a safe place to stay that night; and ensuring the friend and her family were not open to potential harm.

### **Making the Decision**

The Department of Education recommends using the REFLECT decision-making protocol (see Appendix B) when faced with an ethical decision (Department of Education and Training, 2011). Utilising this, as well as referring to relevant laws and codes of ethics and following consultation with a supervisor, the therapist decided to keep the student's location confidential for the following reasons:

- The benefits of keeping confidentiality outweighed the risks of doing so, as well as the benefits of not doing so.
- The student had a safe place to stay that night, therefore the therapist concluded that she was not at risk of harm. Had the clinician divulged the student's location, the student may have decided not to stay at that location, leading her to stay at a potentially unsafe, unknown location.
- The counsellor-client relationship was strong, and breaking confidentiality could have been detrimental to this. The student did not have positive, trusting relationships with other adults, therefore losing the one she had could have caused significant harm and danger to her.
- The student had attempted multiple times to contact her father to be allowed back into their home, but he had not responded.
- Had the father been informed of his daughter's location, there was potential for an altercation or harm to the friend and her family, given the father's emotional state at the time.
- The clinician judged the student to be of a level of maturity appropriate for taking responsibility of this decision and its consequences.

## **Conclusion**

This essay discussed an ethical dilemma faced by a counselling student regarding whether or not to break confidentiality by divulging the name of the friend with whom the client was going to stay with that night. In order to make the most ethical decision, the clinical implications, relevant codes of ethics, legislation and other documents were considered, along with advice from a supervisor. The risks and benefits of each potential decision were then weighed up, with the benefits of not breaking confidentiality outweighing the risks. After analysing the aforementioned considerations, it was decided that not breaking confidentiality was both ethical and the best decision for the client in this situation.

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## Appendix A

### Completed Online Reporting Guide



Department of Communities, Child Safety and Disability Services

## Online Child Protection Guide

### Report not required:

**Document the decision;  
Provide referrals as appropriate; and  
Monitor and support child well-being as appropriate.**

Do you have any additional concerns relating to this child/young person?

Yes, Add Concern

No, Continue

Previous

Restart

Next

### Child Protection Guide Help

#### Report not required

This decision point occurs when the concerns are substantially below the Child Safety - RIS screening threshold for reasonable suspicion that a child is in need of protection. Though no report is recommended, there may be alternative actions the reporter can take or initiate.

#### A. Document decision.

Following your agency protocol, prepare a record of your concerns, including the information that led to your 'yes'/'no' answers on the decision tree. If concerns persist or worsen, the information you document can be included in a future consideration of making a report

#### B. Provide referrals as appropriate.

If your non-reportable concerns include an unmet family need, you can and should provide the family with information about local resources. You may respond in a number of ways depending on your knowledge of and relationships with family members. Talk to the family about your concerns and discuss options for support including referrals to appropriate support services. You may also provide information regarding services and resources directly to the family.

If you intend to refer the family to a secondary service and need assistance locating an appropriate service, you may also consult with Family and Child Connect. You do not need to complete a referral to Family and Child Connect or provide any identifying information to Family and Child Connect. Simply call to explain the type of secondary service you are seeking and any special considerations (i.e. cultural, transportation, language)

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### C. Monitor and support child well-being as appropriate.

- If your professional role includes an ongoing relationship with the child AND/OR parent, it is expected that such a relationship will continue regardless of the reporting decision. It is important to maintain a connection to the family so that if conditions change, you can reconsider your decision not to report. This relationship may include monitoring or creating and maintaining a safe space where the child or parent may make further disclosures about concerns that may exist or disclose new incidents.
- If your professional role **does not** include an ongoing relationship with the child AND/OR parent, *you are not required to maintain contact.*

NOTE: Some circumstances are not reportable because they do not meet the threshold and yet the child may experience emotional or physical stress. You may be able to assist the child in learning coping strategies or accessing suitable services, or to foster trust so that a child will alert you if conditions change.

Consider whether the child and family would benefit from access to other supports or services, provided through school, health, mental health, justice or housing services. The consent of the family should be sought when assistance through a referral is being made or information about a child or their family is being disclosed.

Legislative provisions in regards to information exchange are located in Chapter 5A of the *Child Protection Act (1999)*.

## Appendix B

### REFLECT Decision-Making Protocol

## REFLECT - A guide for ethical decision-making

Employees may consider the ethical decision-making guide below in light of their obligations under this Standard. It will not make the decision for them, but it will help them to analyse all the relevant facts and circumstances surrounding a situation where they need to reach a decision.

#### *REFLECT ethical decision-making model*



(Adapted from REFLECT model, Australian Public Service Commission)