# PART A, CHAPTER 5:PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION

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| **Policy Number** | **Authority** | **Scope**  | **Effective Date** |
| Part A, Chapter 5 | 34 CFR [§361.38](https://www.ecfr.gov/current/title-34/section-361.38), Texas Health and Safety Code [§85.115](https://statutes.capitol.texas.gov/Docs/HS/htm/HS.85.htm) and TWC Rule [Chapter 850, Subchapter D](https://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=850&sch=D&rl=Y) | All TWC-VR staff | 9/3/2024 |

## PURPOSE

In accordance with the authority (Federal and State) listed above, this policy is issued by the Texas Workforce Commission Vocational Rehabilitation Division (TWC-VR). Adherence to these rules and regulations issued under the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), supports Texans with disabilities in gaining, maintaining, and advancing in competitive integrated employment (CIE).

Specifically, the purpose of this policy and these procedures is to ensure adherence to safeguarding the confidentiality of customer information.

## DEFINITIONS

Customer Representative: Any individual chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative for an applicant or eligible individual, that person is the individual's representative.

Customer Representative (Child): The customer representative for a child who is less than 18 years old and not emancipated or married. The parent is presumed to be the representative unless provided documentation shows otherwise.

Personally Identifiable Information (PII): Any information connected to a specific individual that can be used to uncover that individual's identity (on its own or together with other relevant data), such as their social security number, full name, maiden name, birthdate, etc.

Release of Information: The process of providing access to protected information (e.g., PII, health and medical information, history) in which the customer determines who, and under what circumstances, can have access to their case record.

## POLICY

### General Overview

TWC-VR does not share confidential information in any manner without a customer’s consent or without sound legal and/or ethical justification. Throughout each stage of the VR process, VR Counselors communicate the legal and ethical parameters of confidentiality to customers in a culturally competent manner and in the mode of communication determined appropriate for the customer and/or their representative.

TWC-VR staff must also maintain a professional respect for the confidential nature of the data on individuals and refrain from indiscreet and/or casual conversation that might reveal that data to unauthorized individuals.

### Safeguarding Confidentiality

TWC-VR staff must safeguard the confidentiality of a customer's personal information, which can only be used for purposes directly connected with the administration of the VR program. TWC-VR staff must inform customers and/or their representatives of the following:

* Conditions for accessing and releasing customer information;
* The legal authority under which information is collected;
* Mandatory and voluntary data collection;
* Explanation of the principal purposes for which TWC-VR intends to use or release the information (including audits, evaluation, and research) and other programs and authorities;
* Which situations TWC-VR requires or does not require written consent before information can be released; and
* Other agencies to which information is commonly released (e.g., HHSC).

### Release of Information to a Customer or Representative

TWC-VR may release information to the customer or a properly designated representative if a valid release is completed. This information must be released in a timely manner. Information that may not be released to the customer in such circumstances includes the following:

* Information that TWC-VR determines may be harmful to the customer (e.g., medical, psychological, other) which must be provided through a third party chosen by the customer or through a court-appointed individual;
* HIV status or test results without explicit, written, and signed authorization (The confidentiality of customer HIV test results is strictly regulated under Texas Health and Safety Code.);
* Personal information that has been obtained from another agency or organization (e.g., SSA, Department of Public Safety) which may be released only by, or under the conditions established by, the other agency or organization. Confidential documents from other agencies may not always be marked indicating their confidential nature so TWC-VR must inspect all documents thoroughly before release; and
* A name-based Computerized Criminal History (CCH) search to another organization or individual. This includes the customer or customer’s representative unless there is a request contained in a valid subpoena or other valid court order and the release is approved by the Office of General Counsel (OGC).

### Release of Information to a Third Party

TWC-VR strictly prohibits sharing a customer's PII without a valid release. When sharing information such as a customer's name, résumé, or any other PII with a third party, including a potential employer, an *Authorization for Release of Confidential Customer Records and Information (VR1517-2)* or other acceptable formmust be properly filled out with the necessary information and signatures before authorizing the release of the requested information. The signed release must be filed in the customer's paper case file.

### Release for Audit, Evaluation, and Research

Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the TWC-VR program or for purposes that would significantly improve the quality of life for applicants and recipients of services and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

* The information will be used only for the purposes for which it is being provided;
* The information will be released only to persons officially connected with the audit, evaluation, or research;
* The information will not be released to the involved individual;
* The information will be managed in a manner to safeguard confidentiality; and
* The final product will not reveal any PII without the informed written consent of the involved individual or the individual's representative.

### Protecting Records

Sound judgment must be exercised, and reasonable precautions taken, to ensure unauthorized individuals do not have access to confidential records. TWC-VR staff violations of policy on protecting the confidential nature of customer records are grounds for appropriate disciplinary action. The following actions must be taken by TWC-VR staff in furtherance of this policy.

* A customer's paper case files and materials scheduled for inclusion in the customer's folders are kept in a locked desk, filing cabinet, or other suitable locked container when TWC-VR staff are not present to ensure proper security.
* All other information identifying the customer is kept in a locked TWC-VR building, office area, or room when TWC-VR staff are not present to ensure proper security.
* TWC-VR staff are required to use agency-issued equipment, servers, and any other technology or software that contains customer information. Confidential information is not to be saved on hard drives, personal computers, etc.

### Security Breach

TWC-VR defines a confidential information incident as a loss of control, a compromise, an unauthorized disclosure, an unauthorized acquisition, unauthorized access, or any similar situations in which individuals other than authorized users have, for an unauthorized purpose, access or potential access to confidential information, whether physical or electronic. The term "confidential information incident" encompasses **suspected and confirmed** incidents or breaches, whether intentional or inadvertent, involving confidential information that raise a reasonable risk of harm.

It is the responsibility of all TWC-VR staff to report a known or suspected breach of confidential information immediately upon learning of an incident.

## PROCEDURES

### Authorized Release of Information

When the customer or their representative submits a completed release, the VR Counselor must provide in a timely manner the information requested from the customer's case record. [See 40 Texas Administrative Code §850.51(a)(4)](https://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=850&rl=51). The following are valid releases accepted by TWC-VR:

* *Authorization for Release of Confidential Customer Records and Information (VR1517-2)*; if the customer is requesting the information for themselves, they can designate that on the release.
* [Social Security Administration (SSA) Form SSA-827, Authorization to Disclose Information to the Social Security Administration (SSA)](https://www.ssa.gov/disability/professionals/ssa827_informationpage.htm), version dated April 2009 or later (versions of Form SSA-827 dated before April 2009 are not valid and must not be honored); or
* An authorization or form provided by the customer, which, after evaluation on a case-by-case basis, has been found to meet the criteria set forth below.

The VR Counselor, or other designated staff, must ensure that all releases of information are complete and valid. To qualify as a valid release, a customer's authorization form must—

* Be in writing (either handwritten or typed);
* Identify the records or other information to be released;
* Be signed by the customer or a properly designated representative
* Be dated;
* Identify the individual (as appropriate, by name, telephone number, address, email) or entity to whom TWC-VR is authorized to release the information; and
* Be specifically directed to TWC-VR. (Exceptions: Release forms that are not addressed or release forms addressed "To Whom It May Concern" or "To Custodian of Records" are valid if they identify the records to be released as TWC-VR records.)

Open Records needs the full social security number of the customer to evaluate the request for the TWC-VR records.

When releases of information are not complete, the information requested cannot be released (to or from TWC-VR) as it could potentially cause unintended harm or delay to the customer. VR Counselors must ensure that a proper release with all the required information and signatures has been completed and filed before releasing the information.

### Releasing information to a Customer Representative

For TWC-VR to safeguard the customer's confidentiality, the customer or their representative must provide documentation to show their designated status as applicable, prior to releasing any information.

A customer and/or their representative must—

* Complete the Designation of Applicant or Customer Representative form (VR1487);
* Provide power of attorney documentation or a written statement by the customer designating a representative; or
* Provide current legal documentation of guardianship.

Unless legally binding, the customer can revoke their designated representative at any time. For minors who no longer have a legal guardian (e.g., marriage, emancipation), legal documentation must be provided to remove the designated representative.

VR Counselors will have to determine whose signature is mandatory for a proper release to be executed which can be affected by the designation of a representative or guardian. VR Counselors should clearly document these circumstances in case notes in RHW to supplement the above supporting documentation in the paper case file.

### Types of Release

Records may be released for a variety of reasons. All releases (unless otherwise noted in this policy) must have the proper authorization. Examples of requesting individuals, organizations, and entities include the following:

* Customers, guardians, and representatives;
* Individuals accompanying customers to their VR appointment;
* Medical and Mental Health professionals and organizations;
* Law Enforcement, Courts (Must consult with Open Records and use *Notice for Release of Confidential Records Pursuant to Legal Process or Investigation [VR1515]* when submitting the requested documents.);
* Emergency situations (Must contact Open Records for guidance and approval.);
* Educational Organizations; and
* Media Requests; if a media request is received, TWC-VR should promptly contact their direct supervisor and Open Records to consult prior to the release of any records to a media outlet.

### Law Enforcement, Subpoena Duces Tecum, and Other Legal Requests for Records

In legal circumstances, TWC-VR staff must contact Open Records promptly, as well as their direct supervisor. Examples of these requests include, but are not limited to, the following:

* A lawyer, judge, magistrate, or clerk of court calls or writes TWC-VR concerning a subpoena;
* If a Subpoena Duces Tecum for documents or records is received, VR should immediately contact Open Records and forward the Subpoena Duces Tecum to them; and
* All requests from law enforcement and other agencies.

Copies of legal requests must be submitted to Open Records. Release of records is prohibited unless expressly approved by Open Records:

**TWC's Open Records Department**

Email: open.records@twc.texas.gov

Fax: (512) 463-2990

Office:(512) 936-6355

After receiving approval from Open Records to release information to a governmental law enforcement agency, the TWC-VR staff attaches a copy of the request and *VR1515,* as a cover sheet to advise the agency of the confidential nature of the documents.

### Subpoenas for Staff to Appear and Discussions with an Outside Attorney

Open Records should be promptly contacted in the following circumstances:

* TWC-VR staff is served with a subpoena that requires them to appear—
	+ In court;
	+ Before an administrative proceeding; or
	+ For a deposition.
* A customer, customer's representative, or lawyer requests that a TWC-VR staff member discuss a customer's case with an attorney.

### Open Record Requests

Records requests that are received from Open Records must be processed by the receiving TWC-VR office within three business days or as otherwise provided.

The designated TWC-VR staff completes the *Request from Open Records (VR1514),* and follows the instructions below:

1. Release only items within the scope of the authorization and only to those authorized to receive the information.
2. Review records for any items to be withheld, such as information harmful to the individual if released regarding certain medical/psychological notations. Contact Open Records regarding any documents within the scope of the request that TWC-VR believes should be withheld. The VR Counselor or VR Supervisor will need to attest in writing to the basis of withholding the records and submit to Open Records for approval. This statement should be placed in the case file.
3. Make copies of the records that will be released.
4. Sign the Official Certificate and attach it to a copy of the records being released.
5. Make a copy of the signed Official Certificate and retain it in the paper case file along with a description of the records being provided and any records withheld.
6. Regardless of what is requested, do NOT answer any questions, complete depositions, or complete affidavits that may arrive as part of the request.
7. Do not notarize the certification or other documents. Contact Open Records if a notarization was requested.
8. If a question or section does not apply, enter "Not Applicable" and explain why.
9. Type or handwrite responses using blue or black ink.
10. Email a scanned copy of VR1514 and the signed Official Certificate to the Open Records Disclosure Officer as directed.

If there are no records available in the case record, TWC-VR staff notify Open Records via email within three business days of receipt of this form. For specific information on policies, procedures, and costs pertaining to open records requests, see the TWC Open Records Unit Manual.

### Security Breach Procedures

To report a known or suspected breach of confidential information, TWC-VR staff follow the procedures in the TWC Privacy Manual.

Upon discovery of a known or suspected breach, TWC-VR staff secure any loose papers or electronic devices in a locked drawer or cabinet. If the breach is discovered on the network or in an email, the TWC-VR staff note the location or method of access or receipt.

The TWC-VR staff immediately report the incident to their VR Supervisor or, if the VR Supervisor is unavailable or if there is a potential conflict of interest, reports the incident to their local privacy liaison or Regional Field Support Manager.

The employee must be aware of and avoid common mistakes in response to a confidential information incident that could inadvertently create another one. Such an example is forwarding or replying to an email with compromised information like a Social Security Number, full name, or birth date when reporting the original incident.

When the compromised information is needed by the VR Supervisor for TWC's Privacy Office or Chief Information Security Officer to respond to an incident, the TWC-VR staff will be given instructions on whether the compromised information needs to be forwarded to officials at TWC and how to secure it properly.

### Case Record Documentation

All supporting documentation related to the release of information on TWC-VR customers must be included in the case record. Case notes should supplement the supporting documentation to explain the circumstances of the customer and/or their representative. Case notes should include, as needed, the following:

* Reasons for releasing information and why it is necessary for the VR process;
* Validation that the release of information was clearly explained and agreed to by the customer in order to document informed choice; and
* Any other relevant information to the circumstances.

## APPROVALS & CONSULTATIONS

TWC-VR staff must follow the following approvals and consultations:

* *Open Records consultations and notifications are required for all legal and open records requests. Consultation require collaboration with TWC-VR staff and Open Records attorneys.*

**REVIEW**

The Policy Planning and Statewide Initiatives Team, or designee, is responsible for reviewing this policy and these procedures and will update the Document History log if necessary.

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| **Date** | **Type** | **Change Description** |
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