



NATIONAL ACADEMY OF NEUROPSYCHOLOGY

Test Security Appendix

Handling Requests to Release Test Data, Recording and/or Reproductions of Test Data

Please note that these are general guidelines that may not apply to your specific jurisdiction. It is recommended that all psychologists seek advice from personal counsel to determine if these guidelines are appropriate for their specific jurisdiction.

1. Is the request in written form?

If *yes*, go on to 2.

If *no*, ask that the request be placed in written format.

2. Do you have a signed release from a competent patient?

If *yes*, go on to 3.

If *no*, obtain a signed release from the patient or, if the patient is not competent, from his or her legal guardian. (If competency is uncertain, e.g., the patient has deteriorated or competency has not been determined, an alternate course of action will be necessitated, e.g., contact the person who made the request and indicate you are not certain if the patient meets requirements to sign a release.)

3. Is the material to be released to a professional qualified to interpret the test data?

If *yes*, go to 4.

If *no*, go to 5.

4. Has the request included an assurance that test security will be maintained?

If *yes*, release the material.

If *no*, especially in certain circumstances (e.g., the psychologist is not known to you, litigation is ongoing), it may be prudent to ask for written assurance that test security will be maintained. The statement might indicate something like the following, "I agree to protect the test materials in accordance with the principles set forth in the APA Ethical Principles."

5. Is the request in the form of a subpoena (not a court order)?

If *yes*, respond in a timely fashion by indicating that complying with the request to release test data under these circumstances places the psychologist in conflict with professional

practice guides and ethical principles and places him/her at risk for serious professional sanctions due to the need to maintain test security. Sections of the "APA Ethical Principles" and/or of the NAN Test Security Position Statement can be provided. The need to protect test security can be explained, and proposed solutions can be presented such as release to a qualified professional who agrees to maintain test security. If this is not satisfactory, alternative arrangements can be proposed; for example, all parties given access to test data can assent to enter into a written agreement that contains the elements for protection of test materials. Alternatively, the suggestion can be made that a court order be issued containing these elements, at which time the data will be released

If *no*, go on to 6.

6. Is the request in the form of a *court order* (i.e., signed by a judge)?

If *yes*, go to 7.

If *no*, the request should fall under one of the previously listed categories (e.g., an informal request, a subpoena), and the reader should consult that section.

7. Does the court order contain adequate provisions for maintaining test security?
If *yes*, release the material

If *no*, go to 8.

8. Does the court order require release to an unqualified individual?

If *yes*, go to 9.

If *no*, go to 10.

9. Court orders are expected to be obeyed in a timely fashion and failure to do so can place the professional in direct conflict with the law and at risk for serious penalties (e.g., award of attorney fees, contempt orders). If the court order does not appear to maintain adequate test security because it instructs release to a non-psychologist, possible options include:

a. Respond to the court by immediately releasing the data, but at the same time request that appropriate safeguards be put in place to maintain test security. For example, the need to maintain test security might be, briefly described, the NAN Statement and/or sections of the APA Ethical Principles might be provided, and the following arrangements requested:

"I would ask that the test materials not be circulated beyond those directly involved in the case, that no unauthorized copies or reproductions be made, that the presentation of the test materials in the courtroom be minimized to the extent possible, that exhibits and courtroom records containing test materials be protected or sealed, and that all test materials be destroyed or returned upon the completion of the case".

b. Seek personal counsel immediately from an attorney licensed within your jurisdiction, and, if counsel deems it appropriate, inform the court that the

request to release test data creates a potential problem. A solution to the problem can be proposed as in 9.a. above.

10. Court orders are expected to be obeyed in a timely fashion and failure to do so can place the professional in direct conflict with the law and at risk for serious penalties (e.g., award of attorney fees, contempt orders). If the court order commands release to a qualified professional and contains adequate provisions for maintaining test security, release the material. If adequate provisions are not contained, the same type of suggestions described under 9.a. or 9.b. can be presented. It is not recommended that you disobey a court order without seeking advice of personal counsel licensed within your jurisdiction.