

Quick Reference Guide: Crime Victims' Privacy, Confidentiality, and Privilege

Dance like nobody's watching, email like it will one day be read aloud in a deposition.

	PRIVACY	CONFIDENTIALITY	PRIVILEGE
CONCEPT	I have a right to decide who knows my personal information.	You have a duty to protect my information.	You cannot be forced to share that information.
APPLICATION	<p>Individuals control what happens to their personal information.</p> <p>By freely sharing your personal information with the public, you can waive your privacy interest.</p>	<p>Third parties may have a duty of confidentiality. This duty applies to healthcare professionals, religious advisors, and legal representatives.</p> <p>The consequences for breaching this duty are professional, not criminal.</p>	<p>Privilege is held by the third party who is called to testify.</p> <p>For example, if a husband is called to testify against his wife, the husband gets to choose whether he will testify or raise the privilege.</p>
EXCEPTIONS INCLUDE*	A private party can be required to share otherwise-private information with third parties through subpoenas, court orders, and legally-justified searches.	Implicit authorization, preventing reasonably certain death or great bodily harm, preventing use of your services in crime or fraud; and to comply with a court order.	Party is seeking a professional's help in planning a crime or fraud, discloses a past act with ongoing consequences, or gives physical evidence of a crime to the professional.
PRACTICE TIPS	<p>At the beginning of conversations with crime victims, ask if they are alone, and in a place where they can speak freely, privately, and without interruption.</p> <p>Advise against sharing personal information, and details relating to their case, with others or on social media.</p>	<p>Regularly train staff (including volunteers and support staff) on confidentiality and how to protect victims' information.</p> <p>There are exceptions to the duty of confidentiality. If you have questions about your duty of confidentiality, consult with an attorney associated with your practice.</p>	<p>Include a disclaimer in outgoing emails noting that all communications are privileged and confidential, and that the sender should immediately be notified in the communication was erroneously sent to the wrong person.</p> <p>If you do not have a confidential or privileged relationship with the party, be sure that they are aware.</p>

*Exceptions list is non-exhaustive.