



Safeguarding Minors From Being Inadvertently “Outed” By Human Service Agencies

Trust has always been the foundation of a human service agency’s relationship with its clients. Subcategories of that trust, privacy and confidentiality, are cemented in statute and regulation. This protection provides the basis for an effective relationship and ensures that agency officials will not disclose information with others unless there is a sanctioned and pressing need to do so. It follows and it is self-compelling that, in general, information regarding an individual’s sexual orientation or gender identity is private, unless that person has publicly made it known.

“Outing” has been defined as either an intentional or unintentional public revelation of an individual’s sexual orientation or gender identity without his or her consent. As used in this article, it is the unintentional sharing of information about an individual’s sexual orientation or gender identity for an alleged constructive purpose, without any malice, hostility, or regard to any political agenda. Outings by human service officials can have detrimental results for minors whose privacy has been compromised. For instance, LGBTQ (lesbian, gay, bisexual, transgender, queer or questioning) youth are already “at increased risk for suicidal thoughts and behaviors, suicide attempts, and suicide. A nationally representative study of adolescents in grades 7–12 found that lesbian, gay, and bisexual youth were more than twice as likely to have attempted suicide as their heterosexual peers.”¹

Ohio attorney Hannah Botkin-Doty notes that “LGBTQ youth are also at an increased risk for retaliatory acts by parents or other caregivers who may



disagree with their minor’s sexual orientation or gender identity. According to a study by Durso and Gates (2012),² 381 responding human service agencies reported that 40% of the homeless youth they served identified as LGBT. Therefore it is a profound demonstration of trust and maturity for minors to reveal their sexual orientation or gender identity to a human services agency staff member. Such an act merits the same kind of awareness by those staff to be wary that further revelation could be detrimental to the mental and physical wellbeing of those youth.”

A range of legislation in the 21st century has heralded unprecedented legal rights and protections for LGBTQ individuals. The U.S Supreme Court has found, under the auspices of personal

autonomy, that there is a right to privacy that protects matters related to “marriage, procreation, contraception, family relationships, child rearing, and education.”³ This article briefly investigates the extent to which human service officials should obtain permission from a minor client before sharing information regarding that client’s sexual orientation. Especially because the minor may be in the legal custody of the agency, e.g., if the minor is in foster care, the case for not revealing a minor’s sexual orientation is more multifaceted than for other specified groups.

Information sharing defines relationship. The legal definition of privacy is an evolving term that allows us to experience freedom in real time.

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There are two facets of the right to privacy. One is the right to participate in private activities such as consensual sexual relations.⁴ The other prohibits disclosure of personal information.⁵ Focusing on the second, what specific actions and policies will allow a human service agency to be sensitive to a minor's privacy while simultaneously allowing it to robustly advocate for and represent on behalf of that minor?

- ♦ At the outset, clients should be informed of the overall objective of the agency's policy regarding privacy. Specifically, it should be clear to every client that the purpose is to protect the privacy of individuals who have sensitive information stored, either in electronic or paper form, while at the same time providing the agency with the ability to share information with authorized entities as required by law, regulation, or policy.
- ♦ Clients should know how information about them is collected, shared, and protected.
- ♦ Clients should be informed of the physical, technical, and

administrative security measures the agency maintains.

- ♦ Clients should understand that at times, and for particular purposes, their personal information may be made available to certain third-party service providers.

Inadvertent outing of a minor client can be avoided. To do so means just putting in place some common sense policies and training. Most obviously, minor clients should be asked if they wish their sexual orientation and gender identity information to be shared selectively.

Ask. Don't just tell. 🗨️

Daniel Pollack is professor at the School of Social Work, Yeshiva University, New York City. Contact information: dpollack@yu.edu; (212) 960-0836.

Reference Note

1. Centers for Disease Control and Prevention. (n.d.). *Lesbian, gay, bisexual, and transgender health*. Available at <http://www.cdc.gov/lgbthealth/youth.htm>. Also see Russell, S. & Joyner, K. (2001). Adolescent

sexual orientation and suicide risk: Evidence from a national study, *American Journal of Public Health*, 91, 1276–1281.

2. Durso, L., & Gates, G. (2012). *Serving our youth: Findings from a national survey of services providers working with lesbian, gay, bisexual and transgender youth who are homeless or who are at risk of becoming homeless*. Available at: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>
3. *Lawrence v. Texas*, 539 US 558, 573-74 (2003)(citations omitted).
4. *Lawrence v. Texas*, 539 U.S. 558 (2003); *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Barmicki v. Vopper*, 200 F.3d 109 (3d Cir. 1999).
5. *Sterling v. Borough of Minersville*, 232 F.3d 190 (3d Cir 2000); *Nguon v. Wolf*, 517 F. Supp. 2d 1177 (C.D. Cal. 2007). This confidentiality right also includes “the right to be free from the government disclosing private facts about its citizens and from the government inquiring into matters in which it does not have a legitimate and proper concern.” *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490, 492 (5th Cir. 1985) (citing *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977)).

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