Guidelines for Researchers dealing with Disclosures of Confidential Information

A variety of guidelines exist which help researcher’s assess when and where they should disclose confidential information they receive from research participants. For example, the *Children First: National Guidelines for the Protection and Welfare of Children* (2010) were designed to assist people who have contact with children to identify and report concerns they may have about the safety and wellbeing of the children with whom they work. These guidelines are a useful resource for researchers engaged with children who may find themselves privy to information or disclosures that reveal risk of harm or abuse to the child. These guidelines also outline the procedures and best practice for addressing such concerns to the appropriate authorities.

Similarly, the Irish Medical Council’s *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* (2009) identifies the situations and circumstances in which a medical doctor may rightfully violate patient confidentiality. For example, doctors are required to disclose some patient information by law if ordered by a judge or where mandated by infectious disease regulations. A doctor may also disclose patient information without consent where the disclosure is in the public interest, in the interest of the patient or other people. In these situations the Irish Medical Council provides guidelines and best practice for doctors to follow.

Many disciplines provide similar guidelines to practitioners and researchers. However, what of situations outside those dealing with children or involving medical
practitioners? From time to time researchers may find themselves also in situations where they receive information that raises concern about risk or harm to others, or about the safety and wellbeing of parties referred to by research participants. In such situations the researcher may find themselves confronting the dilemma of balancing the right to confidentiality of participants against the public good because a participant makes a disclosure about criminal behaviours, events or intentions they have engaged in or have knowledge of. The types of disclosures participants may make that present challenges to researchers include:

- Disclosure that someone they know is at risk of harm or abuse
- Disclosure of a past offence they have knowledge of or have committed
- Disclosure of serious danger to unsuspecting third parties
- Disclosure of the commission of a criminal offence

These are problematic because they raise questions about when the researcher has an obligation or right to disclose confidences made to them, and to whom should these disclosures be made?

To determine whether there is a duty or right to breach confidentiality the researcher needs to consider the following issues:

- Does the public good override or trump the right to privacy of the participant? While the participant’s personal life is protected in law, this right is not absolute. In deciding to disclose a confidence to an appropriate authority the researcher needs to keep the breach of privacy to a minimum - to what is needed to reduce the risk or harm and no more. In this way the public good is served while limiting the damage of the disclosure to the participant.

- Is harm to the participant a likely consequence of the researcher’s breach of privacy? In deciding to disclose a confidence to an appropriate authority the researcher should ensure that all consents obtained from the participant were based on having outlined such harmful consequences to them in advance. In this
way the participant has been informed up-front of the potential of certain disclosures to cause them harm and agrees to participate in the research in full knowledge of the consequences.

- To whom should the researcher make their disclosure? Disclosures of confidential information by the researcher must be limited to those who have the right to hear that information for example, the Gardai.

It is generally accepted in codes of practice that guide most professional behaviour that confidential information may need to be disclosed if there is clear evidence that someone is at risk of harm or abuse. For example, the Children First Guidelines and the Registered Medical Practitioner Guidelines both emphasize that the caregivers first concern is the welfare of the child or the patient. Similarly, if research participants disclose intentions to harm unsuspecting third parties then current best practice guidelines available suggest that researchers should err on the side of the public good. Also, if a researcher is told in the clearest terms of a past event or behavior that constitutes a serious offence under the criminal code, or if they are told of plans to engage in criminal behaviour then they may come under a duty to report it.

**How to deal with disclosures**

If as a researcher you suspect that the nature of your research is likely to increase the occurrence of the types of disclosure noted above, it is best practice to proceed as follows:

1. **Let the participant know about the limits of confidentiality:** It is important that research participants receive adequate warning from the researcher in advance of disclosure of confidences, that there are limits to the researcher’s ability to keep matters confidential.
2. Let the participant know the types’ of confidences you have to disclose and whom you must disclose them to: In particular, where the researcher is told of a clear and serious danger to unsuspecting third parties, where the researcher is told in clear terms of the commission of a criminal offence, these events may require reporting to the Gardai on this country.

These warnings should be made to the research participant in all the information given to them describing the nature of the research being undertaken by the researcher.

References:


