

interagency information sharing guidelines

FOR ORGANISATIONS INVOLVED IN
CARE AND PROTECTION OF CHILDREN



child,
youth
and
family

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introduction

Interagency cooperation is fundamental to a strong care and protection system. An effective care and protection system aims to prevent the abuse and neglect of children and young people and provide services to strengthen and support families in caring for their children and young people. Sharing information is an important part of a collaborative approach to care and protection and agencies working in this area need access to accurate information which will help them assess risk and the needs of children and young people.

The Department of Child, Youth and Family Services has developed these interagency information sharing guidelines in collaboration with key government and non-government organisations. Many organisations already have their own protocols dealing with abuse and neglect which will include sharing of information. These Guidelines are intended to complement the existing protocols between the Department and individual agencies not supplant them. They reinforce Child, Youth and Family's "New Directions" strategy by strengthening and clarifying interaction between community and government agencies to achieve better outcomes for children and young people. They also complement the work of the Ministry of Social Development on the Care and Protection Blueprint to the extent that they aid the creation of an effective and efficient care and protection community by enhancing information sharing – one of the key areas highlighted in the Care and Protection Blueprint.

Purpose

The primary purpose of these Guidelines is to assist organisations to share information when appropriate to improve the safety and wellbeing of children and young people.

Vision

Effective information sharing between organisations contributes to children and young people being cared for and protected from abuse and neglect.

Scope

These Guidelines do not replace the law but are intended to assist organisations to:

- work together and share information where permitted by law;
- understand relevant legislation and how to apply it; and
- inform and guide practice.

The term "information sharing" is used throughout these Guidelines to describe situations where information is collected, used, held or disclosed. It is important to note that the law talks in terms of these latter concepts rather than "information sharing". The law also makes distinctions about information sharing depending on what kind of organisation requests the information or what kind of organisation receives the request for information, or whether the information is being offered or received without a request.

These Guidelines are about information sharing relating to care or protection concerns for children or young people under the age of 17 years. The Guidelines are intended for all the organisations that make up the care and protection community.

The care and protection community is made up of three broad organisational groupings:

- statutory departments (those with statutory care and protection responsibilities for children and young people i.e. Child, Youth and Family and Police);
- other government organisations. This includes those who have children and young people as a significant client group, for example Health, Education, ACC, Work and Income, as well as those that come into contact with children, young people and families while carrying out their normal duties, for example Housing and the Fire Service; and
- non government organisations (includes those who are contracted by Child, Youth and Family, as well as any others providing services to children, young people, families or adults).

A “government organisation” includes all government departments, agents, or instruments of the Crown and every statutory body. The Ombudsmen Act 1975 has a list of the organisations. These can be found at:

<http://rangi.knowledge-basket.co.nz/gpacts/reprint/text/1975/sc/009sc1.html>.

information sharing

Relevant legislation

The law relevant to information sharing is not intended to unduly inhibit the activities or organisations that have a legitimate interest in protecting children and young people.

Children, Young Persons, and Their Families Act 1989

The Children, Young Persons, and Their Families Act (CYP&F Act) emphasises the importance of sharing information to keep children and young people safe by specifically allowing information to be shared, for example when abuse or suspected abuse is reported or investigated.

Section 6 states that in all matters relating to the administration or application of the CYP&F Act (other than the youth justice provisions) the welfare and interests of the child or young person are the first and paramount consideration with regard to the principles set out in sections 5 and 13 of the Act.

Note: This section sets the context in which Child, Youth and Family staff and staff of Iwi Social Services, Cultural Social Services and Child and Family Support Services disclose information to other agencies in the course of their work with a particular child but does not provide an unfettered power to share information with other agencies in breach of the Privacy Act.

Sections 15 and 16. Any person who believes that any child or young person has been or is likely to be harmed physically, emotionally or sexually, or ill-treated, abused, neglected or deprived may report the matter to Child, Youth and Family or the Police and, provided the report is made in good faith, no civil, criminal or disciplinary proceedings can be brought against the person providing the information.

Note: This is not a blanket authorisation to share any information about a child or young person at any time. It is restricted to sharing information where there are grounds for believing that a particular child or children are at risk of harm as set out above, and that the information is given as part of a report to Child, Youth and Family or the Police.

Section 17 provides authority for a Child, Youth and Family social worker or member of the Police to undertake such investigation as is necessary or desirable into reports of ill-treatment or neglect of a child or young person under section 15. Child, Youth and Family may seek information from:

- a government department e.g. Police or Community Health Board;
- a non-government agency.

Government organisations are obliged to give information about the child or young person concerned (see s66 CYP&F Act below). Non-government organisations are not obliged to give information but are able to provide information as part of a report under s15 that a child or young person is at risk or harm. NGOs are lawfully able to disclose information to a social worker who is conducting an investigation pursuant to section 17 into whether a child or young person has suffered harm, neglect or abuse. They can also supply information to the Department or to any other NGO about a child if

that child is in the custody or guardianship of the Department or that NGO. Other information can be supplied, whether requested or otherwise, that is relevant to the child's need for care or protection, or which would otherwise promote the child's welfare or interests, as long as it is justified under the Information Privacy Principles in the Privacy Act 1993.

What information will Child, Youth and Family seek?

- anything relevant to the child's history and current situation;
- the child's views (if known);
- information about the child's parents, caregivers and family;
- relationships between family members; and
- any involvement other agencies have or have had with the child or young person or the family.

What can an agency expect from Child, Youth and Family when asked for information?

Child, Youth and Family should advise:

- the name of and sufficient identifying information about the child or young person who is the subject of the request to ensure both parties are talking about the same child;
- what is Child, Youth and Family's involvement with this child;
- how the request for information relates to the child's welfare and interest;
- what is perceived to be the risk of harm to the child; and
- how soon the information is needed.

How should the agency respond to the request?

- identify whether they have any information about the particular child or young person or family relevant to risks to the child or young person's welfare or interests;
- respond to requests commensurate with urgency;
- ensure the information given is accurate and relevant to the welfare and interests of the child; and
- identify other possible sources of information.

Section 17(3) of the Act requires Child, Youth and Family to inform any notifier of any child abuse or neglect (under s15) of whether the matter has been investigated and what if any further action has been taken. They must do this as soon as practicable after the report has been investigated or a decision is made not to investigate unless it is impracticable or undesirable to do so.

Section 59 enables Child, Youth and Family or the Police to apply to the Family Court for an order that any person produce a document for inspection where a social worker or the Police believe on reasonable grounds that a document is likely to contain information necessary or relevant for the purposes of determining whether any child or young person is in need of care and protection, where that person has refused to allow that document to be inspected.

Note: the court cannot order production of any document if its disclosure would breach a lawyer's professional privilege.

Section 66 confers on Child, Youth and Family a broad power to require every government department, agent, instrument of the Crown or statutory body to supply information in its possession about any child or young person for any of the following purposes:

- determining whether the child or young person is in need of care and protection (this does not apply to grounds in section 14(1)(e) which relate to the commission of offences);
- any proceedings under the care and protection provisions of the Act.

The information obtained is:

- not to be used for investigating any offence;
- not admissible as evidence in any proceedings other than proceedings under the care and protection provisions of the Act.

Note: The Privacy Commissioner has noted that the information sought must be about the actual child or young person and does not include parents or other people who may pose a risk to the child.

Privacy Act 1993

The Privacy Act promotes and protects individual privacy and establishes certain principles with respect to the collection, use and disclosure by public and private sector agencies of information relating to individuals. Where there is some other legislation which requires or allows or even prohibits some particular disclosure of personal information, that other legislation overrides the more general application of the Privacy Act. Section 66 of the CYP&F Act is an example of this.

The Privacy Act's controls upon holding, using and disclosing personal information apply to any personal information which an agency holds, whether it was collected directly from the individuals concerned or was obtained from some other source.

Section 6 sets out 12 information principles which apply to any information held about an individual in his or her personal capacity. Any person can make a complaint to the Privacy Commissioner that their privacy has to be breached by one or more of these privacy principles.

The principles are summaries below. It is important to note however that when using the Act, an agency should look at the statutory provision (these are attached as Appendix 1) rather than the summary. You cannot rely on the summary but must refer to the direct statutory provision for accuracy.

Relevant privacy principles are summarised as follows:

1. Personal information collected by an agency must be collected for a lawful purpose connected to the purpose of the agency and collection is necessary for that purpose.
2. Personal information should be collected directly from the individual concerned except in a number of defined circumstances which include where this would not prejudice the interests of that individual, the individual will not be identifiable, or the information is needed for Court proceedings.
3. Where personal information is being collected from the individual concerned, the collecting agency must take reasonable steps to ensure the individual is aware of (among other things) the purpose for which the information is being collected, and the intended recipients of the information. Where the collecting agency considers that it may well want to disclose some of the information to another agency later, that should be made clear.
4. Collection of personal information shall not be by means which are unlawful, unfair or unreasonably intrusive.
5. Personal information shall be stored taking all reasonable safeguards against loss, access use, modification or disclosure except with the authority of the agency that holds the information, misuse, and other than is necessary for it to be used within the agency itself.
6. Individuals shall be entitled to obtain from agencies confirmation of whether or not the agency holds personal information and to have access to that information.
7. Where an agency holds personal information, the individual concerned should be entitled to request correction of the information and to request that there be attached to the information a statement of the correction sought but not made.
8. The accuracy of personal information shall be checked before use.
9. Personal information shall not be kept longer than is necessary.
10. Information shall only be used for the purpose for which it was obtained except where the agency believes on reasonable grounds that:
 - the source of the information is a publicly available publication; or
 - use of the information is authorised by the individual concerned; or
 - non-compliance is necessary to avoid prejudice to the maintenance of the law by a public sector agency or needed for court proceedings; or
 - use of the information is necessary to prevent or lessen a serious and imminent threat to public health, public safety or the life or health of the individual concerned or another individual; or
 - the purpose for which the information is used is directly related to the purpose for which it was obtained.

11. An agency must not disclose personal information it holds unless that disclosure is itself one of the purposes for which that information was obtained, or is directly connected to those purposes. There are some exceptions to this principle which will have to be considered carefully if the intended disclosure is not itself one of the purposes for which the information was obtained. If the agency holding the information is a “health agency” (see the Health Information Privacy Code) and the intended disclosure is not one of the purposes for which the agency obtained the information, the agency is required to consider whether it would be desirable or practicable to get the individual’s authorisation for the disclosure before making the disclosure under one of the exceptions to Rule 11 of the Code.

The exceptions in Principle 11 that are most likely to be relevant where consent to share information for care and protection purposes has not been obtained are:

- (a) information can be disclosed where the purpose of disclosure is one of the purposes of collection or a directly related purpose. One of the prime purposes of information collection is for the ongoing care and protection of children and young people at risk of abuse and/or neglect. In some situations where NGOs and other government departments are asking for information necessary for them to help in the care and protection area, this is a “directly related purpose” exception situation. In other words, the information was collected for the care and protection of children and young people and disclosing it where necessary to ensure care and protection to another player in the care and protection community is a directly related purpose. (Principle 11(a))
- (b) avoiding prejudice to the maintenance of law may allow the disclosure of information to enable a public sector agency such as Child, Youth and Family to prevent, detect or investigate a case of child abuse or neglect. (Principle 11(e)(i))
- (c) by contrast, ‘the serious and imminent threat’ exception entails a more demanding requirement. Under this exception, the information provider must be able to prove that there is a serious and imminent threat to the health or safety of an individual or the public before personal information can legally be disclosed without the written consent of the person who it is about. (Principle 11(f))

Section 7 of the Privacy Act allows personal information to be shared when other enactments provide for this e.g. the CYP&F Act.

Appendix 3 provides a template to authorise release of personal information.

Note: Authorisation does not need to be in writing but it may be a protective measure for an agency to have this. Care must be taken that the “authorisation” covers a particular situation.

If you are unsure whether one of the exceptions to the Privacy Act applies in a given situation, discuss the matter with a lawyer or other qualified professional who understands the application of the Privacy Act, eg, at a Law Centre, Citizens’ Advice Bureau.

Official Information Act 1982

The Official Information Act (OIA) provides processes for those outside government to access information held by government organisations. The primary principle is that information should be made available unless there is good reason for withholding it. The Act recognises that there may be times when official information should be protected to preserve personal privacy and government interest (sections 6 – 11). It also recognises, however, that information sometimes needs to be released in the public's interest. Where any official information is provided in good faith section 48 provides a protection from civil or criminal proceedings:

- to the person who made available the information and any consequences that follow from the making available of that information.
- to the person who was the author of the information or any other person having supplied that information to a Department or Minister of the Crown or organisation.

Health Act 1956

Section 22(C)(2)(c) and (f) permit any person holding health information to make it available to a social worker or care and protection coordinator or a police officer if they require it for performing their powers, duties or functions under the CYPF Act. They do not impose an obligation. Social workers when making a request should specify what duty or function they need the information for.

If providers do not wish to supply the information and it is needed for an investigation, Child, Youth and Family may need to obtain a Court order under section 59 of the CYP&F Act.

Note: Section 22(C)(2)(c) and (f) apply to services as defined by the Health Act and includes personal and public health services as well as goods, services and facilities provided for related or incidental purposes.

Section 22(F) requires a person who holds health information to make it available upon request to any other person who is to provide health services or disability services to the individual concerned. There are some limited discretionary grounds upon which the information holder may refuse the request.

Health Information Privacy Code 1994

The Health Information Privacy Code applies to health agencies and may require a rather different test of a possible disclosure of information from that otherwise required under the Privacy Act. The differences between the Health Information Privacy Code and the Privacy Act with respect to Privacy Principle 11 are referred to above in the section on the Privacy Act.

A number of health agencies who are subject to the Code must also comply with the Code of Health and Disabilities Consumers Rights.

The Injury, Prevention, Rehabilitation and Compensation Act 2001

Section 283 of the Injury, Prevention, Rehabilitation and Compensation Act allows the Accident Compensation Corporation (ACC) to disclose to Child, Youth and Family personal information about ACC claimants and others for the purpose of preventing or limiting injury to children or young persons arising through unlawful activity. Furthermore, when ACC provides written consent from the client, Child, Youth and Family can provide ACC with information relevant to a claim lodged for a mental injury to a child or young person as a result of sexual abuse.

Legislation relating to organisations dealing with Child Abuse and Neglect

This table provides a general description of when each Act applies.

Organisation requesting information	Organisation receiving request for information	Legislation potentially applicable	What type of situation might this apply to?
Government organisation (not CYF or Police)	Government organisation	Privacy Act	Hospital requests information from a school
Government organisation (not CYF or Police)	CYF	CYP&F Act Privacy Act	School requests information from CYF
CYF or Police	Government organisation (not CYF or Police)	CYP&F Act, Health Act, Health Information Privacy Code, Privacy Act	CYF requests information about a child or young person from a hospital. CYF requests information about a parent from a mental health provider
CYF or Police	NGO	CYP&F Act Privacy Act	CYF requests information from an NGO
NGO	Government organisation	Official Information Act	NGO requests information from CYF
NGO	NGO	Privacy Act Health Act	One NGO requests information from another

policies for handling personal information

The Privacy Act seeks to achieve an openness or “transparency” between the agency collecting or holding personal information and the individual concerned. It does this by generally requiring that the information is collected directly from that individual and requiring that, at the time of that collection, the individual is made aware of the agency’s intentions as to how it will deal with that information. There will often be situations in which an agency has also obtained personal information from some source other than the individual, but it still needs to be aware of its purposes in holding the information. Once the information is held, it may be used and even disclosed by the agency where that use or that disclosure is one of the purposes for which the information was obtained, all without the need to seek specific authorisation from the individual for that use or disclosure.

In order to know that a possible use or disclosure is indeed one of the purposes for which certain personal information was obtained, an organisation ought to have an established policy or procedure covering these matters. This will also be important for ensuring that the individual is given a sufficient account of the purposes for collecting the information, and may well be used to compile a leaflet or similar information which can be given routinely to the individuals concerned.

Authorisation

In many cases it may be appropriate to seek the authorisation of the individual concerned before collecting personal information about them from some other source, or before disclosing to some other organisation personal information about them which you hold. The Privacy Act does not require that such an authorisation be given in writing, although of course that would be useful in case there is later some dispute as to what was actually authorised. The essential feature of an authorisation, and one which may be different to the sort of “consent” encountered in other situations, is that the individual has turned their mind to the actual collection or use or disclosure in question and intends to approve of the action, so an authorisation should always be sought in quite precise terms. It should cover the scope of the information in question as well as the intended source of collection or destination of disclosure.

Resistance from clients

An agency may feel that it needs to collect some personal information about a client from another source. Usually, the most appropriate way of doing this will involve asking the individual for authorisation to do that. Sometimes, that request for authorisation will be refused. That need not be the end of the matter, as the agency can then ask itself whether any of the other exceptions to Information Privacy Principle 2 would properly apply. It may be, for instance, that it is not reasonably practicable in the circumstances of the case to obtain that particular information from the individual concerned. If the organisation does have a genuine need to collect the information and it is only practicable to collect it from an indirect source (such as where the information needed is some other organisation’s impressions or assessment about a case) then the lack of authorisation from the individual is not a bar to seeking it from that other source.

Where an agency wants to make a disclosure of personal information and the disclosure is not one of the purposes for which the information was obtained, again it is often most appropriate to ask the individual concerned for their authorisation to make that disclosure. If the individual refuses to authorise it, the organisation can still go on to look at the exceptions to Principle 11 (or Rule 11 if the agency is one covered by the Health Information Privacy Code) which might allow the disclosure without authorisation.

The Privacy Act does not insist that an agency must seek authorisation from the individual, where the action that the agency wants to take would apparently be allowed by one of the exceptions to the applicable Information Privacy Principle or, where the Health Information Privacy Code applies, the applicable Rule of that Code. However, the agency's own wish to maintain an open relationship with its clients will often dictate that it will seek the authorisation first even where that step may not be necessary in law.

When a client refuses to provide an authorisation, where one is necessary, you need to consider whether their reluctance may be a factor in assessing risk for the child or young person. If it is, then one of the exceptions to Principle 11 of the Privacy Act may apply or your concern may be such that you make a notification to Child, Youth and Family

information sharing in practice

All agencies should develop policies, practices and procedures for safekeeping of personal information about children, young persons, adults and families, and to guide information sharing as permitted by law.

These should include detail on:

- clarifying the purpose of gathering information;
- why and how the information is being retained;
- obtaining authorisation; and
- record keeping of all instances where an organisation is asked for and discloses information.

All agencies should:

- observe high levels of client confidentiality when sharing information;
- ensure information is accurate;
- only request or disclosed information that is relevant to the purpose for which it is sought;
- share the minimum amount of personal information necessary to satisfy a request and ensure the care and protection of children and young people;
- only share information for legitimate purposes and not for gossip nor simply to enhance interagency relationships;
- request and supply information in a timely manner;
- be aware that delays in sharing information could leave a child or young person at risk of harm and should be minimised;
- verify the identity of the person/organisation asking for personal information should be before providing it; and
- immediately follow any refusal to disclose information by a clear explanation as to the reasons for this decision.

Key questions to inform information sharing

This section provides a guide to help organisations determine whether or not they should give (or receive) personal information to (or from) another organisation in practice. The following questions should be considered both by the organisation requesting information and the organisation receiving the request.

What is the purpose of requesting the information?

The purpose of requesting the information should be clearly related to the care and protection of children and young people. It is advisable to clearly establish why information is being sought before requesting it, both to increase the probability of successfully receiving information as well as receiving the kind of information that will be most useful. If the purpose of collecting information is clearly documented as helping to ensure that a child or young person is protected from abuse or neglect, this provides a legal basis for sharing it with other organisations with the same purpose (under the exceptions in Principle 11 of the Privacy Act).

The organisation that receives the request for information needs to establish the reason for the request in order to know how to respond to it. The answer to this question will substantially influence the answer to the next question.

What specific information is it necessary to collect?

This question is designed both to focus the request for information and to increase the likelihood of receiving information that is useful. It also seeks to safeguard privacy by ensuring that information that is not relevant to the care and protection of children and young people is not shared.

Does the request require that personal information be shared?

The laws around information sharing are primarily focused on personal information – i.e. information about an identifiable individual. Generally speaking information that does not concern identifiable individuals can be shared. Information that does require the identification of an individual to be useful is much more likely to require using one of the exceptions to the Privacy Act or the Official Information Act before it can be legally shared.

What law applies to the situation?

As illustrated in the table above, the answer to this question will vary according to what kind of organisation is requesting the information. Generally the law will permit information sharing if it is to stop suspected child abuse or neglect, so even if it is unclear in a given situation, it is worth seeking legal advice or calling someone such as the Child, Youth and Family Call Centre to clarify which laws apply.

Does the applicable law permit the information to be shared?

The onus to establish whether the law permits information sharing is on the organisation being asked for information. It is important to keep in mind that the Privacy Act is not intended to unduly inhibit the activities of State and NGO organisations that have a legitimate interest in protecting children and young people .

Could the information be collected from the person it is about?

The theory underpinning most of the legislation is that it is generally best to collect information directly from the person it is about whenever possible. This provides a safeguard for personal privacy but is not always practical in cases of suspected or known child abuse.

Do I have the person's written consent to ask for the information?

The law on information sharing is designed to encourage organisations to seek peoples' consent to ask for information about them whenever possible.¹ This is another safeguard to protect personal information. The requester of information needs to establish whether release of information was authorised during the intake process, or whether it is practical to ask for written authorisation in light of considerations such as whether it might affect child safety or the ability of Child, Youth and Family to intervene in a timely manner if necessary. Appendix 3 provides a template to obtain authorisation to release personal information.

What if an organisation has custody and/or guardianship of a child or young person?

Where an agency has custody and/or guardianship of a child or young person they are able to share information to enhance the welfare and interests of the child. This applies to the ongoing care as well as any investigations into abuse or neglect.

¹ Whoever has guardianship of the child or young person can give consent for information sharing on their behalf, but if the child or young person is of the maturity and understanding to give consent themselves, they should be given the opportunity to do so.

links to other resources

The care and protection community is characterised by a vast array of information sharing protocols, memoranda of understanding and interagency agreements. For example, child abuse reporting protocols have been agreed between Child, Youth and Family and the following organisations at a national level:

Child, Youth and Family protocols with government organisations

- Police;
- Ministry of Health;
- Ministry of Education, Early Childhood Education Services;
- Ministry of Education, NZ School Trustees Association;
- Department of Corrections;
- Family Court;
- New Zealand Fire Service.

Child, Youth and Family protocols with non-government organisations

- Barnardos;
- Children's Health Camps;
- Doctors for Sexual Abuse Care (DSAC);
- IHC;
- National Collective of Independent Women's Refuges;
- National Network of Stopping Violence Services;
- New Zealand Association Citizens Advice Bureaux;
- New Zealand Association of Counsellors;
- New Zealand Association of Social Workers;
- New Zealand Council of Victim Support Groups;
- Open Home Foundation;
- Royal College of General Practitioners;
- Royal New Zealand Plunket Society.

Child, Youth and Family protocols under development

- ACC;
- Counsel for Child;
- Healthline;
- Ministry of Social Development (Work and Income);
- New Zealand Schools with Enrolled International Students.

If you are not sure whether there is a protocol in effect between your organisation and Child, Youth and Family, you can either contact your local Child, Youth and Family office or look on the Child, Youth and Family website:

http://www.cyf.govt.nz/UploadLib/images/BTC_interagencyprotocols.pdf

Child, Youth and Family Standards for Approval

In addition, Child, Youth and Family's Standards for Approval for all organisations it approves to provide services under sections 396 and 403 state that:

- The organisation collects, records, stores and uses client information in keeping with the Privacy Act 1993.
- The organisation provides written information to its clients on who will have access to personal information or documentation that the organisation holds about them. (Programme Quality Standard 7).

legislation relating to information sharing

Children, Young Persons, and Their Families Act 1989

Section 6 – Welfare and interests of child or young person paramount

In all matters relating to the administration or application of this Act (other than Parts 4 and 5 and sections 351 to 360), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act.

Section 15 – Reporting of ill-treatment or neglect of child or young person

Any person who believes that any child or young person has been, or is likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived may report the matter to a social worker or a member of the Police.

Section 16 – Protection of person reporting ill-treatment or neglect of child or young person

No civil, criminal, or disciplinary proceedings shall lie against any person in respect of the disclosure or supply, or the manner of the disclosure or supply, by that person pursuant to section 15 of this Act of information concerning a child or young person (whether or not that information also concerns any other person), unless the information was disclosed or supplied in bad faith.

Section 17 – Investigation of report of ill-treatment or neglect of child or young person

- (1) Where any social worker or member of the Police receives a report pursuant to section 15 of this Act relating to a child or young person, that social worker or member of the Police shall, as soon as practicable after receiving the report, undertake or arrange for the undertaking of such investigation as may be necessary or desirable into the matters contained in the report and shall, as soon as practicable after the investigation has commenced, consult with a Care and Protection Resource Panel in relation to the investigation.
- (2) Where, after an investigation under subsection (1) of this section into the matters contained in a report under section 15 of this Act, the social worker or member of the Police to whom the report was made reasonably believes that the child or young person to whom the report relates is in need of care or protection, that social worker or member of the Police shall, as soon as practicable, notify a care and protection coordinator of those matters in accordance with section 18 of this Act.

(3) Where any person receives a report pursuant to section 15 of this Act relating to a child or young person, that person shall, as soon as practicable after—

(a) That report is investigated under subsection (1) of this section; or

(b) A decision is made not to investigate the report,—

unless it is impracticable or undesirable to do so, inform the person who made the report whether or not the report has been investigated and, if so, whether any further action has been taken with respect to it.

Section 59 – Application for production of documents relevant to investigation of whether child or young person in need of care or protection

(1) Subject to subsection (4) of this section, where—

(a) Any Social Worker or member of the Police believes, on reasonable grounds, that any person has in that person's possession, custody, or power any document that contains, or that the Social Worker or member of the Police considers is likely to contain, information necessary or relevant for the purpose of determining whether any child or young person is in need of care or protection (other than on the ground specified in section 14(1)(e) of this Act); and

(b) That person has refused to allow that document to be inspected by that Social Worker or member of the Police,—

that Social Worker or member of the Police may apply to the Court for an order requiring that person to produce that document for inspection by that Social Worker or member of the Police.

(2) Subject to section 60 of this Act, notice of an application under subsection (1) of this section for an order for the production of a document shall be given by the applicant to the person in respect of whom the order is sought and to such other person or persons as the Court directs.

(3) The applicant and every person to whom notice of an application under subsection (1) of this section is given shall be entitled to appear and be heard on the hearing of the application.

(4) Nothing in subsection (1) of this section applies in respect of any document the production of which would breach legal professional privilege.

Section 66 – Government Departments may be required to supply information

(1) Every Government Department, agent, or instrument of the Crown and every statutory body shall, when required, supply to every care and protection coordinator, social worker, or member of the Police such information as it has in its possession relating to any child or young person where that information is required—

(a) For the purposes of determining whether that child or young person is in need of care or protection (other than on the ground specified in section 14(1)(e) of this Act); or

- (b) For the purposes of any proceedings under this Part of this Act.
- (2) No information obtained pursuant to subsection (1) of this section—
 - (a) Shall be used for the purposes of investigating any offence:
 - (b) Shall be admissible as evidence in any proceedings other than proceedings under this Part of this Act.
- (3) Nothing in subsection (1) of this section limits or affects the Official Information Act 1982.

Privacy Act 1993

Principle 1 – Purpose of collection of personal information

Personal information shall not be collected by any agency unless—

- (a) The information is collected for a lawful purpose connected with a function or activity of the agency; and
- (b) The collection of the information is necessary for that purpose.

Principle 2 – Source of personal information

- (1) Where an agency collects personal information, the agency shall collect the information directly from the individual concerned.
- (2) It is not necessary for an agency to comply with subclause (1) of this principle if the agency believes, on reasonable grounds,—
 - (a) That the information is publicly available information; or
 - (b) That the individual concerned authorises collection of the information from someone else; or
 - (c) That non-compliance would not prejudice the interests of the individual concerned; or
 - (d) That non-compliance is necessary—
 - (i) To avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) For the enforcement of a law imposing a pecuniary penalty; or
 - (iii) For the protection of the public revenue; or
 - (iv) For the conduct of proceedings before any court or [tribunal] (being proceedings that have been commenced or are reasonably in contemplation); or

- (e) That compliance would prejudice the purposes of the collection; or
- (f) That compliance is not reasonably practicable in the circumstances of the particular case; or
- (g) That the information—
 - (i) Will not be used in a form in which the individual concerned is identified; or
 - (ii) Will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (h) That the collection of the information is in accordance with an authority granted under section 54 of this Act.

Principle 3 – Collection of information from subject

- (1) Where an agency collects personal information directly from the individual concerned, the agency shall take such steps (if any) as are, in the circumstances, reasonable to ensure that the individual concerned is aware of—
 - (a) The fact that the information is being collected; and
 - (b) The purpose for which the information is being collected; and
 - (c) The intended recipients of the information; and
 - (d) The name and address of—
 - (i) The agency that is collecting the information; and
 - (ii) The agency that will hold the information; and
 - (e) If the collection of the information is authorised or required by or under law,—
 - (i) The particular law by or under which the collection of the information is so authorised or required; and
 - (ii) Whether or not the supply of the information by that individual is voluntary or mandatory; and
 - (f) The consequences (if any) for that individual if all or any part of the requested information is not provided; and
 - (g) The rights of access to, and correction of, personal information provided by these principles.
- (2) The steps referred to in subclause (1) of this principle shall be taken before the information is collected or, if that is not practicable, as soon as practicable after the information is collected.

- (3) An agency is not required to take the steps referred to in subclause (1) of this principle in relation to the collection of information from an individual if that agency has taken those steps in relation to the collection, from that individual, of the same information or information of the same kind, on a recent previous occasion.
- (4) It is not necessary for an agency to comply with subclause (1) of this principle if the agency believes, on reasonable grounds,—
 - (a) That non-compliance is authorised by the individual concerned; or
 - (b) That non-compliance would not prejudice the interests of the individual concerned; or
 - (c) That non-compliance is necessary—
 - (i) To avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) For the enforcement of a law imposing a pecuniary penalty; or
 - (iii) For the protection of the public revenue; or
 - (iv) For the conduct of proceedings before any court or [tribunal] (being proceedings that have been commenced or are reasonably in contemplation); or
 - (d) That compliance would prejudice the purposes of the collection; or
 - (e) That compliance is not reasonably practicable in the circumstances of the particular case; or
 - (f) That the information—
 - (i) Will not be used in a form in which the individual concerned is identified; or
 - (ii) Will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.

Principle 4 – Manner of collection of personal information

Personal information shall not be collected by an agency—

- (a) By unlawful means; or
- (b) By means that, in the circumstances of the case,—
 - (i) Are unfair; or
 - (ii) Intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 5 – Storage and security of personal information

An agency that holds personal information shall ensure—

- (a) That the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against—
 - (i) Loss; and
 - (ii) Access, use, modification, or disclosure, except with the authority of the agency that holds the information; and
 - (iii) Other misuse; and
- (b) That if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or unauthorised disclosure of the information.

Principle 6 – Access to personal information

- (1) Where an agency holds personal information in such a way that it can readily be retrieved, the individual concerned shall be entitled—
 - (a) To obtain from the agency confirmation of whether or not the agency holds such personal information; and
 - (b) To have access to that information.
- (2) Where, in accordance with subclause (1)(b) of this principle, an individual is given access to personal information, the individual shall be advised that, under principle 7, the individual may request the correction of that information.
- (3) The application of this principle is subject to the provisions of Parts 4 and 5 of this Act.

Principle 7 – Correction of personal information

- (1) Where an agency holds personal information, the individual concerned shall be entitled—
 - (a) To request correction of the information; and
 - (b) To request that there be attached to the information a statement of the correction sought but not made.
- (2) An agency that holds personal information shall, if so requested by the individual concerned or on its own initiative, take such steps (if any) to correct that information as are, in the circumstances, reasonable to ensure that, having regard to the purposes for which the information may lawfully be used, the information is accurate, up to date, complete, and not misleading.

- (3) Where an agency that holds personal information is not willing to correct that information in accordance with a request by the individual concerned, the agency shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the information, in such a manner that it will always be read with the information, any statement provided by that individual of the correction sought.
- (4) Where the agency has taken steps under subclause (2) or subclause (3) of this principle, the agency shall, if reasonably practicable, inform each person or body or agency to whom the personal information has been disclosed of those steps.
- (5) Where an agency receives a request made pursuant to subclause (1) of this principle, the agency shall inform the individual concerned of the action taken as a result of the request.

Principle 8 – Accuracy, etc, of personal information to be checked before use

An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.

Principle 9 – Agency not to keep personal information for longer than necessary

An agency that holds personal information shall not keep that information for longer than is required for the purposes for which the information may lawfully be used.

Principle 10 – Limits on use of personal information

An agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose unless the agency believes, on reasonable grounds,—

- (a) That the source of the information is a publicly available publication; or
- (b) That the use of the information for that other purpose is authorised by the individual concerned; or
- (c) That non-compliance is necessary—
 - (i) To avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) For the enforcement of a law imposing a pecuniary penalty; or
 - (iii) For the protection of the public revenue; or
 - (iv) For the conduct of proceedings before any court or [tribunal] (being proceedings that have been commenced or are reasonably in contemplation); or

- (d) That the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to—
 - (i) Public health or public safety; or
 - (ii) The life or health of the individual concerned or another individual; or
- (e) That the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained; or
- (f) That the information—
 - (i) Is used in a form in which the individual concerned is not identified; or
 - (ii) Is used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (g) That the use of the information is in accordance with an authority granted under section 54 of this Act.

Principle 11 – Limits on disclosure of personal information

An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds,—

- (a) That the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or
- (b) That the source of the information is a publicly available publication; or
- (c) That the disclosure is to the individual concerned; or
- (d) That the disclosure is authorised by the individual concerned; or
- (e) That non-compliance is necessary—
 - (i) To avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) For the enforcement of a law imposing a pecuniary penalty; or
 - (iii) For the protection of the public revenue; or
 - (iv) For the conduct of proceedings before any court or [tribunal] (being proceedings that have been commenced or are reasonably in contemplation); or
- (f) That the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to—
 - (i) Public health or public safety; or

- (ii) The life or health of the individual concerned or another individual; or
- (g) That the disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern; or
- (h) That the information—
 - (i) Is to be used in a form in which the individual concerned is not identified; or
 - (ii) Is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (i) That the disclosure of the information is in accordance with an authority granted under section 54 of this Act.

Principle 12 – Unique identifiers

- (1) An agency shall not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the agency to carry out any one or more of its functions efficiently.
- (2) An agency shall not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another agency, unless those 2 agencies are associated persons within the meaning of section OD 7 of the Income Tax Act 1994.
- (3) An agency that assigns unique identifiers to individuals shall take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.
- (4) An agency shall not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.

Official Information Act 1982

Section 6 – Conclusive reasons for withholding official information

Good reason for withholding official information exists, for the purpose of section 5 of this Act, if the making available of that information would be likely—

- (a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
 - (i) The government of any other country or any agency of such a government; or
 - (ii) Any international organisation; or

- (c) To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) To endanger the safety of any person; or
- (e) To damage seriously the economy of New Zealand by disclosing prematurely decisions to change or continue Government economic or financial policies relating to—
 - (i) Exchange rates or the control of overseas exchange transactions:
 - (ii) The regulation of banking or credit:
 - (iii) Taxation:
 - (iv) The stability, control, and adjustment of prices of goods and services, rents, and other costs, and rates of wages, salaries, and other incomes:
 - (v) The borrowing of money by the Government of New Zealand:
 - (vi) The entering into of overseas trade agreements.

Section 7 – Special reasons for withholding official information related to the Cook Islands, Tokelau, or Niue, or the Ross Dependency

Good reason for withholding information exists, for the purpose of section 5 of this Act, if the making available of the information would be likely—

- (a) To prejudice the security or defence of—
 - (i) The self-governing state of the Cook Islands; or
 - (ii) The self-governing state of Niue; or
 - (iii) Tokelau; or
 - (iv) The Ross Dependency; or
- (b) To prejudice relations between any of the Governments of—
 - (i) New Zealand;
 - (ii) The self-governing state of the Cook Islands;
 - (iii) The self-governing state of Niue; or
- (c) To prejudice the international relations of the Governments of—
 - (i) The self-governing state of the Cook Islands; or
 - (ii) The self-governing state of Niue.

Section 8 – Repealed

Section 9 – Other reasons for withholding official information

- (1) Where this section applies, good reason for withholding official information exists, for the purpose of section 5 of this Act, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.
- (2) Subject to sections 6, 7, . . . 10, and 18 of this Act, this section applies if, and only if, the withholding of the information is necessary to—
 - (a) Protect the privacy of natural persons, including that of deceased natural persons; or
 - (b) Protect information where the making available of the information—
 - (i) Would disclose a trade secret; or
 - (ii) Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or]
 - (ba) Protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—
 - (i) Would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
 - (ii) Would be likely otherwise to damage the public interest; or
 - (c) Avoid prejudice to measures protecting the health or safety of members of the public; or
 - (d) Avoid prejudice to the substantial economic interests of New Zealand; or
 - (e) Avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
 - (f) Maintain the constitutional conventions for the time being which protect—
 - (i) The confidentiality of communications by or with the Sovereign or her representative;
 - (ii) Collective and individual ministerial responsibility;
 - (iii) The political neutrality of officials;
 - (iv) The confidentiality of advice tendered by Ministers of the Crown and officials; or

- (g) Maintain the effective conduct of public affairs through—
 - (i) The free and frank expression of opinions by or between or to Ministers of the Crown [or members of an organisation] or officers and employees of any Department or organisation in the course of their duty; or
 - (ii) The protection of such Ministers[, members of organisations], officers, and employees from improper pressure or harassment; or
- (h) Maintain legal professional privilege; or
- (i) Enable a Minister of the Crown or any Department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities; or]
- (j) Enable a Minister of the Crown or any Department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- (k) Prevent the disclosure or use of official information for improper gain or improper advantage.

Section 10 – Information concerning existence of certain information

Where a request under this Act relates to information to which section 6 or section 7 or section 9(2)(b) of this Act applies, or would, if it existed, apply, the Department or Minister of the Crown or organisation dealing with the request may, if it or he is satisfied that the interest protected by section 6 or section 7 or section 9(2)(b) of this Act would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, give notice in writing to the applicant that it or he neither confirms nor denies the existence or non-existence of that information.

Section 11 – Exclusion of public interest immunity

- (1) Subject to subsection (2) of this section, the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of—
 - (a) Any investigation by or proceedings before an Ombudsman . . . ; or
 - (b) Any application under section 4(1) of the Judicature Amendment Act 1972 for the review of any decision under this Act; but not so as to give any party any information that he would not, apart from this section, be entitled to.
- (2) Nothing in subsection (1) of this section affects—
 - (a) Section 31 of this Act; or
 - (b) Clause 8 of Schedule 2 to this Act; or
 - (c) Section 20(1) of the Ombudsmen Act 1975

Section 48 – Protection against certain actions

- (1) Where any official information is made available in good faith pursuant to this Act,—
 - (a) No proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow from the making available of that information; and
 - (b) No proceedings, civil or criminal, in respect of any publication involved in, or resulting from, the making available of that information shall lie against the author of the information or any other person by reason of that author or other person having supplied the information to a Department or Minister of the Crown or organisation.
- (2) The making available of, or the giving of access to, any official information in consequence of a request made under this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the information is made available or the access is given.

Health Act 1956

Section 22C – Disclosure of health information

- (1) Any person (being an agency that provides services or arranges the provision of services) may disclose health information—
 - (a) If that information—
 - (i) Is required by any person specified in subsection (2) of this section; and
 - (ii) Is required (or, in the case of the purpose set out in paragraph (j) of that subsection, is essential) for the purpose set out in that subsection in relation to the person so specified; or
 - (b) If that disclosure is permitted—
 - (i) By or under a code of practice issued under section 46 of the Privacy Act 1993; or
 - (ii) If no such code of practice applies in relation to the information, by any of the information privacy principles set out in section 6 of that Act.
- (2) The persons and purposes referred to in subsection (1)(a) of this section are as follows:
 - (a) Any medical officer of a penal institution within the meaning of the Penal Institutions Act 1954, for the purposes of exercising or performing any of that person's powers, duties, or functions under that Act:
 - (b) Any probation officer within the meaning of the Criminal Justice Act 1985, for the purposes of exercising or performing any of that person's powers, duties, or functions under any enactment:

- (c) A social worker or a care and protection coordinator within the meaning of the Children, Young Persons, and Their Families Act 1989, for the purposes of exercising or performing any of that person's powers, duties, or functions under that Act:
- (d) Any employee of the department for the time being responsible for the administration of the Social Security Act 1964, for the purposes of administering section 75 of the Social Security Act 1964:
- (e) Any member of the New Zealand Defence Force, for the purposes of administering the Armed Forces Discipline Act 1971 or the Defence Act 1990:
- (f) Any member of the Police, for the purposes of exercising or performing any of that person's powers, duties, or functions:
- (g) Any employee of the Ministry of Health, for the purposes of—
 - (i) Administering this Act or the Hospitals Act 1957; or
 - (ii) Compiling statistics for health purposes:
- (h) Any employee of the Ministry of Agriculture and Forestry authorised by the chief executive of that Ministry to receive the information, for the purposes of administering the Meat Act 1981 or the Animal Products Act 1999:
 - (i) Any employee of the Land Transport Safety Authority of New Zealand, for statistical or research purposes in relation to road safety or the environment:
 - (j) Any employee of a district health board, for the purposes of exercising or performing any of that board's powers, duties, or functions under the New Zealand Public Health and Disability Act 2000.
- (3) For the purposes of principle 11(d) of the Privacy Act 1993, the disclosure of health information about an individual may be authorised—
 - (a) By that individual personally, if he or she has attained the age of 16 years; or
 - (b) By a representative of that individual.]

Section 22F – Communication of information for diagnostic and other purposes

- (1) Every person who holds health information of any kind shall, at the request of the individual about whom the information is held, or a representative of that individual, or any other person that is providing, or is to provide, services to that individual, disclose that information to that individual or, as the case requires, to that representative or to that other person.

- (2) A person that holds health information may refuse to disclose that information under this section if—
- (a) That person has a lawful excuse for not disclosing that information; or
 - (b) Where the information is requested by someone other than the individual about whom it is held (not being a representative of that individual), the holder of the information has reasonable grounds for believing that that individual does not wish the information to be disclosed; or
 - (c) Refusal is authorised by a code of practice issued under section 46 of the Privacy Act 1993.
- (3) For the purposes of subsection (2)(a) of this section, neither—
- (a) The fact that any payment due to the holder of any information or to any other person has not been made; nor
 - (b) The need to avoid prejudice to the commercial position of the holder of any information or of any other person; nor
 - (c) The fact that disclosure is not permitted under any of the information privacy principles set out in section 6 of the Privacy Act 1993— shall constitute a lawful excuse for not disclosing information under this section.
- (4) Where any person refuses to disclose health information in response to a request made under this section, the person whose request is refused may make a complaint to the Privacy Commissioner under Part 8 of the Privacy Act 1993, and that Part of that Act, so far as applicable and with all necessary modifications, shall apply in relation to that complaint as if the refusal to which the complaint relates were a refusal to make information available in response to an information privacy request within the meaning of that Act.
- (5) Nothing in subsection (4) of this section limits any other remedy that is available to any person who is aggrieved by any refusal to disclose information under this section.

Health Information Privacy Code 1994

Part 1 – Preliminary

1. Title
2. Commencement
3. Interpretation
4. Application of code

Part 2 – Health Information Privacy Rules

5. Health Information Privacy Rules
 - Rule 1: Purpose of collection of health information
 - Rule 2: Source of health information
 - Rule 3: Collection of health information from individual
 - Rule 4: Manner of collection of health information
 - Rule 5: Storage and security of health information
 - Rule 6: Access to personal health information
 - Rule 7: Correction of health information
 - Rule 8: Accuracy etc of health information to be checked before use
 - Rule 9: Retention of health information
 - Rule 10: Limits on use of health information
 - Rule 11: Limits on disclosure of health information
 - Rule 12: Unique identifiers

Part 3 – Miscellaneous

6. Charges
 7. Complaints of breach of code
- Schedule 1: Specified health agencies
- Schedule 2: Agencies approved to assign NHI number

Part 1 – Preliminary

1. **Title**

This code of practice may be referred to as the Health Information Privacy Code 1994.
2. **Commencement**

This code is to come into force on 30 July 1994.

Note: Clause 2(2) was revoked, and clause 2(1) accordingly renumbered as clause 2, by Amendment No. 5.

3. Interpretation

In this code:

Commencement, in relation to this code, means the coming into force of the code;

Disability services includes goods, services, and facilities:

- (a) provided to people with disabilities for their care or support or to promote their independence; or
- (b) provided for purposes related or incidental to the care or support of people with disabilities or to the promotion of the independence of such people;

Ethics committee means:

- (a) the Ethics Committee of the Health Research Council of New Zealand;
- (b) the National Advisory Committee on Health and Disability Services Ethics; or
- (c) an ethics committee constituted in accordance with the currently applicable Standard for Ethics Committees promulgated by the Ministry of Health;

Health agency means an agency referred to in subclause 4(2) and, for the purposes of rules 5 to 11, is to be taken to include :

- (a) where an agency holds health information obtained in the course of providing health or disability services but no longer provides such services – that agency; and
- (b) with respect to any health information held by a health agency (being a natural person) at the time of the person’s death – his or her personal representative;

Health information means information to which this code applies under subclause 4(1);

[**Health professional body** means any authority or body that is empowered, under or by the virtue of any enactment or law, or the rules of any body or association, to exercise disciplinary powers in respect of any registered health professional;]

[**Health registration enactment** means any of the enactments specified in the First Schedule to the Health and Disability Commissioner Act 1994;]

Health services includes goods, services, and facilities provided to people for health purposes or provided for related or incidental purposes;

Health training institution means a school, faculty or department referred to in paragraph 4(2)(h);

[**Hospital** has the meaning given to it in the Medical Practitioners Act 1995;]

Principal caregiver, in relation to any individual, means the friend of the individual or the member of the individual's family group or whanau who is most evidently and directly concerned with the oversight of the individual's care and welfare;

[**Registered health professional** has the meaning given to it by section 4 of the Health and Disability Commissioner Act 1994;]

Representative, in relation to an individual, means:

- (a) where that individual is dead – that individual's personal representative;
- (b) where the individual is under the age of 16 years – that individual's parent or guardian; or
- (c) where the individual, not being an individual referred to in paragraphs (a) or (b) is unable to give his or her consent or authority, or exercise his or her rights – a person appearing to be lawfully acting on the individual's behalf or in his or her interests;

Rule means a rule set out in clause 5;

The Act means the Privacy Act 1993.

Note: Clause 3 was amended by Amendment No. 2 (affecting definitions of health professional body, health registration enactment and registered health professional) and Amendment No. 4 (affecting the definition of hospital). Amendment No. 5 revoked clause 3(2) and accordingly renumbered clause 3(1) as clause 3.

4. **Application of code**

- (1) This code applies to the following information or classes of information about an identifiable individual:
 - (a) information about the health of that individual, including his or her medical history;
 - (b) information about any disabilities that individual has, or has had;
 - (c) information about any health services or disability services that are being provided, or have been provided, to that individual;
 - (d) information provided by that individual in connection with the donation, by that individual, of any body part or any bodily substance of that individual or derived from the testing or examination of any body part, or any bodily substance of that individual; or
 - (e) information about that individual which is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual.

- (2) [This code applies in relation to the following agencies or classes of agency:
- (a) an agency which provides health or disability services;
 - (b) within a larger agency, a division or administrative unit (including an individual) which provides health or disability services to employees of the agency or some other limited class of persons;
 - (c) a person who is approved as a counsellor for the purposes of the Accident Insurance Act 1998;
 - (d) a school, faculty or department of a tertiary educational institution which provides the training or a component of the training necessary for the registration of a health professional;
 - (e) an agency having statutory responsibility for the registration of any registered health professionals;
 - (f) a health professional body;
 - (g) persons appointed or designated under the Health and Disability Commissioner Act 1994;
 - (h) the Health Funding Authority or an agency that has been declared by the Minister of Health by notice in the Gazette to be a funder for the purposes of the Health and Disability Services Act 1993;
 - (i) an agency which provides health, disability, accident or medical insurance, or which provides claims management services in relation to such insurance, but only in respect of providing that insurance or those services;
 - (j) an accredited employer under the Accident Insurance Act 1998;
 - (k) an agency which provides services in respect of health information, including an agency which provides those services under an agreement with another agency;
 - (l) a district inspector, deputy district inspector or official visitor appointed pursuant to section 94 of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
 - (m) an agency which manufactures, sells or supplies medicines, medical devices or related products;
 - (n) an agency which provides health and disability services consumer advocacy services;
 - (o) the Department for Courts but only in respect of information contained in documents referred to in section 44(2) of the Coroners Act 1988;

- (p) the agencies specified in Schedule 1.

Note: Clause 4(2) was substituted by Amendment No. 5.

Part 2 – Health Information Privacy Rules

5. Health information privacy rules

The information privacy principles are modified in accordance with the Act by the following rules which apply to health information and health agencies:

Rule 1: Purpose of Collection of Health Information

Health information must not be collected by any health agency unless:

- (a) the information is collected for a lawful purpose connected with a function or activity of the health agency; and
- (b) the collection of the information is necessary for that purpose.

Note: An action is not in breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4). Furthermore, this rule and rules 2–4 apply only to the collection of information on or after the commencement of this code.

Rule 2: Source of Health Information

- (1) Where a health agency collects health information, the health agency must collect the information directly from the individual concerned.
- (2) It is not necessary for a health agency to comply with subrule (1) if the agency believes on reasonable grounds:
 - (a) that the individual concerned authorises collection of the information from someone else having been made aware of the matters set out in subrule 3(1);
 - (b) that the individual is unable to give his or her authority and the health agency having made the individual's representative aware of the matters set out in subrule 3(1) collects the information from the representative or the representative authorises collection from someone else;
 - (c) that compliance would:
 - (i) prejudice the interests of the individual concerned;
 - (ii) prejudice the purposes of collection; or
 - (iii) prejudice the safety of any individual;
 - (d) that compliance is not reasonably practicable in the circumstances of the particular case;

- (e) that the collection is for the purpose of assembling a family or genetic history of an individual and is collected directly from that individual;
- (f) that the information is publicly available information;
- (g) that the information:
 - (i) will not be used in a form in which the individual concerned is identified;
 - (ii) will be used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (iii) will be used for research purposes (for which approval by an ethics committee, if required, has been given) and will not be published in a form that could reasonably be expected to identify the individual concerned;
- (h) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences;
 - (ii) for the protection of the public revenue; or
 - (iii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
- (i) that the collection is in accordance with an authority granted under section 54 of the Act.

Note: An action is not in breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4).

Rule 3: Collection of Health Information from Individual

- (1) Where a health agency collects health information directly from the individual concerned, or from the individual's representative, the health agency must take such steps as are, in the circumstances, reasonable to ensure that the individual concerned (and the representative if collection is from the representative) is aware of:
 - (a) the fact that the information is being collected;
 - (b) the purpose for which the information is being collected;
 - (c) the intended recipients of the information;
 - (d) the name and address of:

- (i) the health agency that is collecting the information; and
 - (ii) the agency that will hold the information;
 - (e) whether or not the supply of the information is voluntary or mandatory and if mandatory the particular law under which it is required;
 - (f) the consequences (if any) for that individual if all or any part of the requested information is not provided; and
 - (g) the rights of access to, and correction of, health information provided by rules 6 and 7.
- (2) The steps referred to in subrule (1) must be taken before the information is collected or, if that is not practicable, as soon as practicable after it is collected.
- (3) A health agency is not required to take the steps referred to in subrule (1) in relation to the collection of information from an individual, or the individual's representative, if that agency has taken those steps in relation to the collection, from that individual or that representative, of the same information or information of the same kind for the same or a related purpose, on a recent previous occasion.
- (4) It is not necessary for a health agency to comply with subrule (1) if the agency believes on reasonable grounds:
- (a) [revoked]
 - (b) that compliance would:
 - (i) prejudice the interests of the individual concerned; or
 - (ii) prejudice the purposes of collection;
 - (c) that compliance is not reasonably practicable in the circumstances of the particular case; or
 - (d) that non-compliance is necessary to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences.

Note: An action is not a breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4). Rule 3(4)(a) was revoked by Amendment No. 4.

Rule 4: Manner of Collection of Health Information

Health information must not be collected by a health agency:

- (a) by unlawful means; or
- (b) by means that, in the circumstances of the case:

- (i) are unfair; or
- (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Note: An action is not a breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4).

Rule 5: Storage and Security of Health Information

- (1) A health agency that holds health information must ensure:
 - (a) that the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against:
 - (i) loss;
 - (ii) access, use, modification, or disclosure, except with the authority of the agency; and
 - (iii) other misuse;
 - (b) that if it is necessary for the information to be given to a person in connection with the provision of a service to the health agency, including any storing, processing, or destruction of the information, everything reasonably within the power of the health agency is done to prevent unauthorised use or unauthorised disclosure of the information; and
 - (c) that, where a document containing health information is not to be kept, the document is disposed of in a manner that preserves the privacy of the individual.
- (2) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not a breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4).

Rule 6: Access to Personal Health Information

- (1) Where a health agency holds health information in such a way that it can readily be retrieved, the individual concerned is entitled:
 - (a) to obtain from the agency confirmation of whether or not the agency holds such health information; and
 - (b) to have access to that health information.
- (2) Where, in accordance with paragraph (1)(b), an individual is given access to health information, the individual must be advised that, under rule 7, the individual may request the correction of that information.

- (3) The application of this rule is subject to:
 - (a) Part IV of the Act (which sets out reasons for withholding information);
 - (b) Part V of the Act (which sets out procedural provisions relating to access to information); and
 - (c) clause 6 (which concerns charges).
- (4) This rule applies to health information obtained before or after the commencement of this code.

Note: This rule is subject to provisions in enactments which authorise or require personal information to be made available or Acts which prohibit, restrict, or regulate the availability of personal information – Privacy Act, section 7(1) and (2). Under section 7(3) it is also subject to certain regulations which prohibit, restrict or regulate the availability of personal information.

Rule 7: Correction of Health Information

- (1) Where a health agency holds health information, the individual concerned is entitled:
 - (a) to request correction of the information; and
 - (b) to request that there be attached to the information a statement of the correction sought but not made.
- (2) A health agency that holds health information must, if so requested or on its own initiative, take such steps (if any) to correct the information as are, in the circumstances, reasonable to ensure that, having regard to the purposes for which the information may lawfully be used, it is accurate, up to date, complete, and not misleading.
- (3) Where an agency that holds health information is not willing to correct the information in accordance with such a request, the agency must, if so requested, take such steps (if any) as are reasonable to attach to the information, in such a manner that it will always be read with the information, any statement provided by the individual of the correction sought.
- (4) Where the agency has taken steps under subrule (2) or (3), the agency must, if reasonably practicable, inform each person or body or agency to whom the health information has been disclosed of those steps.
- (5) Where an agency receives a request made under subrule (1), the agency must inform the individual concerned of the action taken as a result of the request.
- (6) The application of this rule is subject to the provisions of Part V of the Act (which sets out procedural provisions relating to correction of information).

- (7) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not a breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4).

Rule 8: Accuracy etc of Health Information to be Checked before Use

- (1) A health agency that holds health information must not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.
- (2) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not in breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4).

Rule 9: Retention of Health Information

- (1) A health agency that holds health information must not keep that information for longer than is required for the purposes for which the information may lawfully be used.
- (2) Subrule (1) does not prohibit any agency from keeping any document that contains health information the retention of which is necessary or desirable for the purposes of providing health services or disability services to the individual concerned.
- (3) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not a breach of this rule if it is authorised or required by or under law – Privacy Act section 7(4).

Rule 10: Limits on Use of Health Information

- (1) A health agency that holds health information obtained in connection with one purpose must not use the information for any other purpose unless the health agency believes on reasonable grounds:
 - (a) that the use of the information for that other purpose is authorised by:
 - (i) the individual concerned; or
 - (ii) the individual's representative where the individual is unable to give his or her authority under this rule;
 - (b) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained;

- (c) that the source of the information is a publicly available publication;
- (d) that the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;
- (e) that the information:
 - (i) is used in a form in which the individual concerned is not identified;
 - (ii) is used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (iii) is used for research purposes (for which approval by an ethics committee, if required, has been given) and will not be published in a form that could reasonably be expected to identify the individual concerned;
- (f) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);
- (g) that the use of the information is in accordance with an authority granted under section 54 of the Act.

(2) This rule does not apply to health information obtained before [1 July 1993].

Note: An action is not a breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4). Subrule 10(2) was amended by Amendment No. 1.

Rule 11: Limits on Disclosure of Health Information

- (1) A health agency that holds health information must not disclose the information unless the agency believes, on reasonable grounds:
 - (a) that the disclosure is to:
 - (i) the individual concerned; or
 - (ii) the individual’s representative where the individual is dead or is unable to exercise his or her rights under these rules;

- (b) that the disclosure is authorised by:
 - (i) the individual concerned; or
 - (ii) the individual's representative where the individual is dead or is unable to give his or her authority under this rule;
 - (c) that the disclosure of the information is one of the purposes in connection with which the information was obtained;
 - (d) that the source of the information is a publicly available publication;
 - (e) that the information is information in general terms concerning the presence, location, and condition and progress of the patient in a hospital, on the day on which the information is disclosed, and the disclosure is not contrary to the express request of the individual or his or her representative;
 - (f) that the information to be disclosed concerns only the fact of death and the disclosure is by a registered health professional, or by a person authorized by a health agency, to a person nominated by the individual concerned, or the individual's representative, partner, spouse, principal caregiver, next of kin, whanau, close relative or other person whom it is reasonable in the circumstances to inform[; or]
 - (g) the information to be disclosed concerns only the fact that an individual is to be, or has been, released from compulsory status under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and the disclosure is to the individual's principal caregiver.
- (2) Compliance with paragraph (1)(b) is not necessary if the health agency believes on reasonable grounds that it is either not desirable or not practicable to obtain authorisation from the individual concerned and:
- (a) that the disclosure of the information is directly related to one of the purposes in connection with which the information was obtained;
 - (b) that the information is disclosed by a registered health professional to a person nominated by the individual concerned or to the principal caregiver or a near relative of the individual concerned in accordance with recognised professional practice and the disclosure is not contrary to the express request of the individual or his or her representative;
 - (c) that the information:
 - (i) is to be used in a form in which the individual concerned is not identified;
 - (ii) is to be used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or

- (iii) is to be used for research purposes (for which approval by an ethics committee, if required, has been given) and will not be published in a form which could reasonably be expected to identify the individual concerned;
- (d) that the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;
- (e) that the disclosure of the information is essential to facilitate the sale or other disposition of a business as a going concern;
- (f) that the information to be disclosed briefly describes only the nature of injuries of an individual sustained in an accident and that individual's identity and the disclosure is:
 - (i) by a person authorised by the person in charge of a hospital;
 - (ii) to a person authorised by the person in charge of a news medium; for the purpose of publication or broadcast in connection with the news activities of that news medium and the disclosure is not contrary to the express request of the individual concerned or his or her representative;
- (g) that the disclosure of the information:
 - (i) is required for the purposes of identifying whether an individual is suitable to be involved in health education and so that individuals so identified may be able to be contacted to seek their authority in accordance with paragraph (1)(b); and
 - (ii) is by a person authorised by the health agency to a person authorized by a health training institution;
- (h) that the disclosure of the information:
 - (i) is required for the purpose of a professionally recognised accreditation of a health or disability service;
 - (ii) is required for a professionally recognised external quality assurance programme; or
 - (iii) is required for risk management assessment and the disclosure is solely to a person engaged by the agency for the purpose of assessing the agency's risk; and the information will not be published in a form which could reasonably be expected to identify any individual nor

disclosed by the accreditation or quality assurance or risk management organisation to third parties except as required by law;

- (i) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution and punishment of offences; or
 - (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);
 - (j) that the individual concerned is or is likely to become dependent upon a controlled drug, prescription medicine or restricted medicine and the disclosure is by a registered health professional to a Medical Officer of Health for the purposes of section 20 of the Misuse of Drugs Act 1975 or section 49A of the Medicines Act 1981;
 - (k) that the disclosure of the information is in accordance with an authority granted under section 54 of the Act.
- (3) Disclosure under subrule (2) is permitted only to the extent necessary for the particular purpose.
- (4) Where under section 22F(1) of the Health Act 1956, the individual concerned or a representative of that individual requests the disclosure of health information to that individual or representative, a health agency:
- (a) must treat any request by that individual as if it were a health information privacy request made under rule 6; and
 - (b) may refuse to disclose information to the representative if:
 - (i) the disclosure of the information would be contrary to the individual's interests;
 - (ii) the agency has reasonable grounds for believing that the individual does not or would not wish the information to be disclosed; or
 - (iii) there would be good grounds for withholding the information under Part IV of the Act if the request had been made by the individual concerned.
- (5) This rule applies to health information about living or deceased persons obtained before or after the commencement of this code.
- (6) [Despite subrule (5), a health agency is exempted from compliance with this rule in respect of health information about an identifiable deceased person who has been dead for not less than 20 years.]

Note: Except as provided in subrule 11(4) nothing in this rule derogates from any provision in an enactment which authorises or requires information to be made available, prohibits or restricts the availability of health information or regulates the manner in which health information may be obtained or made available – Privacy Act, section 7. Note also that rule 11, unlike the other rules, applies not only to information about living individuals, but also about deceased persons – Privacy Act, section 46(6).

Note: Rule 11(1)(f) was amended by Amendment No. 4. Rule 11(1)(g) was inserted by Amendment No. 3, which also amended subrule 11(6).

Rule 12: Unique Identifiers

- (1) A health agency must not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the health agency to carry out any one or more of its functions efficiently.
- (2) A health agency must not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another agency, unless:
 - (a) those 2 agencies are associated persons within the meaning of [section OD7 of the Income Tax Act 1994]; or
 - (b) it is permitted by subrule (3) or (4).
- [(3) The following agencies may assign the same National Health Index number to an individual:
 - (a) any agency authorised expressly by statute or regulation;
 - (b) any agency or class of agencies listed in Schedule 2].
- (4) Notwithstanding subrule (2) any health agency, having given written notice to the Commissioner of its intention to do so, may assign, to a registered health professional, as a unique identifier, the registration number assigned to that individual by the relevant statutory registration body.
- (5) A health agency that assigns unique identifiers to individuals must take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.
- (6) A health agency must not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.
- (7) Subrules (1) to (5) do not apply in relation to the assignment of unique identifiers before the commencement of this code.
- (8) Subrule (6) applies to any unique identifier, whether assigned before or after the commencement of this code.

Note: An action is not a breach of this rule if it is authorised or required by or under law – Privacy Act, section 7(4). Subrule 12(2) was amended by Amendment No. 3. Subrule 12(3) was substituted by Amendment No. 5.

Part 3 – Miscellaneous

6. Charges

- (1) For the purposes of charging under section 35 of the Act in relation to information privacy requests concerning health information, a health agency that is not a public sector health agency must not require the payment, by or on behalf of any individual who wishes to make a request, of any charges in respect of a matter referred to in paragraphs 35(1)(a) to (f) of the Act except in accordance with this clause.
- (2) Where an individual makes an information privacy request to a health agency that is not a public sector health agency, the agency may, unless prohibited by a law other than the Act or this code, make a reasonable charge:
 - (a) where, on a particular day, that agency has made health information available to that individual in response to a request – for making the same or substantially the same health information available in accordance with any subsequent request within the period of 12 months after that day; or
 - (b) for providing a copy of an x-ray, a video recording or a CAT scan photograph.
- (3) Where an agency intends to make a charge under subclause (2) and the amount of the charge is likely to exceed \$30, the agency must provide the individual with an estimate of the charge before dealing with the request.

7. Complaints of breach of code

- [(1) Every health agency must designate a person or persons to deal with complaints alleging a breach of this code and facilitate the fair, simple, speedy, and efficient resolution of complaints.
- (2) Every health agency to which this subclause applies must have a complaints procedure which provides that:
 - (a) when a complaint of breach of this code is received by the agency:
 - (i) the complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the complainant within that period;
 - (ii) the complainant is informed of any relevant internal and external complaints procedures; and
 - (iii) the complaint and the actions of the health agency regarding that complaint are documented.

- (b) within 10 working days of acknowledging the complaint, the agency must:
 - (i) decide whether it:
 - (A) accepts that the complaint is justified;
 - (B) does not accept that the complaint is justified; or
 - (ii) if it decides that more time is needed to investigate the complaint:
 - (A) determine how much additional time is needed; and
 - (B) if that additional time is more than 20 working days, inform the complainant of that determination and of the reasons for it; and
- (c) as soon as practicable after a health agency decides whether or not it accepts that a complaint is justified, it must inform the individual of:
 - (i) the reasons for the decision;
 - (ii) any actions the agency proposes to take;
 - (iii) any appeal procedure the agency has in place; and
 - (iv) the right to complain to the Privacy Commissioner.
- (3) Subclause (2) applies to any health agency specified in clause 4(2)(a), (c), (d), (e), (h), (i), (j) and (k) or items 6 and 8 of Schedule 1.
- (4) Nothing in this clause is to limit or restrict any provisions of Parts IV, V, VIII or IX of the Act or sections 55 to 57.]

Note: The original clause 7 (“privacy officers”) and 8 (“complaints of breach of code”) were revoked by Amendments No. 3 and 5 respectively. The present clause 7 was inserted by Amendment No. 5.

Schedule 1: Specified health agencies

1. Ministry of Health
2. Health Research Council
3. New Zealand Council on Healthcare Standards
4. Communicable Disease Centre, Institute of Environmental Science and Research Limited
5. The Interchurch Council on Hospital Chaplaincy
6. Health Benefits Limited
7. The Mental Health Commission

8. Accident Compensation Corporation
9. The Regulator under the Accident Insurance Act 1998

Note: Schedule 1 was substituted by Amendment No. 5.

Schedule 2: Agencies approved to assign NHI number

1. Ministry of Health
2. Hospitals
3. Registered medical practitioners
4. Registered midwives
5. Registered physiotherapists
6. Accident Compensation Corporation
7. Royal NZ Plunket Society
8. Blood Transfusion Service
9. Health Benefits Limited
10. Health Funding Authority
11. Framework Trust
12. Pathways Trust Board
13. Richmond Fellowship New Zealand Incorporated
14. National Society on Alcohol and Drug Dependence

Note: Schedule 2 was substituted by Amendment No. 5.

2000/hipc2000/hipcwww

Injury Prevention, Rehabilitation and Compensation Act 2001

Section 283 – Disclosure of information by Corporation for injury prevention purposes

- (1) The purpose of this section is to facilitate the disclosure of information by the Corporation to the Department of Child, Youth and Family Services for the purpose of preventing or limiting injury to children or young persons arising through unlawful activity.
- (2) For the purpose of this section, the Corporation may provide information to that agency about claimants and other persons if the Corporation believes on reasonable grounds that it is reasonably necessary to achieve the purpose of this section.

- (3) Information must be provided under subsection (2) in accordance with an agreement between the Corporation and the chief executive of that department.

scenarios

Scenario 1 – A school requests information from Child, Youth and Family

A school makes a notification to Child, Youth and Family that a child is at risk of abuse and is being neglected. They are told the notification has been referred to the local Child, Youth and Family office for investigation, but hear nothing further. They continue to have regular contact with the child and parents and find it very difficult to know how they can best ensure the child's wellbeing until the investigation is completed. The school is also struggling to know how best to manage situations where the parents are participating in school trips or camps, and are offering to help in the school. They do not know whether the family is aware of the notification or whether Child, Youth and Family has completed the investigation and closed the case. The school calls the local Child, Youth and Family office to ask for information on the investigation.

What is the purpose of requesting the information?

The purpose of requesting the information is so the school knows how to approach its relationship with the parents and whether they pose a threat to their own child as well as other children at the school.

What specific information is it necessary to collect?

In this case, the principal wants to know:

- whether Child, Youth and Family has started the investigation;
- whether the parents know about the investigation; and
- whether the parents are “safe” both for the child concerned and any other children they may come into contact with at school, or that the child in question might want to take home with them.

Does the request require that personal information be shared?

Yes, in this example, the information is about identifiable individuals – both the child and their parents.

What law applies to the situation?

Section 17(3) of the CYP&F Act applies. It would apply whether the organisation that notified is an organisation established under statute such as a school, or a non-government organisation such as Plunket, Barnardos or Women's Refuge. It also applies to any individuals that notify care and protection concerns.

Does the applicable law permit the information to be shared?

Yes, Child, Youth and Family should be able to answer the principal's questions relating to the investigation under section 17(3) of the CYP&F Act. The Act requires Child, Youth and Family to inform any notifier of child abuse or neglect (under section 15 of the Act) of whether the matter has been investigated and whether any further action has been taken unless it is impracticable or undesirable to do so.

Information given is likely to be quite general, but sufficient to answer the principal's concerns. Child, Youth and Family will not give information they think might prejudice the investigation, for example, information they do not want the parents to know.

Could the information be collected from the person it is about?

In this example, it would not be practicable for the principal to ask either the child or the family these questions. The information sought is about actions taken by, or opinions held by, Child, Youth and Family; even if the child or family in question does have some understanding of that information. In the interests of accuracy it ought to be obtained directly from Child, Youth and Family..

Do I have the person's authorisation to ask for the information from the government department?

In this example, authorisation is not necessary because there is no need to rely upon such authorisation.

Scenario 2 – Child, Youth and Family requests information from a hospital

Child, Youth and Family is investigating a notification of alleged abuse of a child. A social worker contacts the local hospital to get information about the child's health history and wants to talk to the doctor or nurse who has actually worked with the family. Instead they are referred to the hospital's Privacy Officer who is a lawyer.

What is the purpose of requesting the information?

The purpose is to investigate a notification of alleged abuse of a child.

What specific information is it necessary to collect?

In this example, Child, Youth and Family is seeking any health records or information that provide any indication that child abuse or neglect took place or that will help assess risk. Child, Youth and Family particularly wants to speak to the medical staff involved.

Does the request require that personal information be shared?

Yes – the information is about an identifiable individual, so is personal.

What law applies to the situation?

The hospital and Child, Youth and Family are both government organisations, so the following laws apply:

- Section 66 of the CYP&F Act
- Section 22C of the Health Act
- Section 17 of the CYP&F Act

Does the applicable law permit the information to be shared?

Child, Youth and Family could require that they be given any information about the child that is held by the hospital (CYP&F Act, section 66). However this Act only allows the release of information relating to the child or young person concerned. If information about a person other than the child is required, e.g. a parent, it may be more conducive to obtaining useful information for Child, Youth and Family to ask the relevant health provider to release information they see as pertinent under section 22C(2)(c) of the Health Act. The release of records is normally handled by a hospital's Privacy Officer.

When Child, Youth and Family is conducting an investigation under the CYP&F Act, section 17, it can legitimately ask to speak to a doctor if this is seen as useful to the investigation. Most doctors are happy to assist.

Could the information be collected from the person it is about?

In this example Child, Youth and Family could not obtain the information required to thoroughly investigate the case of suspected child abuse without going to the hospital; the information sought is that which is in the records or the memory of the hospital and its staff.

Do I have the person's authorisation to ask for the information from the government department?

It is not necessary for Child, Youth and Family to obtain authorisation to access personal information from sources other than the individual concerned where it is not reasonably practicable to obtain it directly from the individual. Investigations of the kind involved here will frequently create circumstances in which it is not reasonably practicable to get the information from the individual whose actions and history are being investigated, and in this case the information being sought is about the child.

Scenario 3 – Child, Youth and Family requests information from a community mental health service provider

Child, Youth and Family is investigating a notification of alleged child abuse. The social worker contacts the community mental health service provider to get information about the mental health history of the child's mother, who is suspected of abusing the child.

What is the purpose of requesting the information?

The purpose of requesting the information is to know the mental health history of the mother so as to establish how this impacts on risk to the child.

What specific information is it necessary to collect?

Any information about the mental health of the mother is potentially of relevance.

Does the request require that personal information be shared?

Yes. Mental health information about an identifiable individual is “personal”.

What law applies to the situation?

Section 22C of the Health Act applies because the information is held by a health provider.

Section 17 provides authority for a Child, Youth and Family social worker or member of the Police to undertake such investigation as is necessary or desirable into the report/notification they have received. It enables Child, Youth and Family to request information as part of the investigation, although it does not in itself provide authorisation for the holder of the information sought to disclose it

(Section 66 of the CYP&F Act should not be used because the information sought is about the child’s mother and not about the actual child.)

Does the applicable law permit the information to be shared?

Yes. Section 22C(2)(c) of the Health Act allows any provider of health or disability services to disclose health information to enable Child, Youth and Family or the Police to carry out their duties and functions.

If neither the Health Act nor the CYP&F Act can be shown to apply, one of the exceptions to the Privacy Act’s Health Information Privacy Code may, especially if the potential danger to a child appears to be serious and imminent e.g. Rule 11(1)(c), or Rule 11(2)(a) or (d), or (i).

Scenario 4 – Child, Youth and Family requests information from an NGO

Child, Youth and Family receives a notification from a hospital which indicates that a child has been abused and the child’s father is the suspected abuser. Child, Youth and Family begins an investigation. During the investigation it comes to light that the child’s father has been receiving services from an NGO specialising in anger management services. The social worker who is investigating calls the NGO to enquire whether they know anything about the father that is relevant to the investigation.

What is the purpose of requesting the information?

The purpose of requesting the information is to investigate an incident of child abuse.

What specific information is it necessary to collect?

Child, Youth and Family is seeking information about whether the father has a history of violence and whether the NGO holds any other information that might be relevant to establishing whether the father has been abusive or poses a risk to a child..

Does the request require that personal information be shared?

Yes. Child, Youth and Family is seeking information about an identifiable individual – the father.

What law applies to the situation?

Section 17 provides authority for a Child, Youth and Family social worker or member of the Police to undertake such investigation as is necessary or desirable into the hospital's report. It enables Child, Youth and Family to request information from an NGO as part of its investigation, although it does not in itself allow the NGO to disclose the information sought. (Information may be disclosed when the NGO has an authorisation from that person permitting it although this is probably undesirable in this situation. Alternatively, one of the other exceptions in the Privacy Act may apply.)

Section 66 would not apply as the NGO is not one of the bodies covered by that section.

Does the applicable law permit the information to be shared?

The Health Information Privacy Code may permit the NGO to disclose the information, depending on the circumstances. The exceptions in Rule 11 should be considered.

Could the information be collected from the person it is about?

It is usually impractical and can be dangerous to the child to obtain the information about suspected child abuse from the suspected party (i.e. the person who the information is about), so the answer here is probably “no”.

Do I have the person's authorisation to ask for the information?

It is unlikely in this scenario that Child, Youth and Family would have found it practicable or advisable to obtain such an authorisation from the father. However, Child, Youth and Family does not need that authorisation where it is (as here) not reasonably practicable to obtain the information sought from the father directly.

Scenario 5 – An NGO requests information from Child, Youth and Family

A mother self-refers to an NGO that provides support services to parents with young children. While completing the intake interview the mother acknowledges that she gets angry and impatient with her children. She says she yells at them sometimes and has smacked her baby a few times. This seems to happen mainly when the mother's partner has been drinking or when they argue. The mother signs a form giving her consent for the NGO to ask for or share information.

The NGO worker is concerned that there may be more than the mother has disclosed and rings the Child, Youth and Family Call Centre to see if they have any knowledge of the family.

The NGO worker tells the Call Centre his name and who he works for, and that he is ringing to ask for information because he has some concerns about a family. He gives the names, address and ages of the mother, her partner and the children and asks if Child, Youth and Family has any record of the family, and if they have had any concerns about the mother or her partner's management of the children.

What is the purpose of requesting the information?

It is clear that the purpose of the NGO worker requesting the information is to establish whether to notify a potential case of child abuse or neglect to Child, Youth and Family.

What specific information is it necessary to collect?

The NGO worker is seeking to establish whether Child, Youth and Family has had dealings with the family in the past and whether it would indicate that they should notify their suspicions of abuse to Child, Youth and Family.

Specifically, the NGO worker is seeking information about whether the mother has a relevant history with Child, Youth and Family or whether there are any other indications that might lead the NGO worker to conclude there is an increased risk of child abuse or neglect.

Asking this question also establishes that Child, Youth and Family might not be the only organisation with relevant information. The NGO worker might choose to also consult with any of the organisations listed in the "links to other resources" section later in this document.

Does the request require that personal information be shared?

Yes – the NGO worker is seeking information relating to an identifiable individual – the mother, and the rest of the family.

What law applies to the situation?

Usually, when an NGO asks for information from a government organisation such as Child, Youth and Family, the request falls under the Official Information Act. This is the same whether the NGO makes a notification to Child, Youth and Family or not. There are two situations in which the NGO should be able to simply receive relevant information about a child without consideration of the Official Information Act:

- when the NGO holds custody or guardianship orders and/or is acting in place of a parent/caregiver;
- when the NGO is implementing a Family Group Conference (FGC) plan.

Does the applicable law permit the information to be shared?

The Official Information Act requires Child, Youth and Family to establish within 20 days whether it has a good reason for withholding the information. Child, Youth and Family should be able to do it in a considerably shorter time period if the urgency of the situation is established. This could result in the information being released, or being declined under section 9(2)(a) of the Official Information Act on the basis that there is a good reason to withhold. A 'good reason' to withhold is to protect the privacy of the individual concerned.

If the Child, Youth and Family is convinced that providing the information may be necessary for detecting or stopping child abuse, it might release the information under section 9 of the Official Information Act. To do this it must be confident that the 'public interest' (i.e. in this scenario, to protect a child from abuse) is estimated to outweigh the family's right to personal privacy. The Privacy Act Principle 11 exceptions again provide some guidance as to the kinds of circumstances under which CYF might consider there to be cause for releasing the information.

Choosing to provide the information to the NGO on the basis of section 9(1) of the Official Information Act puts the Department at risk of a complaint to the Privacy Commissioner. Choosing not to provide the information may put a child at risk of ongoing abuse or neglect. These risks need to be negotiated carefully, but always with a view to the best interests of the child as the most important consideration.

The same rules apply if the NGO is asking for information from the Police or any other government organisation such as a school or public hospital. A written authorisation is also very useful when asking another NGO for information.

If the NGO worker cannot get information from the Call Centre, there may be other people who also hold relevant information who can share it, for example family members.

Where an NGO is unable to get information but continues to have concerns about a child's safety, they should make a formal notification of abuse or neglect to Child, Youth and Family or the Police.

Could the information be collected from the person it is about?

To avoid their request for information potentially being rejected under section 9(2)(a) of the Official Information Act, the NGO worker might consider asking for the information directly from the mother. This is often not possible in cases where there are care and protection concerns about that person.

Do I have the person's authorisation to ask for the information from the government department?

If requesting the information directly from the mother is not possible, the mother may authorise the NGO to get information from Child, Youth and Family that is relevant to the work the NGO has been asked to do with the family. It is then much easier for information to be shared. The Call Centre can then ask for a copy of the consent to be faxed to them and provided they are confident of the NGO worker's identity, have no good reason under the Official Information Act to withhold the information. The mother has authorised the collection and disclosure of this information so it is not necessary to withhold it to protect her privacy. Appendix 3 provides a form that might be used to do this.

The NGO worker may not want to ask for authorisation because they suspect that if the mother realises that the NGO is seeking information about her, she may withdraw from seeking help, thereby potentially increasing the risks to the children. Again, the NGO should consider this possibility before making contact with Child, Youth and Family, and be prepared to make a notification so that Child, Youth and Family can assess all the information together.

Scenario 6 – An NGO requests information from another NGO

A father is referred by a court order to an NGO for family violence services as a result of being convicted of child abuse. The NGO suspects that the family has already been receiving similar services from another NGO. The NGO that received the referral approaches the NGO they suspect was previously involved and asks for information about any services provided and any relevant information about the family.

What is the purpose of requesting the information?

The purpose of requesting the information is to enable the NGO to provide effective family violence services.

What specific information is it necessary to collect?

The information required is some background on the family in question. The NGO in receipt of the referral would be interested specifically in any information about the client that may be cause for ongoing care and protection concerns.

Does the request require that personal information be shared?

Yes – to be useful, the information has to be about an identifiable individual; the father, and potentially other family members also.

What law applies to the situation?

As shown in Table 1, the Privacy Act applies because it concerns the sharing of personal information between two NGOs.

Does the applicable law permit the information to be shared?

The Privacy Act only allows personal information to be shared if it meets the exceptions outlined in Principle 11 (see above for these). In particular, given the information was collected by an NGO previously providing family violence services (and probably related to the aim of stopping child abuse), the information may be allowed under exception 11(a). This is because the NGO that received the referral from the court is also likely to be trying to obtain the information to stop child abuse (i.e. it is being used for the same purpose as it was collected for).

The NGO from which the information is requested needs to establish which exception of the Privacy Act might apply that will allow the personal information to be shared without seeking authorisation from the father or family concerned.

Could the information be collected from the person it is about?

In this case, the best course of action would usually be to attempt to collect the information from the individual concerned first. The NGO receiving the referral may well be able to find out about the services previously received by the family directly from the family, but they may then want to verify some information and extend their knowledge of the family by asking the NGO that provided the services to the family originally.

Do I have the person's authorisation to ask for the information?

In this case, even if the information cannot be collected from the family, the NGO in receipt of the referral might have the father's authorisation to information sharing which was obtained as part of the initial interview. If not, they may realistically consider asking for consent from the father to obtain information from the previous NGO. The Privacy Act 'indicates' that this is 'desirable' and would mean that exception 11(d) rather than 11(a) of Principle 11 was used to allow the disclosure of any personal information.

When an NGO first talks to clients, it should ask for a wide-ranging authorisation to request or share information with other agencies in order to assist the family

Scenario 7 – Information sharing when Child, Youth and Family refers a family to an NGO

The Child, Youth and Family Call Centre receives a call from a mother who says her husband is having trouble controlling his temper and she is afraid that he is going to harm their children. After discussion with the caller, the Call Centre social worker determines that there is no serious threat to the safety of the children and no need to investigate. The Call centre worker refers the case on to an NGO.

What is the purpose of requesting the information?

This question assumes that the NGO requests the information. The purpose of this is to enable the NGO to tailor its services most effectively.

What specific information is it necessary to request?

The kind of information requested is general background information about the family that might help the NGO tailor its services.

Does the request require that personal information be shared?

The information is about an identifiable family, so is about personal information.

What law applies to the situation?

If the NGO asks for information, the Official Information Act applies. If Child, Youth and Family offer it without receiving a request, the Privacy Act applies.

Does the applicable law permit the information to be shared?

The Official Information Act requires Child, Youth and Family to establish within 20 days whether it has a good reason for withholding the information. Child, Youth and Family should be able to do it in a considerably shorter time period if the urgency of the situation is established. This could result in the information being released, or being declined under section 9(2)(a) of the Official Information Act on the basis that there is a good reason to withhold. A 'good reason' to withhold is to protect the privacy of the individual concerned.

If Child, Youth and Family is convinced that providing the information may be necessary for detecting or stopping child abuse, it might release the information under section 9 of the Official Information Act. To do this it must be confident that the ‘public interest’ (i.e. in this scenario, to protect a child from abuse) in making the information available to the NGO outweighs the family’s right to personal privacy. The Privacy Act Principle 11 exceptions may provide some guidance as to the kinds of circumstances under which CYF might consider there to be cause for releasing the information.

In this scenario it has been established that there is no immediate threat to the safety of the child (otherwise Child, Youth and Family must, by law, investigate).

If Child, Youth and Family was offering information they could argue that this was justified under the exception in Principle 11(a) of the Privacy Act, which allows information to be disclosed if the disclosure is one of the purposes (or is directly related to the purposes) for which it was collected, or if the family had given authorisation for the disclosure (Principle 11 (d)).

Could the information be collected from the person it is about?

It is highly likely that the NGO could collect the information directly from the mother who provided the information to Child, Youth and Family. This would be a far better option. Although some of the information is about persons other than the mother – that is, her husband or the children – she holds the information as an individual and for her own family purposes, so she is not bound by the prohibitions against disclosure which are in the Privacy Act (see section 56).

Do I have the person’s authorisation to ask for the information from the government department?

This is a critical question. If Child, Youth and Family can obtain permission from the family to release relevant information, the information can simply be shared without introducing any of the complexities outlined above that are associated with the laws. This is consistent with the idea that information sharing should be kept simple whenever possible. It is also consistent with the notion that people should be kept informed and whenever practicable, have a say in the sharing of their personal information.

If Child, Youth and Family had referred the case after concluding an investigation and finding no safety concerns, the NGO may request the information. The NGO may want to ensure the ongoing safety and wellbeing of the child as well as the effectiveness of services, knowing that immediate safety concerns in the family have already been investigated. They are likely to be interested in receiving any information that might suggest violence in the family – both for the purposes of monitoring the ongoing safety of the child and others, and for tailoring effective services. They are unlikely to be able to get this information from family or others and Child, Youth and Family will have additional information gained during their investigation.

Child, Youth and Family could release the information requested by the NGO under section 9 of the Official Information Act as long as it was confident that the ‘public interest’ (i.e. to protect a child from abuse or to ensure the safety of the NGO employees) outweighs the family’s right to personal privacy. In theory, however, if Child, Youth and Family was confident that it needed to share the information with the NGO to protect the NGO workers or the child from harm, then it should have

already offered them the information rather than waiting for the NGO to ask for it (although Child, Youth and Family are not bound by law to do this).

The Privacy Act applies if Child, Youth and Family decides that it is necessary to provide personal information to the NGO without the NGO requesting it. Child, Youth and Family can make an argument under Principle 11(a) of the Privacy Act that this disclosure would be among the purposes for which the information was obtained.

template for obtaining informed authorisation

Person or organisation requesting information

Person or organisation from which information is to be requested

Description of information to be disclosed

Purpose for us collecting that information

Relevant laws and statutory provisions

Statement of consent

I (first name, last name) authorise the disclosure of my personal information as described above for the purposes described above.

.....
(Signature)