

# Health Information Privacy Code fact sheet 3

## Disclosure of Health Information – the basics

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### Health Information Privacy Code 2020

The code regulates how health agencies (such as doctors, nurses, pharmacists, health insurers, hospitals, Primary Health Organisations, ACC and the Ministry of Health) collect, hold, use and disclose health information about identifiable individuals.

### Rule 11

Rule 11 of the Code **prohibits disclosure** except where one or more of its **exceptions** apply. The rule is quite detailed, and this fact sheet is only a very brief overview.

### Disclosure with authorisation or for purpose

Disclosure is always allowed when the person concerned, or their representative (if the individual is dead or is unable to give their authority), has given their **permission** or where disclosure was one of the **purposes** for which the information was originally obtained.

If a doctor collects information from a patient to pass on to a specialist, then there is no need to get the patient's permission for that disclosure, because **disclosure is one of the reasons for collection**. However, the patient should have been **told the disclosure was going to occur** at the time of collection (see Rule 3).

### Disclosure of presence in hospital

Hospitals can disclose basic information about their patients' **presence, location and condition** to anyone on request, as long as the patient has not **vetoed** this disclosure.



## Disclosure to friends and family

Disclosure is permitted where it is not practicable or desirable to get the patient's authorisation, and the disclosure is made by health practitioner a person nominated by the individual concerned, or to the principal caregiver or near relative of the patient in accordance with "recognised professional practice" and the disclosure is not contrary to the express wish of the patient or their representative.

## Disclosure to prevent risk

Health agencies can disclose information if this is necessary to prevent or lessen a **serious threat** to public health or public safety, or to the life or health of the individual concerned or another individual. The disclosure must be to someone who can do something about the threat.

There are also specific legislative provisions that apply to the sharing of information to respond to child welfare or family violence concerns. The Ministry of Health has published guidance for health professionals regarding information sharing under the Oranga Tamariki Act 1989, and the Family Violence Act 2018 which is available at <https://www.health.govt.nz/our-work/preventative-health-wellness/family-violence>.

## Representative

A person's **representative** has a degree of access to, and control over, that person's health information. 'Representative' means:

- the **parent or guardian** of a child under 16
- the **administrator or executor** of the estate of a dead person
- where the person is over 16 but is not able to give their consent or authority, or exercise their rights, someone who is acting lawfully on the individual's behalf and in the individual's interests. This may be an enduring power of attorney, or someone else who is clearly **acting on behalf** and in the **best interests** of a person who is **unconscious or otherwise incapable**.



## Section 22F

If the representative of a person or their treating clinician makes a request for health information, section 22F of the Health Act **requires** the health agency holding the information to provide it **unless**:

- the **person does not (or would not) want** the information disclosed;
- where the requester is a representative, then the disclosure would not be in the best **interests** of the person concerned (refer rule 11(5)); or
- the person holding the information has a lawful excuse (such as a statutory obligation of confidentiality or one of the grounds in section 49 to 53 of the Privacy Act) to refuse the request.

If any of the above apply then the holder of the health information may refuse the request.

## Official Information Act

Official Information Act requests can be made, by anybody, to any public sector health agency and must be responded to within 20 working days. However, requests for health information about **identifiable individuals** may be refused where the disclosure would breach the individual's privacy and there is **no strong public interest in disclosure**.

## Privacy and confidentiality

Many of the laws around disclosure of health information **allow** health agencies to disclose in certain circumstances. However, health practitioners need to consider both their legal obligations under the code and any **ethical obligation of confidentiality** they may have to their patients. Just because the law allows a disclosure doesn't mean it would always be ethical to disclose.



## Where to get additional assistance

There are four other Health Information Privacy Code fact sheets that give a broad overview of how the Code works in practice.

For more detailed information, a copy of the Health Information Privacy Code is available from the Office of the Privacy Commissioner's website at [www.privacy.org.nz](http://www.privacy.org.nz).

For enquiries, please ring the Office of the Privacy Commissioner on 0800 803 909 or email [enquiries@privacy.org.nz](mailto:enquiries@privacy.org.nz)

