Statement on the Disclosure of Test Data

Committee on Psychological Tests and Assessment, American Psychological Association

Preamble

The issue of disclosure of test data raises a number of concerns for psychologists who develop, validate, and use tests in a variety of settings. The statement that follows was formulated to help psychologists with these issues. Its intent is to be consistent with the *Ethical Principles of Psychologists and Code of Conduct* (APA, 1992; hereinafter referred to as the Ethics Code) and the *Standards for Educational and Psychological Testing* (1985; hereinafter referred to as the Testing Standards).[1] Psychologists should refer to the above documents, other appropriate guidelines and standards, and relevant legal statutes in resolving legal and ethical conflicts.

This statement should be interpreted in light of its educational and aspirational intents, advances in assessment, and the professional judgment of the psychologist. It is not intended to establish guidelines or standards of conduct or care for psychologists relative to disclosure of test data. This document does *not* provide legal advice, nor is it intended to be or to substitute for the advice of an attorney. Professional judgment is not preempted by this statement; rather, the intent is to enhance it.

I. General Issues

Test data include an individual's test results, raw test data, records, written/computer-generated reports, global scores or individual scale scores, and test materials such as test protocols, manuals, test items, scoring keys or algorithms, and any other materials considered secure by the test developer or publisher.

The release of test data may affect test takers, but may also be relevant for a variety of other professional, scientific, institutional, and legal purposes. The disclosure of an individual's test results, as defined in the previous paragraph, often requires consideration of several basic issues: (a) maintaining confidentiality of test data; (b) informing the test taker of the purpose, use, and results of testing; (c) releasing data with the consent of the test taker; (d) releasing data to unqualified persons; (e) releasing data without impairing test security; (f) releasing data without impairing copyright or other intellectual property interests of third parties (e.g., test publishers); (g) conforming to legal mandates and rules pertaining to test data; and (h) other issues.

Several existing principles and standards of relevance to these issues can be found in the Ethics Code (APA, 1992), Testing Standards (1985), and other APA guidelines. Psychologists should be familiar with these standards and appropriate principles which apply to specific settings (e.g., schools, organizations, health care) or uses for test data. Psychologists may wish to obtain legal or other professional advice concerning relevant federal and state statutes, regulations, and rules, relevant to the release of test data. Guidance may be provided by a variety of standards or guidelines such as state licensing laws, the Ethics Code, and the Testing Standards.

When psychologists are mandated by law, or otherwise required to release data to persons they believe to be unqualified or in instances that may impair the security of the test materials or intellectual property/copyright interests, they should inform others (e.g., employers, schools, courts, test takers) of their obligations to the Ethics Code (APA, 1992; which may have the force of law in some jurisdictions), Testing Standards (1985), and other relevant professional standards.

Psychologists should be aware that professional standards and practices as well as legal mandates governing the disclosure of test data often differ substantially depending on the setting, intended purpose, and use of testing. At times, this statement, and APA standards, may conflict with legal mandates, organizational or institutional requirements. When such conflicts arise, psychologists should attempt to identify the relevant issues, make known their commitment to relevant standards, and attempt to resolve them in a way that, to the extent feasible, conforms both to law and professional practice as required by the Ethics Code (APA, 1992), licensing regulations, and other relevant standards.

II. Access to Test Data

Psychologists, and their employing organizations and institutions, may develop formal procedures and policies

This statement was approved by the APA Council of Representatives in February 1996 and is intended to be consistent with relevant principles, standards, and guidelines previously endorsed by the APA Council. Other appropriate principles and standards governing the confidentiality of assessment and evaluation of records or reports may apply to release or dissemination of test materials. The Committee on Psychological Tests and Assessment developed this statement, but the following individuals deserve special note for their efforts: Wayne J. Camara, Rodney L. Lowman, Daniel Reschly, and Neal Schmitt.

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[1] This document references the current edition of the *Standards for Educational and Psychological Testing*, codeveloped by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education (1995). At this writing, the document is under revision.

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fore such records can be released. Many states protect against disclosure of mental health records under the psychotherapist–patient privilege. In addition, several federal statutes exist which may be relevant in specific situations. Further, constitutional, statutory, or common-law privacy protections may exist to protect against the untoward consequences of disclosure. Various limitations have been imposed across jurisdictions which permit the client to waive such protections (e.g., therapist–client privilege) or exempt purely diagnostic interactions.

V. Release of Data and Test Security

The concerns regarding the release of test materials primarily relate to test security, the potential invalidation of tests, and copyright laws and contractual obligations. Psychologists are required by the Ethics Code to maintain the integrity and security of tests and other assessment techniques consistent with law and contractual obligations (APA, 1992; Standard 2.10, "Maintaining Test Security"). This is important for several reasons.

Disclosure of secure testing materials (e.g., test items, test scoring, or test protocols) to unqualified persons may decrease the test's validity. Availability of test items to an unqualified person can not only render the test invalid for any future use with that individual, but also jeopardizes the security and integrity of the test for other persons who may be exposed to test items and responses. Such release imposes very concrete harm to the general public—loss of effective assessment tools. Because there are a limited number of standardized psychological tests considered appropriate for a given purpose (in some instances only a single instrument), they cannot easily be replaced or substituted if an individual obtains prior knowledge of item content or the security of the test is otherwise compromised.

Development and refinement of items and norms for individual intelligence tests, personality assessment techniques, and achievement tests often require many years of research and considerable effort and expense. Improper disclosure of test items or other test materials also may result in damage to those parties which have developed or have ownership in the test and possibly result in breach of contract claims against psychologists who violate the terms of their test purchase or lease agreements.

VI. Releasing Data to Unqualified Persons

Psychologists usually inform persons or agencies requesting test data of the psychologist's obligations to the Ethics Code (APA, 1992) and professional standards and practices, which includes taking reasonable steps to limit the release of test data to persons qualified to use such information.

Any release of data must conform to the Ethics Code (APA, 1992), which requires psychologists to refrain from misuse of assessment techniques, results, and interpretations and to take reasonable steps to prevent misuse of assessment results by others. Misuse includes releasing test data to unqualified persons. The Testing Standards (1985; Standard 6.6) note that responsibility for test use should only be assumed by and delegated to persons with training and experience necessary to handle these responsibilities in a professional and technically adequate manner. Test users should be knowledgeable about a variety of complex issues, perform a variety of technical activities, and be able to use professional judgment. The primary concern of releasing test data to individuals who are not competent to interpret them, including the limitations of the data, is that the data will be misused, having potentially harmful effects on the client, patient, or others. In addition, untrained and/or unqualified individuals might make harmful and misguided decisions based on a misunderstanding of the test data. The psychologist's responsibilities extend to raw test materials such as responses to test items or recording of observations during assessment that may be contained in test protocols or testing records.

VII. Protecting Copyright Interests When Releasing Data

Tests and test protocols are generally protected by the federal copyright laws and usually may not be copied without permission of the copyright holder. Psychologists mandated by law or regulation to provide copies of a test, test manual, or test protocols need to consider copyright laws which may potentially be violated by releasing such materials.

It is prudent for psychologists to be familiar with the terms of their test purchase or lease agreements with test publishers as well as reasonably informed about relevant provisions of the federal copyright laws. Psychologists may wish to consult with test publishers and/or knowledgable experts to resolve possible conflicts before releasing specific test materials to ensure that the copyright and proprietary interests of the test publisher are not compromised.

VIII. Conforming to Federal and State Statutes and Rules, Regulatory Mandates, and Institutional/ Organizational Rules and Requirements

Federal and state statutes, federal/state rules and regulations, and court precedents address disclosure requirements that vary by the setting, use or purpose of testing, and the party requesting disclosure. Court decisions have been largely case specific, that is, decisions based on the specific facts of a case, usually balancing the rights of participants with the degree to which the protected information is considered necessary for resolution of legal issues. There may also be additional constitutional, statutory, or common-law privacy protections governing test disclosure. Therefore, it is advisable for psychologists to

mandating release of data may also make known their commitment to professional and ethical standards (see, e.g., APA Ethical Principles 1.02, "Relationship of Ethics and Law," and 8.03, "Conflicts Between Ethics and Organizational Demands"; APA, 1992) and attempt to inform all parties of appropriate ways to resolve any conflicts in order to ensure conformity to these standards.

XIII. Other Issues

A. Reprinting of Test Items

In deciding whether to reprint items, psychologists are encouraged to consider the qualifications of the intended audience, access to the publication by the general public or potential test takers, the intent and use of the publication, the potential for invalidating the assessment technique, and intellectual property/copyright law. The reprinting or description of individual test items in a publication (e.g., popular press, paper presentation, research article, book, technical report, handout) may jeopardize the integrity and security of many standardized tests.

Psychologists generally obtain permission from the copyright holder prior to reprinting test items. Psychologists may also consider alternatives to providing test items to persons not qualified in assessment by (a) developing similar items having little or no overlap with content in the original test items and (b) using factors, clusters, or content-categories and their descriptions.

B. Use of Test Items in Teaching and Training

It is advisable for persons in training who use test materials, or who have access to test data, to be directly supervised by a qualified professional. Academic departments and professors should maintain the security of all test materials under conditions that prevent access by unauthorized individuals (APA, 1992; Standard 2.10, "Maintaining Test Security"). For example, stored testing materials should be carefully safeguarded and be accessible only to supervising faculty, appropriate storage facility staff, and to students in training who have permission and oversight by the appropriate faculty member.

When students are administered a test for demonstration purposes, the instructor assures the security and appropriate use of the test. Because exposure to tests in such demonstrations can invalidate the test for future use with students, simulated test items, film or video demonstrations, or other alternative means are encouraged as alternatives to classroom administration or demonstrations of actual tests, whenever possible.

C. Retention and Maintenance of Testing Data

The Testing Standards (APA, 1985) state that test protocols and any written reports should be preserved when any test data about a person are retained (Standard 15.9), and data (whether retained on paper, data files, etc.) should be adequately protected from improper disclosure (Standard 16.5). The Ethics Code (APA, 1992) and *Record Keeping Guidelines* (APA, 1993) contain additional information regarding the retention of psychological records. Also, the need for and extent of record keeping may be impacted by statutes of limitations for relevant causes of action (e.g., fair employment laws in personnel selection settings, malpractice laws in clinical settings, etc.).

Psychologists should take great care in storing outdated test results to ensure that they are not inappropriately used as a basis for interventions, recommendations, or decisions. Test data should be used only for decisions for which they are appropriate and still valid. A particular problem exists when test data from screenings are used as the principal basis for evaluations (in employment, school, or therapeutic settings) when additional and more current or relevant data may often exist. Such potential misuse of test data increases when unqualified persons have access to secure test materials or confidential test data.

Psychologists should also take reasonable steps to maintain the integrity and security of test materials (e.g., tests, protocols) consistent with ethical and legal obligations. Casual access to tests or administration of tests by individuals who have no real need can result in breaches of security and may jeopardize security and validity. This does not preclude administration of tests for research or training purposes under appropriately controlled conditions.

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