



Withholding of Information Legislation 2012

Practical Guide for RCNI Rape Crisis Centres

LPD/RCNI

September 2012

To be used with the RCNI Standard and
Flowcharts on Withholding of Information

Withholding of Information (1)

Introduction

1.1 Background:

On 1st August 2012, the Criminal Law (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 came into force, as part of a suite of legislation designed to improve child protection.

1.2 Our Obligations under this Act:

This legislation obliges us to pass on information to the Gardai about offences we **know or believe** to have been committed against children and/or vulnerable persons, as defined in the Act, **in certain circumstances** and if **no defences apply**. This power point will look at these circumstances and defences in turn.

1.3 Our Obligations under Wol Best Practice Standard:

In summary, we must identify and record our clients' decisions, and our own, in relation to disclosure of relevant information under the Act, on one or more of a series of specially designed forms which accompany the RCNI BPS on Withholding of Information.

Withholding of Information (2a)

Key Definitions

2.1 Whom does this legislation concern? 2 categories:

- “child”: anyone under the age of 18, whether or not married; and
- “vulnerable person”: someone who “has a mental illness or dementia, or is intellectually disabled, or who has a physical disability, in any case which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person, or to report such exploitation or abuse to An Garda Síochána, or both”.

2.2 What constitutes an offence under the Act? Under the Act, it is an offence to

- **Fail to disclose** information **as soon as reasonably practicable** to AGS,
- **Without reasonable excuse** (not defined), if you
- **Know or believe** that an offence has been committed against a child or vulnerable person, AND
- You have **information** about this offence **which you know or believe might be “of material assistance”** (help to arrest, prosecute or convict the person concerned) AND
- The information relates to a **serious offence as defined by the Act** (see Schedules)

Withholding of Information (2b)

Definitions continued

2.3: More Definitions in the Act:

- **“Prescribed organisation”**: one providing services to children and/or vulnerable persons who have suffered injury, harm or damage as a result of physical or sexual abuse, and recognized as such by the Minister;
- **“Prescribed person”**: a person either employed or otherwise engaged (e.g. on a sessional or voluntary basis) by a prescribed organisation, to provide services in respect of the injury caused by an offence against children or vulnerable persons, which require the exercise of skill and judgement; (i.e. in essence, therapists and counsellors);
- **“Designated Professions”**: are **registered** medical practitioners, nurses, psychologists and social work – **only**;
- **“Information...of Material Assistance”**: rephrased in the RCNI Best Practice Standard as “information which might help...” (see RCNI note on this), and:

2.4: Definition from RCNI Best Practice Standard on Withholding of Information:

- **“Designated Information Person”** is the RCC person with responsibility for giving advice, helping make decisions on capacity, and receiving and making reports to AGS.

Withholding of Information (3)

Circumstances where a report to AGS must be considered

- 3.1: **Ask yourself a series of questions to work out whether you need to consider making a report or not:**
- 3.1.1: Do you know or believe an offence has been committed against a child or vulnerable person? **and**
- 3.1.2: Do you have information which you know or believe might help arrest, prosecute or convict the person concerned? If so,
- 3.1.3: Does the child or vulnerable person have capacity to decide for themselves whether to report to the Guards, in both your judgment and that of the **Centre's Designated Liaison Person**? If you don't know, you should report. If not,
- 3.1.4: **Is it in the best interests** of the child or vulnerable person concerned to report the offence to AGS, in the opinion of **either a designated professional, a prescribed person** or, in the case of a child under 14, a parent or guardian acting on reasonable grounds and in good faith? If yes, (note that the last part of this question excludes parents or guardians who are alleged to be perpetrators of the offence **and** parents and guardians' views where the perpetrator is a family member) – **a report must be made** if no report is already made, to AGS, **and** no other defence applies under the Act – (see below):

Withholding of Information (4)

When you do NOT have to make a report under the Act – Defences:

4.1: You do not have to report to AGS if:

4.1.1: You are yourself the victim of the offence, have capacity to decide whether to report, and **do not choose to do so**;

4.1.2: The victim her/himself **tells you they do not want to report** the offence to AGS, and is a person with the capacity to make that decision;

4.1.3: The victim her/himself does not have the capacity to decide whether to report, in your view and that of your Designated Information Person, **and** you are also aware that a

- **Designated Professional OR**
- **Prescribed Person OR**
- **Parent or Guardian (not the perpetrator or related to him), in all cases**
- acting on reasonable grounds and in good faith in the best interests of the child, holds the view that a report to AGS should not be made, to protect the “health and well being” of that child of vulnerable person.

Note: all professionals, including prescribed persons, must act in a professional manner in coming to that view.

4.1.4: There is also a **general** defence of “reasonable excuse” under the Act, and

4.1.5: There is a separate defence re other existing criminal law rules, such as legal professional privilege, which will **continue** to operate as a legitimate reason to withhold information.

Withholding of Information (5)

More on the Act:

5.1: Other things to know about the Act

- 5.1.1: It is not retrospective, meaning it applies **only** to information coming to our attention **on or after** 1st August 2012, whether or not it is about offences committed before the Act was passed; and
- 5.1.2: This means that **historic** offences are included, if we learnt about them **on or after** 1st August 2012;
- 5.1.3: **We still have to make Children First reports** to the HSE as usual – this Act does not release us in any way from those responsibilities. However, if because it is an emergency or the weekend, we make a Children First report to the Guards instead of the HSE, we do not have to make a **second** Wol report, as only one report needs to be made to the Guards under the Act; and similarly
- 5.1.4: If the client has **already made** a report to the Guards, we simply record that fact and do not make a separate report ourselves, and lastly
- 5.1.5: Organisations wishing to apply to become “prescribed” under the Act can do so on the form on the Justice website, from this weblink. If your Centre has already applied on our RCNI form, there is no need to re-apply.

Withholding of Information (6a)

Centre Responsibilities under Best Practice Standard

5.1: This is a general overview only, the details relating to different sets of circumstances are in the Best Practice Standard and accompanying Forms. You should **record in writing** on the appropriate form, what action was taken in relation to Withholding of Information. There are three scenarios:

A: Where the person does in fact have capacity to decide for themselves whether to report to An Garda Siochana:

5.1.2: Where there is no issue about someone's capacity, s/he decides, or has decided, whether to report, and that information is filled in on the appropriate form. – NO REPORT FROM YOU to AN GARDA SIOCHANA

5.1.3: Where there is an issue about capacity, because the person is under 14 or a "vulnerable person", it is up to you and the Designated Information Person to make a judgment about their capacity. If you both decide that person **does** have capacity, again that person decides themselves whether to report, or has already reported, and you fill in that information on the appropriate form. – NO REPORT FROM YOU to AN GARDA SIOCHANA

Withholding of Information (6b)

continued - Centre Responsibilities under Best Practice Standard

B: Where the person does not in fact have capacity to decide for themselves whether to report to AGS:

5.1.4: Where there is an issue about capacity, because the person is under 14 or a “vulnerable person”, and in the judgment of both the Designated Information Person and yourself, that person lacks capacity to decide for themselves whether to report or not, you have no obligation to report if you are aware from either a parent/guardian acting in good faith, not themselves a perpetrator nor related to one, OR a designated professional, OR a prescribed person, that it is not in the best interests of the child or vulnerable person for a report to be made to An Garda Siochana. THERE MAY NOT HAVE TO BE A REPORT FROM YOU.

If you decide NOT to report for any of these reasons, you should record these reasons carefully on the appropriate form.

If none of them does apply **and** there is no reasonable excuse for withholding **and/or** no other rule of law which would excuse you, YOU MUST MAKE A REPORT to AN GARDA SIOCHANA.

If you decide NOT to make a report because of a “reasonable excuse” OR rule of law reason, you should record your decision and the reasons for it carefully on the appropriate form. Note: You should take legal advice before coming to such a decision.

C: Where you have no information about whether the person has capacity to report or not

5.1.5: If you have **no information** about a child under 14 or vulnerable person’s capacity to decide whether or not, most often because you have only second hand information, YOU MUST REPORT.

D:Last Word: If in doubt about what to do in any situation, ask advice from DIP, Centre Manager and if necessary, from RCNI LPD.

Withholding of Information (7)

Further Reading

- Criminal Law (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012;
- RCNI Best Practice Standard on Withholding of Information and Accompanying Forms;
- RCNI Note on “Material Assistance”;
- RCNI Flowcharts (Set of Three);
- Department of Justice Information Note and Application Form