

Requests for disclosure of a child's health information

This factsheet provides an overview of the circumstances in which the health information of a child (that is, a person under the age of 16) may be disclosed to that child's representative.

Under Rule 6 of the Health Information Privacy Code 2020 (**the Code**) individuals have the right to access their health information upon request. Where that individual is under the age of 16, a Rule 6 request may also be made by the child's representative. "Representative" is defined under the Code as the child's parent or guardian.

However a child's health information should not be disclosed automatically to their parent or guardian on request. In certain circumstances, such a request may be refused. These include:

- a. If the disclosure of the information would be contrary to the child's interests;
- b. If there are reasonable grounds for believing that the child does not or would not wish the information to be disclosed;
- c. Where one of the grounds for refusal in the Privacy Act 2020 applies (see sections 49 – 53 below).

If none of the above grounds apply and it is considered that disclosure may be made, the identity of the child's parent or guardian who made the request, should be confirmed before any information is provided.

The child's interests or wishes

When considering whether disclosure would be contrary to the child's interests or wishes, it is important to take into account the child's age and maturity and their capacity to understand and exercise their rights under the Privacy Act, (i.e. whether they will have a view on the issue).

Particular care needs to be taken in circumstances where there is known family conflict, as it may be that the child's interests are no longer aligned, or are in conflict, with their parents' or guardians' interests.



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For example, where there has been a family breakdown and a child has disclosed accusations about a parent to their GP, those accusations would form part of the child's clinical record. Should the parent about whom the accusations have been made then request a copy of the child's record, careful consideration would need to be given to whether disclosing the child's health information (i.e. the accusations) to the requesting parent would be contrary to the child's interests, or whether there would be reasonable grounds for believing that the child does not or would not want the information to be disclosed.

Grounds for refusal (sections 49 – 53 of the Privacy Act 2020)

By way of summary, the grounds for refusal include:

- **Section 49 – Protection (etc.) of the individual:** In relation to individuals under the age of 16, a disclosure request may be refused where disclosure of the information would be contrary to the interests of the individual concerned. This section also covers other situations where a disclosure request may be refused in order to protect individuals or the public. For example, where disclosure would be likely to pose a serious threat to the life, health or safety of an individual, or to the public, or where disclosure would include information about another individual who is the victim of an offence or an alleged offence and that individual would be harmed by the information being provided.

- **Section 50 – evaluative material:** Access to personal information may be refused where the information is evaluative material and a promise was made, expressly or impliedly, to the person who supplied the material that it would be held in confidence.
- **Section 51 – security, defence and international relations, and Section 52 – trade secret:** These sections are concerned with protecting the security or defence of New Zealand and other countries (as listed in the section), and international relations, as well as trade secrets.
- **Section 53 – other reasons:** This section lists other reasons for refusing access to personal information. For example, the information doesn't exist or cannot be found, disclosure would involve the unwarranted disclosure of the affairs of another individual or a deceased person, or disclosure would be likely to prejudice the maintenance of the law or would breach legal professional privilege.

(It should be noted that the above sections apply to a disclosure request by the individual themselves, not just to a request by the individual's representative).

If one of the above grounds applies, instead of refusing access to the information requested, it may be that access can be granted but subject to certain conditions, or with parts of the information being withheld.

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When a child's parents are separated

A request by a child's parent or guardian cannot be refused simply because:

- The request was made by a parent who does not have custody of the child or – in the case of GP practices – who did not enrol the child in the practice; or
- One parent has requested their child's health information, but the child's other parent has said that they do not want the information to be provided to their ex-partner.

There need to be other factors at play also for a request to be denied (as set out at (a) – (c) above).

If a situation arises where one parent does not want the other parent to be provided with their child's health information, it may be necessary to understand from the parent who holds the concern why it is that they do not want the information disclosed, (and in turn whether that forms a proper ground for refusal).

Before disclosing a child's medical record to one of their parents, care should be taken to check whether the record contains information about the child's other parent. As a parent only has the right to request information about their *child*, they should not inadvertently receive information about the other parent in that process. It may be then that those parts of the child's clinical record will need to be redacted before disclosure is made.

When a child turns 16

Once a child turns 16, the child's parents or guardians can no longer make a Rule 6 request. However under Rule 11(2) (b) of the Code, disclosure may be made to the "principal caregiver or near relative" of a person who is 16 or older in circumstances where:

- It is not desirable or practicable to obtain the person's authorisation to disclose the health information;
- Disclosure is made in accordance with recognised professional practice; and
- It is not contrary to the express request of the individual or their representative.

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Contact Us

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