

# Privacy Protections for Individuals with Mental Health Disorders under the Information Practices Act in the Age of Technology and Agency Website Postings

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The popularity of relying on the internet to gather information about a person has helped to develop privacy protections for individuals who are subject to internet postings by an agency. Prospective employers now often utilize the internet to view what an agency has posted about a job applicant. Given the existence of stigma and discrimination towards individuals with mental health disorders, individual privacy needs to be maintained.

The Information Practices Act (IPA) provides privacy protections by limiting specific types of information that may or may not be disclosed by an agency – including online postings.<sup>1</sup> These privacy rights are especially important for individuals with mental health disorders who are applying for employment and have a practice license issued by an agency that is subject to the IPA.

This sheet gives some introductory information about what type of information must be kept private under the IPA and describes some of the remedies available under the Act.

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<sup>1</sup> See Civil Code Sections 1798 *et seq.*

## 1. What is the Information Practices Act and how does it apply to me?

The Information Practices Act (IPA) is a state law that seeks to protect the right to privacy of individuals from disclosure by an agency with sensitivity to the increasing use of computers or other technology. The IPA has strict limits on maintaining and disseminating personal information.

## 2. What is considered an “agency” under the IPA?

Under the IPA, an “agency” is a state office, officer, department, division, bureau, board or commission. There are some limited exceptions of what is considered an “agency” such as the State Compensation Fund or the California Legislature.

## 3. What are some examples of an “agency” that might be involved when an individual with a practice license applies for employment?

Some examples of an “agency” that maintains information about its members and which also uses technology to disclose information about its members can be found in a publication offered by the Department of Consumer Affairs called “Who We Are and What We Do.”<sup>2</sup> This publication lists the many departments, boards and bureaus that are subject to the privacy protections for individuals under the IPA. Here are only a few examples: California Board of Accountancy; Board of Behavioral Sciences; Board of Barbering and Cosmetology; Dental Board of California; Medical Board of California; California Board of Occupational Therapists; Bureau of Security and Investigative Services.

## 4. What type of information is an “agency” allowed to maintain as specified under the IPA?

An agency is only allowed to maintain “personal information” which is relevant and necessary to accomplish a purpose of the agency and that is required or authorized by state or federal law. Each agency is to maintain all records to the maximum extent possible with accuracy, relevance, timeliness, and completeness and to ensure security and confidentiality.<sup>3</sup>

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<sup>2</sup> [http://www.dca.ca.gov/publications/dca\\_booklet.pdf](http://www.dca.ca.gov/publications/dca_booklet.pdf)

<sup>3</sup> See Civil Code section 1798.14

The agency is to collect personal information as practical as possible directly from the individual who is the subject of the information rather than another source.<sup>4</sup> When the agency collects personal information, the agency is to maintain the source of the information.

To determine what information is necessary to accomplish a purpose of the agency or is authorized by state or federal laws, ask the agency for a statement and the authority for why the agency exists.

## 5. What does “disclosure” mean under the IPA?

Under the IPA, “disclosure” means to disclose, release, disseminate, or communicate all or any part of a record orally, in writing, or by electronic or other means to any person or entity.

## 6. What information can an agency disclose?

Answer: It depends. Some general information such as mailing address for official notices, date of graduation, school graduated from, when you obtained the license and when it expires often can be disclosed.

## 7. What type of information cannot be disclosed by an agency?

“Personal information” cannot be disclosed unless an exception exists.

“Personal information” means information that is maintained by an agency that describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

The agency should not disclose personal information that would be linked to the person which the information is about. There are many exceptions, however, which would allow for disclosure under the statute.<sup>5</sup> Some examples include when the agency gives the information to the person him or herself, when the individual agrees to disclosure in writing, when information is given to a conservator or guardian, when there is an investigation of unlawful activity, when

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<sup>4</sup> See Civil Code section 1798.15.

<sup>5</sup> See Civil Code section 1798.24, “Conditions of Disclosure.”

information is given to a third party individual for whom the agency finds compelling circumstances that affect the health and safety of that person, in some adoption situations or when the information falls under the Committee for the Protection of Human Subjects. Disclosure shall be allowed to the Protection and Advocacy agency for the state in order to advocate for and protect the rights of individuals with disabilities.<sup>6</sup>

## 8. How is “medical information” which is protected from disclosure defined under the IPA?

Answer: “Medical information” is defined as any information about the individual’s medical, mental or physical condition, medical treatment or diagnosis by a health care provider.

## 9. I am an individual with a mental health condition and have a practice license that is issued by an agency. Should I be concerned that my mental health condition might be “disclosed” to others or made public online?

Maybe. Do an online search of yourself and the agencies that are involved to see what has been posted online. Licensing boards that are considered an “agency” under the IPA may disclose some but not all information about its members online.

To find out if there have been disclosures made to another party aside from internet postings, the IPA requires that an agency keep accurate records for up to three years of the date, nature, and purpose of each disclosure of a record.<sup>7</sup>

## 10. Do I have rights to access my records maintained by an agency that possesses my personal information?

It depends. With proper identification, a person may request to review their own record that contains personal information. Access to active records can be given to another upon the individual’s request within 30 days after a request has been received. Within 60 days of receiving a request for inactive or stored records, the

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<sup>6</sup> See Civil Code section 1798.24(b)

<sup>7</sup> See Civil Code section 1798.25 & 1798.27, Accounting of Disclosures.

agency should make available the records for inspection. Within 15 days of inspection, copies of the record should be made available.<sup>8</sup>

11. Does the agency have to disclose personal information to me about my own physical or psychological condition if I request it?

Not always. If the agency determines that telling you information about your physical or psychological condition would be detrimental, then the agency does not have to disclose it to you. Instead, the information shall be disclosed to a designated licensed medical professional or psychologist with written authorization.<sup>9</sup>

12. If there is something inaccurate in my personal records, what can I do?

You can contact the agency in writing to request a change to the record to correct information that you believe is not accurate, timely, relevant, or complete. Within 30 days of receiving the request, the agency must make your requested corrections unless the agency decides not to grant your request. If the agency refuses to make your changes, then the agency shall give you the reason for the refusal, and inform you of the procedure to request review by the head of the agency or a designee.<sup>10</sup>

13. What can I expect in a review process?

You can request that the head of the agency or designee review the agency's refusal to amend a record. He or she has 30 days from the date of your written request to review the situation and make a final determination. The 30 day timeline can be extended for 30 days more if the agency has good cause. If the final determination is that the agency will not change the record, you can still file a statement of the reasons you disagree with the decision, as long as it is of a reasonable length.

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<sup>8</sup> See Civil Code section 178.34

<sup>9</sup> See Civil Code section 1798.40(f)

<sup>10</sup> See Civil Code section 1798.35

When a statement of disagreement has been filed, the agency shall make a note of the disputed portion and make available copies of the individual statement and the agency's reasons why an amendment is not being made. <sup>11</sup>

#### 14. What can happen if an agency violates the IPA?

There are legal actions you can take for violating the IPA, including filing a civil action against an agency. Penalties can include employee discipline, a finding of a misdemeanor crime with a fine of up to \$5000, or imprisonment of less than a year, or both. <sup>12</sup>

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<sup>11</sup> Civil Code section 1798.37

<sup>12</sup> Civil Code sections 1798.48 – 1798.57

We want to hear from you! After reading this fact sheet please take this short survey and give us your feedback.

English version: <http://fs12.formsite.com/disabilityrightsca/form54/index.html>

Spanish version: <http://fs12.formsite.com/disabilityrightsca/form55/index.html>

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***The California Mental Health Services Authority (CalMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.***



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