

# Responding to requests for personal information about children and young people

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This guidance aims to help agencies respond appropriately to requests for personal information about children and young people.

The guidance covers:

- Information Privacy Principle 6 (IPP 6) of the Privacy Act 2020.
- Who can make an IPP 6 request for information about a child or young person.
- Requests made by parents, legal guardians or other caregivers, including:
  - when a parent, legal guardian or caregiver is acting as a representative of the child or young person.
  - whether the Privacy Act 2020 or the Official Information Act 1982 applies
  - what other laws may apply.
- Requests made by a Lawyer for the Child.
- Responsibilities of an agency before giving access to personal information.
- Requests made by other agencies.
- Applying the guidance in practice- some examples.

## Information Privacy Principle 6 (IPP 6)

The Privacy Act applies to any individual regardless of age. A child or young person has the same privacy rights as an adult but sometimes needs the assistance of another person to exercise those rights.

One of those rights is a person's right to ask for information about themselves, set out in IPP 6.



An agency must respond to the requester within 20 working days and usually has to provide the information, unless one of the refusal grounds applies.

Read more general information about responding to IPP 6 requests: [Office of the Privacy Commissioner | Principle 6 - Access to personal information](#).

## Who can make an IPP 6 request about children and young people?

An IPP 6 request may be made by the child or young person themselves or their representative.

A **representative** is a person who is lawfully acting on the child or young person's behalf.

## Information requests from parents, legal guardians or caregivers

The Privacy Act does not provide an automatic right of access by a parent, legal guardian, or caregiver to their child's personal information.

Assessing and processing a request from a parent, legal guardian or caregiver is a two-step process:

1. Determine whether the parent, legal guardian or caregiver is a representative.
2. If yes, then determine whether any of the refusal grounds apply.

In most cases, a **parent or legal guardian** can be considered a representative, particularly where the child is too young or otherwise not able to act on their own behalf. Where a **caregiver** is making the request, determining whether they are a representative may not be so clear cut as they won't have the same legal status as a parent or legal guardian.



The circumstances will be different for each request, so it is important that an agency considers each request on a case-by-case basis before deciding whether the parent, legal guardian or caregiver is acting as a representative of the child or young person.

### **Step 1: When is a parent, legal guardian or caregiver a representative?**

For the purposes of IPP 6, a parent, legal guardian or caregiver **may** be considered representative of the child where:

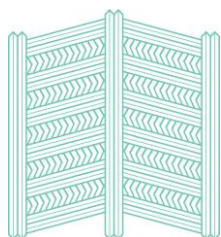
- the child is too young or otherwise not able to act on their own behalf, or
- an older child or young person has authorised them to make the request on their behalf.

Before determining that a parent, legal guardian or caregiver is a representative, agencies should consider:

- The age and maturity of the child and whether they are capable of understanding and exercising their rights under the Privacy Act.
- Any court orders relating to parental access or responsibility (e.g. protection orders, custody and guardianship orders).
- Whether, based on what is known to the agency, it is (or isn't) likely to be in the best interests of the child or young person for the parent, legal guardian or caregiver requesting the information to be able to exercise their child's Privacy Act rights on their behalf.

Where there is a family breakdown of some sort such as family harm, a custody or guardianship dispute or where the child is or has experienced abuse, the best interests of the child or young person should be a primary consideration. When determining whether it is in the best interests of the child or young person agencies should consider:

- the interests of the parent, legal guardian, caregiver and the child or young person are no longer the same or are in conflict, and/or disclosing the information to the parent/legal guardian would go against the child's interests.



- whether there are reasonable grounds for believing the child or young person does not or would not wish the information to be disclosed.

If any of the factors above exist, an agency may determine that a parent, guardian or caregiver is not acting as representative of the child or young person and the request does not fall under the Privacy Act.

Where a parent, guardian or caregiver is not a representative you can consider the request under the Official Information Act ([see table below](#)).

### Non-custodial parents

A non-custodial parent is the parent who doesn't live with their child most of the time. Non-custodial parents with guardianship rights<sup>1</sup> still have legal rights and responsibilities, ensuring they can maintain a relationship with their child.

A non-custodial parent with guardianship rights can exercise their child's privacy rights in the same way the custodial parent can, taking the wishes of the child into account if expressed or known (for older children or young people).

Where an agency receives an information request from a non-custodial parent with guardianship rights, it should follow the same process for managing a request from a custodial parent or other legal guardian.

## Step 2: Decision to release or refuse the request

A representative does not have automatic access to a child or young person's personal information. An agency still needs to consider whether any of the refusal grounds apply in the circumstances.

In situations where parents are separated, agencies do not need the consent of the other parent (either custodial or non-custodial) to disclose information about the child or young person. However, agencies should consider whether the child or young



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<sup>1</sup> A non-custodial parent has guardianship rights if they meet the test in section 17 of the Care of Children Act 2004 (or are otherwise appointed by the Court).

person's personal information also reveals personal information about the other parent (e.g., the other parent's home address or contact details where there is a protection order in place).

Read more general information about refusal grounds: [Office of the Privacy Commissioner | Principle 6 - Access to personal information](#).

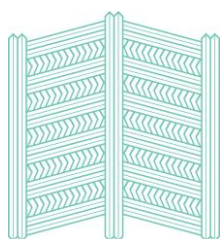
## When a request for information should be managed as an Official Information Act request

The Official Information Act (OIA) enables an individual to make a request for 'official information' (certain information held by public sector agencies). Official information can include personal information about other people, including children and young people.

Where the person requesting the information isn't the child or young person or a representative, the request should be considered under the OIA.

The following table can help you determine which Act may apply depending on the specific circumstances of the request:

Individual making request	Purpose of request	Applicable Act
Child/young person – capable of making their own request.	Their own personal information	Privacy Act
Parent/legal guardian/caregiver of child/young person who is too young or not capable of exercising their rights.  (Parent/legal guardian/caregiver <b>probably a representative</b> )	Personal information about the child or young person	Privacy Act, <b>unless</b> there are circumstances which suggest the Parent/Legal Guardian/caregiver is not acting on their behalf or in their best interests, then the request should be processed under the OIA

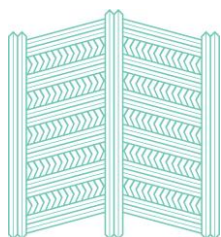


Parent/legal guardian/caregiver of older child or young person capable of making their own request <b>with</b> the older child/young person's authorisation to make the request on their behalf.  (Parent/legal guardian/caregiver <b>probably a representative</b> )	Personal information about the older child or young person	Privacy Act, <b>unless</b> there are circumstances which suggest the Parent/Legal Guardian/caregiver is not acting on their behalf or in their best interests, then the request should be processed under the OIA
Parent/legal guardian/caregiver of older child capable of making their own request <b>where</b> the older child/young person has made it clear they do not authorise the requestor to make the request on their behalf.  (Parent/legal guardian/caregiver is <b>not a representative</b> )	Personal information about the older child or young person	Part 2 OIA/LGOIMA <sup>2</sup>
All other cases where a parent/legal guardian/caregiver of child/young person is determined not to be a representative.	Personal information about the child or young person	Part 2 OIA/LGOIMA <sup>3</sup>

## What other laws may apply

Agencies should also consider whether other laws may apply to requests made for children and young person's information. These laws include:

**The Health Act 1956 and the Health Information Privacy Code (HIPC)** regulate access to "health information" held by a "health agency". Under the HIPC, parents or guardians of children under 16 years are legally defined as their 'representatives', whose access requests for health information are treated as though made by the



<sup>2</sup> Subject to eligibility requirements in the OIA (s 12(1)), but not the LGOIMA.

<sup>3</sup> Subject to eligibility requirements in the OIA (s 12(1)), but not the LGOIMA

child themselves.

As with any information privacy request, these requests may be refused in certain circumstances (Rule 11(5) HIPC). More information about the HIPC is available on our [website](#).

**Section 103 of the Education and Training Act 2020** says that principals should tell parents about matters affecting their child's progress through school or relationships with others.

Under **IPP 11 of the Privacy Act 2020**, an agency may disclose personal information to a third party if it believes there are reasonable grounds that one of the exceptions in IPP 11 applies.

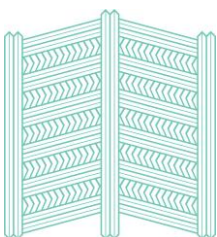
For example, this could be when the child or young person authorises the disclosure (IPP11(1)(c)) or where disclosure to parents is one of (or is directly related to) the purposes for which an agency obtained the information (IPP11(1)(a)).

However, unlike IPP 6 and the OIA, IPP 11 does not give a right to access or request information. IPP 11 gives an agency discretion to disclose personal information where that agency considers it is necessary to do so (rather than legally being required to respond to a request for the information). Whether an exception applies will depend on the circumstances.

More information about IPP 11 is available on our [website](#).

## Information requests from Lawyer for the Child

A Lawyer for the Child is a specialist lawyer appointed by the Family Court to represent the interests of the child or young person in Family Court proceedings involving custody or guardianship disputes, or situations of family harm.



To fulfil their responsibilities, the Lawyer for the Child often needs information about the child or young person held by agencies such as a school or healthcare provider. When making a request for information, the Lawyer for the Child will be acting as a representative for the child or young person.

The Lawyer for the Child should provide evidence of their appointment and brief from the Family Court.<sup>4</sup> If it not clear whether the requestor is acting as the Lawyer for the Child, you should ask them to provide evidence of their appointment before you provide access to any personal information.

## **Responsibilities of an agency before giving access to personal information**

Providing access to personal information to an unauthorised person can cause serious harm to an individual and be a form of notifiable privacy breach - where the personal information is about children and young people the harm can be long lasting and significant.

When providing access to personal information under IPP 6, the agency must:<sup>5</sup>

- be satisfied of the identity of the requestor (e.g. the child or young person or the representative)
- not provide access to the information if the agency has reasonable grounds to believe that the request is being made under the threat of physical or mental harm (coercion)
- ensure that the information intended for the requestor (or their representative) is provided to the right person.

You may need to request additional information from the requestor to satisfy these requirements of the Privacy Act.



<sup>4</sup> A Lawyer for the Child is appointed by Court Minute and receives their brief by letter from the Court.

<sup>5</sup> Section 57 of the Privacy Act 2020.

## Confirming a requestor's identity

Where additional information is required to confirm a requestor's identity the agency should inform the requestor what information is required and why. Agencies must also ensure that any identification documentation requested is securely destroyed once confirmation of the requestor's identity has been made.

Where a decision has been made to grant access to personal information, agencies should confirm with the requestor (or their representative) the method in which they would like to receive the information and double check email, or postal addresses are correct.

More information about confirming a requestor's identity is available on our [website](#).

## Information requests from other agencies

Where a request for information about a child or young person is made by another agency other laws may apply. These include:

- [Section 66C of the Oranga Tamariki Act](#) permits Child Welfare and Protection Agencies to request and share information about children and young people for specified purposes.
- [Section 20 of the Family Violence Act](#) permits Family Violence Agencies to request and share information about individuals who have been subject to family harm for specified purposes.
- Any law that **requires** the information to be provided to the requestor e.g. section 66 Oranga Tamariki Act, section 11 Social Security Act, section 17 Tax Administration Act.

Where requests for information are made under one of these laws an agency cannot refuse the request under one of the IPP 11 refusal grounds (or a withholding ground under the OIA). An agency should assess the request and decide whether to share the requested information in line with the law under which the request was made.



## Applying the guidance in practice – some examples

The following examples can help you apply the guidance in practice and determine whether a requestor is, or is not, a representative.

Remember, once you have determined a requestor is a representative, you still need to consider whether any of the refusal grounds apply.

### Example 1: Parent with day-to-day care of child/young person – a representative

P is the parent of 12-year-old H and has day-to-day care of H. H sees their other parent occasionally under a contact arrangement. P has made a request to H's school for the results of any assessments their child has undertaken during the term. H attends school regularly, is meeting all achievement expectations, and the school is not aware of any family issues impacting H.

#### Is P a representative?

Where a parent with day-to-day care of a child/young person requests information about that child/young person, they will generally be a representative – acting on the child/young person's behalf. However, the school will still need to determine whether there are any factors that would indicate P is not acting on behalf of H.

H is at an age where they might be able to exercise their IPP 6 rights but would likely need assistance. At 12 years old, H may have views about the request and the school could consider whether to consult H. This might depend, for instance, on the nature and sensitivity of the information requested by the parent and the maturity and ability of H to understand express their views.

The school is not aware of any issues that indicate P is not acting in the best interests of their child, or that H would not want the information to be released to P.



In this case, it would be reasonable for the school to determine that P was acting as H's representative.

## **Example 2: Non-custodial parent in acrimonious family situation**

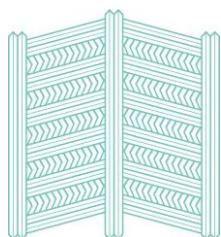
An Early Childhood Centre (ECE) has received a request from the parent of 4-year-old S. S's parents are separated – S is with one parent (J) during the week, and their other parent (C) in the weekends. C picks S up from the ECE Service on Friday afternoons and drops S off on Monday mornings. C is requesting all notes the ECE Service has made about S while they are in the care of J.

The ECE Service has no current concerns about S's safety or wellbeing or the care of S while with each parent, but they are aware that the parent's relationship with each other is acrimonious. C has mentioned to a staff member that they have started the process of seeking additional contact with S.

### **Is C a representative?**

C doesn't have day-to-day care of S but does have guardianship rights the same as the parent with day-to-day care. The ECE Service should determine whether C is a representative – acting on behalf of S – in the same way they would for J who has day-to-day care of S.

S is too young to be able to exercise their own IPP 6 rights. It is in S's best interests that C has information about S to support their care of S during the weekends. However, given the knowledge the ECE Service has about the acrimonious nature of the parents' relationship, that C is seeking additional contact through the Family Court, and the nature of the information C is requesting, it is reasonable for the ECE Service to question the breadth and nature of the information requested, e.g., does it go beyond what is needed to support C's weekend care of S.



In this case, it would be reasonable for the ECE Service to determine that C was acting as a S's representative in respect of information needed to provide care to S, but not for information beyond that.

If S is appointed a Lawyer for the Child during the custody dispute, then the lawyer could request relevant information about S for that purpose.

### **Example 3: Non-custodial parent – a representative**

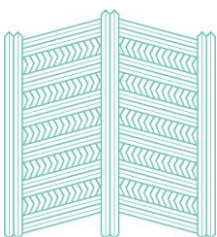
D is the parent of 11-year-old K. D does not have day-to-day care of K but looks after them every second weekend. K has learning disabilities and is receiving learning support services through their school. D provided consent, along with K's other parent, for a third-party organisation to provide the services to K. While it is generally K's other parent that brings them to the sessions, on occasions, both parents have attended.

D has made a request to the organisation for information about the services being provided and the outcomes of any assessments the organisation has undertaken.

#### **Is D a representative?**

D doesn't have day-to-day care of K but does have guardianship rights in the same way as the parent with day-to-day care. The organisation should determine whether D is a representative –acting on behalf of K - in the same way they would for the parent who has day-to-day care of K.

K is too young to be able to exercise their own IPP 6 rights. Both parents have provided consent for the organisation to provide support services to K and there is no information known to the organisation that indicates D is not acting in the best interests of K when requesting the information.



At 11 years old, K may have views about the request and the provider could consider whether to consult them. This might depend, for instance, on the nature and sensitivity of the information requested by the parent and the maturity and ability of K to understand and express their views. The provider should also consider what K was told about who could access their information at the time the services started (and since then).

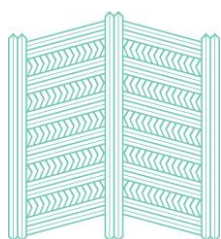
In this case it would be reasonable for the organisation to determine that D was acting as K's representative. The agency may also want to consider whether both parents should receive the same information about K at the same time.

#### **Example 4: Family member looking after child/young person – a representative**

S is an extended family member of 7-year-old J. S has made an IPP 6 request to an NGO for information about services the NGO is providing to J. One of J's parents lives overseas and is uncontactable, and their other parent is unwell and currently unable to care for J on a day-to-day basis. S is living in the family home with J and their parent and is looking after J fulltime while their parent is undergoing medical treatment. There is no legal guardianship order in place, but S has provided evidence that they are living with and caring for J and the extent of J's parent's illness.

#### **Is S a representative?**

While J is living with one parent, that parent is not well enough to care for J on a day-to-day basis. Due to their age, J would not be able to exercise their own IPP 6 rights. In the circumstance described, S is acting as J's primary caregiver while their parent is unwell. S has taken on responsibility for J's day-to-day care including getting them to school and other appointments while their parent is unable to.



There are no circumstances that the NGO is aware of that would indicate S is not acting in the best interests of J, nor is there any indication that J doesn't want their information being released to S. It is in J's best interests that S has information about J to support their care of J while their parent is unwell. This may depend on the breadth and nature of the information requested, e.g., does it go beyond what is needed to support S's temporary care of J. J's parent is unwell, but not out of the picture and the agency could consult them as appropriate.

In this case, while S is not J's parent or legal guardian it would be reasonable for the NGO to determine that S was acting as J's representative in respect of information needed to provide care to J.

### **Example 5: Caregiver of child/young person requesting information about attendance – not a representative**

D cares for 9-year-old E after school for a couple of hours until E's parents finish work. D has been caring for E after school for the last three years. D is registered with the school as a person authorised to pick E up and meets E at the school gates each afternoon. D is known to the teachers and other parents at the school pickup area.

The school has received a request from D seeking information about the learning support services that E is receiving at the school. D has not said in their request whether E's parents have authorised D to make the request on their behalf.

#### **Is D a representative?**

To be a representative the person making the request must be acting on the child or young person's behalf. The school needs to consider whether D is acting as representative for E.



E is too young to be able to exercise their own IPP 6 rights and D is not their parent or legal guardian. While it may be in E's best interests that D has information about E to support their afterschool care of E, what information is disclosed will depend on the breadth and nature of the information requested, e.g. does it go beyond what is needed to support D's afterschool care of E. In these circumstances, this probably does not extend to information about the services E is receiving regarding their learning disabilities. The school should check with E's parents as to whether D is acting on behalf of E. The school should also consider what E's parents said about what information D could access at the time authorisation was given for D to collect E from school.

In this case, it would be reasonable for the school to determine that D was not a representative in respect of this information. E's parents should make the request – the school can then determine whether, in the circumstances, the parents are acting as E's representative. In these circumstances, it would be reasonable for the school to determine that E's parents were acting as E's representative.

### **Example 6: Parents requesting health information**

Health Care United is a health care provider offering a range of health care services including counselling services. M is 14 years old and has been receiving counselling services at Health Care United for the last 12 months. M's parents provided consent for counselling services to be provided to M and both parents bring M to their appointments.

Health Care United has received a request from M's parents requesting all information Health Care United holds about M including all notes taken by her counsellor during her counselling sessions.



### Are M's parent's representatives?

The Health Act and the Health Information Privacy Code (HIPC) apply to this situation as M's parents are requesting health information from a health agency. Under the Health Act a parent or guardian of a child under the age of 16 is considered a representative.

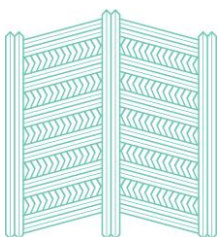
In this case, the parents are representatives as M is under 16 years old.

Under HIPC, a request made by a representative is treated as a Rule 6 request (the health equivalent of an IPP 6 request). Just like IPP 6, Health Care United still need to consider whether one of the refusal grounds apply in the circumstances. At 14 years old, M may have views about the request and the provider should consider whether to consult them. This might depend, for instance, on the nature and sensitivity of the information requested by the parents, e.g., high level diagnosis or treatment information may be different to copies of session notes. The provider should also consider what M was told about who could access to their information at the time the services started (and since then).

### Example 7: Parent request where protection order exists – not a representative

M is 14 years old and lives with one parent. Their parents have recently separated and there is a protection order in place protecting M and their day-to-day parent from the other parent. In this instance the other parent still has guardianship rights. The day-to-day parent has provided the school with a copy of the protection order. The protection order provides that M's other parent is to have no contact with them or the other parent. M and their day-to-day parent have recently moved into a new house, and M's day-to-day parent has changed their contact details.

The school has received a request from M's other parent. The other parent is requesting M's updated enrolment information.



### Is M's other parent a representative?

While it is one of M's parents who is making the request, the school needs to determine whether they are acting as M's representative. At 14 years old, M is likely capable of being able to understand and exercise their IPP 6 rights, but they may require some assistance from an adult to exercise their rights.

However, the school is aware of the protection order that is in place and is aware that that M's other parent does not currently know where M and their day-to-day parent are living or their new contact information. There are good grounds to consider that it is not in M's best interests for other parent to exercise M's IPP 6 rights on their behalf in respect of contact information. Informing M's other parent location and contact information could expose M and their day-to-day parent to further harm and disruption.

In this case it would be reasonable for the school to determine that M's other parent was not a representative. However, given the other parent's guardianship rights, it might be reasonable for the other parent to request and receive other information about M, such as school reports or school photographs under section 103 of the Education and Training Act 2020.

