

DOJ Privacy Certificates

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NIJ

HSP/Privacy Laws & Regulations for DOJ-funded Research

- Confidentiality of Information (42 USC 3789g)
- Confidentiality of Identifiable Research and Statistical Information (28 CFR Part 22)
- Protection of Human Subjects (28 CFR Part 46)

Department of Justice Confidentiality Statute (42 USC 3789g)

“No officer or employee of the Federal Government, and no recipient of assistance...shall use or reveal any research or statistical information furnished...by any person and identifiable to any specific private person other than the purpose for which it was obtained. **Such information ...shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any...judicial, legislative or administrative proceedings.**”

Privacy/Confidentiality Regulations (28 CFR Part 22)

All DOJ awardees collecting PII must submit a Privacy Certificate (PC):

- describing the research,
- **assuring** that the applicant will comply with the requirements, and
- describing the procedures that will be used to protect the confidentiality of the identifiable information collected as part of the research.

Elements of the Privacy Certificate

(28 CFR 22.23)

- Brief description of project
- Procedures to notify subjects (informed consent)
- Justification for the collection and maintenance of identifiable information and assurance to preserve confidentiality
- Administrative and physical security of identifiable data, to include removal of identifiers, locked file cabinets, password protection, etc.
- Access to data limited to persons w/ need-to-know and who agree to comply
- Information transfer agreements - limitations and authority
- Final disposition of data in identified form & data archiving

Notification (Informed Consent)

- All research subjects must give their consent to participate and be told:
 - the information they provide will be used for research and statistical purposes only;
 - compliance with the request for information is voluntary and can be terminated at any time;
 - study risks and benefits;
 - how the data will be securely maintained; and
 - how data will be archived/disposed of post-study.

Are there exceptions to confidentiality?

- No. Confidentiality can only be broken with the subject's consent. Identifiable data collected can only be used for research purposes and no other purpose without the subject's consent.
- 28 CFR Part 22.20 (c): The regulations do not apply to information gained regarding future criminal conduct.

FAQs

- I already have a CoC. Can I use it for DOJ-funded research?
- Can I get a CoC from DOJ?
- What is the difference between CoCs & PCs?
- Must I release my data per subpoena?



CoC vs. PC

- Both allow voluntary disclosure by subjects.
- Both protect against compelling disclosure.
 - They allow the researcher to refuse to disclose identifying information in any civil, criminal, administrative, legislative, or other proceeding, whether at the federal, state, or local level.
- They differ with respect to other voluntary disclosures.

What About Mandatory Reporting?

- CoCs do not prevent researchers from the voluntary disclosure of matters such as child abuse, reportable communicable diseases, or subject's threatened violence to self or others.
- DOJ confidentiality statute & regs. do prevent such voluntary disclosures by researchers.
- DOJ Statute supersedes State law, thus need for 2 consent forms: consent to participate & consent to allow reporting
- Self-report is strongly encouraged and resources can be provided to all study subjects.

Bright Line of Confidentiality

- Researchers using DOJ funds cannot report suspected abuse of subjects, unless they obtain subjects assent/consent to
 - 1) participate in the research **AND**
 - 2) allow the PI to report if abuse alleged or suspected
- One form w/ 2 signatures or two separate forms
- DOJ is the agency; few would participate in DOJ-funded research without protections on identifiable data

When can confidentiality be broken?

- “Confidentiality can be broken if you report information about future criminal conduct.”
- “Confidentiality can be broken if you report information about future criminal conduct, or doing immediate harm to yourself or others.”
- “Confidentiality can be broken in the following circumstances: 1) if State mandatory reporting laws require that it be broken and you have signed a separate consent form allowing the researchers to report suspected child abuse, 2) if you report information about future criminal conduct, or 3) if there is a risk of your doing immediate harm to yourself or others. In addition, statements blurted out during the course of this research might not be held strictly confidential.”

Penalties

- Any person violating the provisions of 42 USC 3789g or 28 CFR Part 22 is subject to a fine of \$10,000 in addition to any other penalties imposed by law.
- DOJ has the right to terminate funding and initiate appropriate legal action for violations of the statute or the regulation.

The World of Privacy Protections.....

- Is the dual world (CoC/PC) OK?
 - If so, can we (the Feds) do better job of:
 - educating PIs?
 - meeting the needs for privacy protection?



continued...The World of Privacy Protections

- Is a dual world not OK?
 - Can the duality be reconciled?
 - Should it be?

- And beyond, there's HIPAA & CIPSEA &.....?

Resources

- NIJ Webpage on Confidentiality & Privacy Protections
<http://www.nij.gov/nij/funding/humansubjects/confidentiality.htm>

- Contact:

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