

PRACTICE NOTE

Handling Requests from Providers for Keeping Information Confidential

1. This Practice Note is an update of the Practice Note 2/2018 of the Guardianship Board (“Board”).
2. This Practice Note is issued to the general public as a guide to prepare for hearings. The Board’s exercise of power is not limited by the Practice Notes and may give other directions at hearings.
3. This Practice Note applies to situations where persons who provide documents and information for the purposes of proceedings before the Board (“Information”) make requests to keep certain Information confidential. It applies to both the provider of the Information and the officers of the Social Welfare Department who are appointed to produce the social enquiry reports and make recommendations to the Board (“SER Writers”). Please also refer to the Board’s Procedural Guidelines.
4. As all hearings before the Board are quasi-judicial proceedings, it is of paramount importance that openness and transparency must be adhered to. To ensure due process, fairness and natural justice must be preserved. Hence, any intention and request of a party to present certain information to the Board and to withhold the same information from other parties tend to create unfairness unless there is due justification, such requests will unlikely receive the Board’s approval.
5. The Board will, however, determine whether non-disclosure is justified if the provider of Information submits a written and signed request, stating: -
 - (i) the Information seeking to be concealed,
 - (ii) the person(s) from whom such Information is intended to be kept confidential,
 - (iii) an explanation on why the Information should be considered confidential,
 - (iv) a statement indicating whether the mentally incapacitated person or any other individual may be harmed by disclosure of the Information and whether they may be harmed if the Information is not disclosed; and
 - (v) any other reasons or supporting evidence in support of such a request.
6. Where the written request has been received by the SER Writers, they shall include the Information in a separate report from their main report (i.e. the Social Enquiry Report/Progress Social Enquiry Report or their supplementary reports) to be described as a Separate Confidential Report addressed to the Board only, enclosing the Information involved, the written request and the recommendation of the SER Writer as to whether the request should be supported in light of the above-mentioned written request.

7. On a need basis, the SER Writers may, at their discretion, mention the existence of certain Information which is subject to a request for confidentiality to be determined by the Board. It may be necessary in some cases for the Board to hear the views of opposing parties.
8. The above measures are arranged to facilitate the assessment of confidentiality requests by the Board. The Board, its staff and the SER Writers are not bound by any request for confidentiality until the Board has already made an Order for Non-Disclosure in respect of the Information. They remain free to disclose such Information to any person relevant to the case as they deem fit, without having to seek the consent of the provider of the Information.
9. The Board will determine whether the situation justifies a Non-Disclosure Order to be made under sections 7(2), 10(2) & 13(2) of the Mental Health Guardianship Board Rules in respect of the Information.
10. If the Board decides not to grant a Non-Disclosure Order, then copies of the Information will be provided to or made available for collection by the parties of the case who are entitled to receive documents under sections 7, 10 & 13 of the Mental Health Guardianship Board Rules.
11. Further guidance may be issued by the Board from time to time.

Guardianship Board
28 February 2025