

## Information sharing in out of home care

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**This advice is endorsed by the:** Assistant Director, Child Protection Policy, Practice and Planning.

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### Introduction and purpose

This Advice provides Child Protection practitioners with an overview of confidentiality and information exchange where a child is placed in out of home care.

A care team, responsible for caring for a child in out of home care will use and disclose personal and health information about the child where this is required to support proper care provision. . The composition of a care team will vary depending on the specific issues and needs of the child and family, however will include the Child Protection practitioner, agency placement worker, the child's case manager, the child's carer and parents (as appropriate).

The looking after children (LAC) practice framework for children in residential and home-based care (excluding kinship care and permanent care) facilitates the sharing of essential information amongst the child's care team.

### Legislation

**Note:** Use the Legislation link on toolbar to access full text versions of the legislation. Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Where a child is placed in out of home care as part of a child care agreement, Part 3.5 of the Children Youth and Families Act 2005 (CYFA ), under a short term agreement there is no effect on guardianship and custody and under a long term agreement there is ongoing involvement by the parent with the child. Therefore, a parent of a child subject to a child care agreement is entitled to information about the child.

In most instances, a child in out of home care will be subject to a protection order or an interim accommodation order (IAO) and current court proceedings. The sections of this Advice regarding sharing information contained in reports to the Children's Court and about a child subject to a protection order should be referred to as to how information may be shared.

## Children, Youth and Families Act

Specific requirements in the CYFA :

- s. 179 Responsibility of Secretary or out of home care service to provide information to carers:
  - s. 179(1) If Child Protection intends to place a child in the care of a person other than the parent of the child; Child Protection must provide the carer with all information that is reasonably necessary to assist the carer to make an informed decision as to whether or not to accept the care of the child. (A similar requirement is placed on an out of home care service where placing a child as part of a Part 3.5 child care agreement.)
  - s. 179(2) If Child Protection has placed a child in the care of a person other than the parent of the child; Child Protection must provide the carer with any information regarding the medical status of the child to enable the carer to provide appropriate care for the child. (A similar requirement is placed on an out of home care service where placing a child as part of a Part 3.5 child care agreement.)
- s. 180 Confidentiality

A person who is given information about a child under s. 179 must not disclose that information to any other person except for the purpose of providing appropriate care for the child (for example, disclosure to a doctor).

- s. 265 Parent entitled to know child's whereabouts

A parent is entitled to be given details of the child's whereabouts under an interim accommodation order unless the Court or Bail Justice making the order directs that those details be withheld from the parent. The court or a bail justice may only give such a direction if of the opinion that the direction is in the best interests of the child.

## Health Records Act

*Health Records Act 2001*

## Information Privacy Act

*Information Privacy Act 2000*

## Charter of Human Rights and Responsibilities Act

*Charter of Human Rights and Responsibilities Act 2006*

- s. 13 Privacy and reputation

## Standards and procedures

### Responsibilities to children

Children depend on their parents or guardians for care and protection to varying degrees according to their age and needs. When children are placed in out of home care, care responsibilities are shared across a care team including Child Protection practitioners, CSO staff, residential care workers, home based carers, parents and significant others (see Advice number 1044, 'Duty of care' - see Related content).

The protection of a child's privacy is one element of the care team's responsibility. Privacy considerations are balanced with decision-making to support effective quality care provision. Where appropriate, care teams must involve children in decision making about matters affecting their lives and help them to protect the privacy of their personal information in that process. (See Advice number 1090, 'Information sharing in Child Protection practice' - see Related content).

## Use and disclosure of information in the child's best interests

Child Protection practitioners should use and disclose personal information in the best interests of children and young people and to support quality care provision. The use and disclosure of information in the child's best interests is influenced by the following considerations:

- Is provision of the information in these circumstances legally prohibited (for example could the information lead to the identification of a reporter?)
- Has the child and/or parent been informed that their information may be shared in this way?
- Does the person need to know this information in relation their role or responsibility to ensure the safety and wellbeing of the child?
- Is the person authorised to receive or disclose information? By what section of the CYFA or other legislation?
- Does the person need to know this information in relation to their role in assisting the child to avoid knowingly or unknowingly causing harm to other persons?
- What specific information does the person need to provide care of this child? The extent of information that is necessary to ensure the safety and wellbeing of the child and avoid them causing harm to others will vary from case to case and from time to time.
- What is the risk that disclosure of this information to this person might have avoidable negative consequences for a person such as a parent or another family member, such as reputational damage or impact on privacy?
- While the wishes of the child might not be the determining factor, they should be considered as should the wishes and concerns of parents and other family members.
- Those with responsibility for the provision of out of home care will generally need to collect and use relevant personal information in order to provide good care. This includes home-based carers with day-to-day care of the child.

## Disclosing personal information

Much like a parent; to provide good care for a child, the care team needs a significant amount of personal and health information about the child.

Child Protection and CSO staff, and home-based carers should act in accordance with the principle that information should be disclosed within the care team to the extent necessary for the good care of the child and should be shared beyond the care team only when lawful to do so, appropriately authorised and required to ensure the best interests of the child.

## Privacy legislation

The Information Privacy Act and the Health Records Act govern the collection and handling of personal information and health information, unless there is a specific provision in another Act (such as the CYFA) which applies to the circumstances. A key function of these Acts is to protect personal and health information from being used or disclosed for purposes other than the primary purpose(s) or related secondary purpose(s) (directly related for sensitive personal and health information) for which it was collected, unless an exception applies.

In Child Protection the primary purpose for which information about children is collected is usually to protect them from harm and to promote their best interests in accordance with the CYFA. When children are placed in out of home care, it is expected that they will receive good care including assistance to avoid knowingly or unknowingly causing harm to others.

It is not the intention of privacy legislation or privacy conscious practice to prevent disclosure and use of personal and health information about a child where this is required to protect the child from harm and promote their best interests. In the context of out of home care this means that information necessary to provide effective

care for a child may be disclosed to the extent necessary. Where there is conflict between privacy concerns and the best interests of a child a consultation with Legal Services Branch or a regional or central privacy officer should occur.

It would be contrary to good practice for Child Protection to withhold information about a child's history of at risk behaviour, such as sexually intrusive acts against others, from a care provider on the basis of privacy concerns alone as such information would be required to support safe and effective care planning for the child.

Carers and others are not prevented by privacy legislation from advising Child Protection of information arising during placement in out of home care where this is relevant to case planning for the child. Such information could include a disclosure of abuse made by a child in care.

### Particular sensitivity of personal information

Particularly sensitive case information held by Child Protection might include the placement location where disclosure could result in risk to the safety of a person; health information regarding a person having or being at risk of contracting a communicable disease such as HIV or hepatitis; criminal records information.

The management and disclosure of such information must comply with relevant legislation and department policy and should occur only where there is a compelling requirement to ensure the best interests of the child or to protect a person from significant harm. A supervisor should be consulted who should consider consulting a more senior manager, a legal practitioner and/or a regional or central privacy officer..

Child Protection is thus obliged to take reasonable steps to ensure that personal and health information is disclosed only to those individuals who require it to meet their responsibilities with respect to the care and best interests of a child and that those individuals and services to whom information has been disclosed protect the information and do not disclose it to others unless authorised to do so.

### Considerations for good practice

For this Advice, there are no specific considerations for good practice.

### Contact for further procedural advice

- Supervisor
- Regional Manager, Placement Coordination Unit
- Regional Placement and Support - Program and Services Advisor (PASA)
- Community service organisation (CSO) staff

### Related content and external links

**Note:** Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

#### Related Content:

1044 - Duty of care

1090 - Information sharing in Child Protection practice

1091 - Security of information in Child Protection

#### External Links:

For this Advice, there are no specific external links.

### Checklist of required standards

For this Advice, there are no required standards.