



Information Sheet – For Requestors

Confidentiality Orders

This information is to assist you in understanding and completing a request for a Confidentiality Order regarding information or documents you are providing to the Mental Health Review Tribunal (the Tribunal).

What is a Confidentiality Order?

The *Mental Health Act 2016* (the Act) entitles a patient to access information and documents the Tribunal has received UNLESS there is a Confidentiality Order that prohibits or restricts a patient from having access.

In accordance with section 722 of the Act, the Tribunal may prohibit or restrict the disclosure of any of the following to a patient through a Confidentiality Order:

- a) information given before the Tribunal;
- b) matters contained in documents filed with, or received by, the Tribunal;
- c) the reasons for the Tribunal's decision on a proceeding.

A Confidentiality Order is not required regarding Victim Impact Statements as the Act specifies that Victim Impact Statements are confidential and must not be disclosed to patients except in certain circumstances.

Who can apply for a Confidentiality Order?

Persons who are placing information and/or documents before the Tribunal may apply for a Confidentiality Order.

For instance, a request for a Confidentiality Order may be considered by a treating team where concerns are held that part of a clinical report, or an attachment to a clinical report, contains information provided to the treating team in confidence and where the disclosure of that information may result in serious harm to the patient or put the safety of someone else at serious risk.



How do I make a request for a Confidentiality Order?

A Request for Confidentiality Order form should be completed and lodged with the Tribunal **at least 7 days before the relevant hearing**. This form can be located at <https://www.mhrt.qld.gov.au/resources/public-forms>. The completed Request for Confidentiality Order form should be attached to the information/document, or part thereof, that you are asking to be made confidential. If the request is over part/s of a document, the relevant section/s should be highlighted.

What happens when the Tribunal receives a Request for a Confidentiality Order?

When the Tribunal receives a Request for a Confidentiality Order, a lawyer will be appointed to represent the patient at the hearing, at no cost to the patient. The request for a Confidentiality Order and the information/document that is the subject of the request will be provided to the lawyer. The lawyer is bound to not disclose the information/document to the patient. The person requesting confidentiality should also not disclose the information/document to the patient.

What happens after I submit my Request?

After a lawyer has been appointed, and the information provided to them, the Tribunal arrange a hearing to decide whether a Confidentiality Order should be made. This hearing usually takes place just prior to the hearing to review the substantive matter (eg. the treatment authority or forensic order).

What happens at the hearing of the Request for a Confidentiality Order?

The patient's lawyer will attend the Confidentiality Order hearing on the patient's behalf as the patient is unable to attend this part of the hearing.

The person making the request will likely be required to attend and speak to the Tribunal about the basis for the request. If the request for a Confidentiality Order is regarding a clinical report or an independent report, the psychiatrist should attend.



What decisions can the Tribunal make in relation to the Request for a Confidentiality Order?

The Tribunal will decide whether to make the Confidentiality Order or to refuse to make the Confidentiality Order.

The Tribunal may make a Confidentiality Order if satisfied the disclosure of the information/document would:

- (a) Cause serious harm to the health of the patient; or
- (b) Put the safety of someone else at serious risk.

The Tribunal may also make a Confidentiality Order in relation to any Statement of Reasons arising from the hearing.

Should a Confidentiality Order be made, it will always remain in place and the information/document must not be disclosed to the patient at any time. The patient's lawyer will also be provided with reasons for the making of the Confidentiality Order.

The review hearing will then proceed without reference to the information/document the subject of the Confidentiality Order.

If the Confidentiality Order is not made, the review hearing may be adjourned to allow the patient the opportunity to access the information/document and respond to it. Alternatively, you may choose to withdraw the information/document. If the document is a clinical report, you should ensure there is a substitute report provided for the patient and for consideration by the Tribunal.

Where can I get more information about Confidentiality Orders?

Further information about Confidentiality Orders can be found at www.mhrt.qld.gov.au or you can contact the Tribunal on telephone 07 3338 8300, or via email enquiry@mhrt.qld.gov.au .