

## **STATEMENT CONCERNING INSTITUTIONAL SUPPORT TO RESEARCHERS IN MAINTAINING PROMISES OF CONFIDENTIALITY**

### **1. Statement**

McGill University will support its researchers in maintaining promises of confidentiality made to participants in a study carried out in accordance with an approval granted by a Research Ethics Board (REB) recognized as acting on behalf of the University.

### **2. Nature of the support provided to researchers**

This statement describes the support offered by the University to researchers where the confidentiality of a participant's information is threatened by third party action aiming to compel the disclosure of such information.

### **3. Scope of the support provided to researchers**

3.1 Support will be provided through the Advisory Council on Human Research Ethics (ACHRE) and the Department of Legal Services. Depending on the specific circumstances of a case, support may take several forms, such as:

- Advice on the extent of promises of confidentiality made to participants in accordance with the approval granted by the REB;
- Investigation of and advice on current best practices bearing on the matter;
- Advice on whether to seek the support of professional organisations to which the researcher belongs whenever ethical obligations may also derive from one's professional obligations;
- Support in attempting to resolve the dispute with the third party seeking disclosure of participant information;
- Legal action or legal support to oppose third party action to compel disclosure of confidential participant information (subpoenas, search warrants, requests for access to documents, etc.).

3.2 In cases where there is an irreconcilable conflict between the researcher's ethical obligations to safeguard confidentiality of participant information (as approved by the REB) and the researcher's legal obligations, the University will provide the researcher the services of independent outside legal counsel.

3.3 The mandate given to outside counsel will be to advise the researcher on the personal consequences of a possible decision to respect ethical obligations rather than legal obligations in accordance with the mechanism described below. The purpose of the mandate will not be to provide advice on the potential consequences of the researcher's decision on the University itself or on other parties.

### **4. Mechanism to seek and receive support**

4.1 A researcher presented with a request for access to confidential participant information or an action seeking to compel disclosure of such information shall seek the help of ACHRE as soon as possible.

4.2 ACHRE shall review the matter and seek any relevant information from the researcher and the REB as appropriate, including details of what may be disclosed if the request or order is enforced, and what promises of confidentiality were made to participants according to the REB approval.

4.3 ACHRE shall seek the advice of Legal Services whenever the request for disclosure is in the form of a legal proceeding seeking to compel the disclosure of participant confidential information.

4.4 Legal Services, with the cooperation of the researcher and ACHRE, may, in the name of the University (and of the researcher if deemed appropriate by Legal Services) take reasonable lawful measures to prevent the disclosure of confidential participant information.

4.5 In the event of an irreconcilable conflict between the researcher's ethical obligations to safeguard confidentiality of participant information (as approved by the REB) and the researcher's legal obligations, Legal Services shall retain the services of independent outside legal counsel for the purpose of advising the researcher as described in paragraphs 3.2 and 3.3. Except at the request of, or with the express consent of the researcher, such advice shall be confidential and privileged, and shall not be shared with the University.

## **5. Funding of the support**

5.1 The services of ACHRE and Legal Services as described in this policy are provided to the researcher free of charge.

5.2 The services of outside counsel retained by Legal Services in accordance with paragraphs 4.5 are covered by the University.

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Advisory Council on Human Research Ethics  
Office of the Vice-Principal (Research and International Relations)  
Department of Legal Services