

## Summary of Standardized Language topic

The Subcommittee reviewed the report submitted by OPLA and the document outlining specific examples for standardized language when drafting public records exceptions based on whether the record can be shared with specific persons or for identified purposes.

The Subcommittee recommends that the Advisory Committee adopt as a guiding principle the use of the term “confidential” when drafting a public records exception. This should be the standard language used by drafters for all public records exceptions. The Advisory Committee does not recommend that statutory language say the record is “not a public record” and a statute should not cross reference the FOAA generally or Title 1, section 402, subsection 3 specifically.

Example: The intake form is confidential.

The underlying principle is that a record that is confidential is not to be disclosed. There may be situations in which it is necessary to disclose the confidential record to a particular individual or category of persons carrying out specific responsibilities. The authorized disclosure should be written clearly and concisely. When protecting information contained in a record, especially information that is personal or protected because of privacy or safety concerns, the standard for determining when it is appropriate for certain confidential information to be released should be stringent. The statutory language should be carefully considered so that if information is released it would not allow the protected information to be discovered. Policymakers should be mindful of emerging technology that permits “reverse encryption” or other mechanisms to uncover otherwise protected information.

At this time, the Advisory Committee does not recommend statutory changes to existing public records exceptions to conform to this guidance. Moving forward, the Advisory Committee expects that statutory changes consistent with this guidance for standardized language will be considered as part of the review of new proposed public records exceptions and of existing public records exceptions.