

Information sharing in Child Protection practice

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Introduction and purpose

This Advice describes the legal and practice requirements regarding information collection and disclosure between Child Protection practitioners, other professionals and members of the community during each phase of the Child Protection process.

Protecting children from harm and promoting their development is only possible where assessments and case plans are based on adequate information. This requires that the professionals involved with the family, and other relevant members of the community, are able to share relevant information in a timely and effective manner. Equally, parents, children and other individuals have a right to expect that their privacy is respected and personal information is not misused.

While the *Children, Youth and Families Act 2005* (CYFA) and other relevant privacy legislation authorise information sharing in particular circumstances, it should not be assumed that all information held by Child Protection can be shared. The following guidance explains what is permitted and prohibited.

In situations where there is uncertainty regarding the management or disclosure of information, practitioners should seek the advice of supervisors. Further advice can be obtained from divisional privacy contact officers or Legal Services Branch.

For a visual guide of information sharing in Child Protection practice, please use the following link: *A guide to information sharing for Child Protection, Child FIRST and Family Service workers* (PDF, 74 kb).

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.

There are three primary pieces of legislation, which govern the sharing of information in Child Protection cases.

- *Children, Youth and Families Act 2005 (CYFA) and Children, Youth and Families Regulations 2007 (Regulations)*
- *Information Privacy Act 2000*
- *Health Records Act 2001*

The CYFA prescribes when and how information sharing is authorised under the Act. Where there are no specific provisions in the CYFA relevant to a specific circumstance, information sharing must then be consistent with the Information Privacy Principles contained in Schedule 1 of the Information Privacy Act 2000 and the Health Privacy Principles contained in Schedule 1 of the Health Records Act 2001.

Children, Youth and Families Act

The following sections of the CYFA prescribe when and how information sharing is authorised under the Act:

- s. 28 Report to Secretary about child
- s. 29 Report to Secretary about unborn child
- s. 30 Response by Secretary to report
- s. 33 Response by community-based child and family service to referral
- s. 35 Who may the Secretary consult?
- s. 36 Who may the community-based child and family service consult?
- s. 37 Disclosers protected
- s. 38 Consultation with Secretary
- s. 39 Records of disclosures
- s. 40 Reporters protected
- s. 41 Identity of reporter or referrer confidential
- s. 167 Preparation of case plan
- s. 178 Responsibility of Secretary to provide information to parents
- s. 179 Responsibility of Secretary or out of home care service to provide information to carers
- s. 180 Confidentiality [of information about a child in care]
- s. 183 Report to protective intervener
- s. 184 Mandatory reporting
- s. 185 Report on child in need of therapeutic treatment
- s. 187 Determination by Secretary about report
- s. 188 Record of report
- s. 189 Reporters protected
- s. 190 Evidence and legal proceedings
- s. 191 Confidentiality

- s. 192 Secretary may request provision of information
- s. 193 Disclosers protected
- ss. 194-203 Compulsory Disclosure of Information
- s. 205 Investigation by protective intervener
- s. 206 Record of investigation
- s. 208 Protection of givers of information
- s. 209 Confidentiality
- ss. 210-213 Investigation of therapeutic treatment report
- s. 234 Protection of privileges
- s. 238 Report to Court by Secretary [re TAO]
- s. 265 Parent entitled to know child's whereabouts
- s. 552 Confidentiality of reports
- s. 534 Restriction on publication of proceedings
- s. 556 Access to protection report
- s. 559 Access to disposition report
- s. 561 Access to additional report
- s. 562 Access to additional reports [by the Children's Court Clinic]
- s. 556 Access to therapeutic treatment application report
- s. 570 Access to therapeutic treatment (placement) report

The Act establishes classes of people who are authorised to share particular information with Child Protection in specific circumstances.

It is important to understand the terms for these classes, which are used throughout the following advice.

The classes are:

Community services

Community services are an integral part of the system of which Child Protection is also a part. They are organisations registered and funded to provide services to vulnerable children and families, and out of home care services. For example: A Child FIRST team, family service or out of home care service or other service provided specifically to vulnerable children that is registered by the Secretary of the Department of Human Services and required to comply with service standards (ss. 3, 46, 47)

Information holders

The CYFA and Regulations define certain professionals who may have contact with vulnerable children or their parents as 'information holders'. Child Protection can consult with information holders during protective interventions, and they may be subject to compulsory disclosure. The following are information holders for the purposes of the CYFA:

- police
- government department employees
- school teachers and principals
- doctors
- nurses
- psychiatrists

- psychologists
- person in charge of a health service
- person in charge of a mental health service
- person in charge of a children's service
- person in charge of a disability service
- person in charge of a drug or alcohol treatment service
- person in charge of a family violence service
- person in charge of a sexual assault support service
- person in charge of a parenting assessment and skills development service
- person in charge of a local government child and family service
- person in charge of a placement support service for children in out of home care.

Service agencies

Service agencies are government departments and service providers who may provide services to vulnerable families. Child Protection can consult with service agencies during intake.

Following is the list of service agencies within the meaning of the CYFA.

- Victorian government department
- health service
- psychiatric service
- disability service
- drug or alcohol treatment service
- family violence service
- sexual assault support service
- parenting assessment and skills development service
- local government child and family service
- placement support service for children in out of home care

(The precise meaning of these terms is more clearly defined in s. 3, CYFA and Regulation 7.)

Information Privacy Act and Health Records Act

The Information Privacy Act and the Health Records Act govern the management and exchange of personal and health related information in Victoria. The Health Records Act deals with health information and the Information Privacy Act deals with all other personal information. 'Personal information' is information or an opinion that is recorded about a person and which identifies or may identify that person.

Where there are no specific provisions in the CYFA, information sharing must be consistent with the principles outlined in Schedule One of both Acts.

One of the key functions of both Acts is to protect personal and health information from being used or disclosed for purposes other than the primary purpose(s), or a related secondary purpose(s) for which it was collected, unless an exception applies.

The Information Privacy Act regulates the collection and handling of 'personal information', including 'sensitive information'. 'Sensitive information' is more tightly regulated and includes racial, ethnic, political, religious, trade union, and sexual or criminal information about an identifiable person.

The table below sets out a summary version of the Principles from the Information Privacy Act and the Health Records Act.

Note: The table does not set out the full set or form of the Principles, and is intended for quick reference only.

Key Privacy Principles in summary

Health Privacy Principles summary	Information Privacy Principles summary
<p>1. Collection Only collect health information if necessary for the performance of functions or activity and with consent (or if it falls within HPP 1). Notify individuals about what you do with the information and that they can gain access to it.</p>	<p>1. Collection IPP 1.1 allows Child Protection to collect information necessary for its functions or activities (e.g. to protect a child from harm or to arrange services for a family), even where this is not specifically authorised by the Children Youth and Families Act 2005, provided this is done in a manner that complies with the Privacy Principles. IPP 1.3 sets out the information which must be given to persons whose information is collected by child protection. This includes how to contact child protection, why their information is being collected, their right to access and correct it, the people or groups with whom such information is usually shared. Standard collection notices are available for children, parents and professionals.</p>
<p>2. Use and disclosure Only use or disclose health information for the primary purpose for which it was collected or a directly related secondary purpose the person would reasonably expect. Otherwise, you generally need consent.</p>	<p>2. Use and disclosure IPP 2 describes when and how the information that has been collected can be used or disclosed, including circumstances in which the use or disclosure can occur without the consent of the subject of the information. Amongst these circumstances are that information can be used or disclosed:</p> <ul style="list-style-type: none"> For the primary purpose for which the information was collected For a related secondary purpose where an individual would reasonably expect the information to be used or disclosed for that purpose Where this is necessary to lessen or prevent: <ul style="list-style-type: none"> a serious or imminent threat to an individual's life, health, safety or welfare a serious threat to public health, public safety or public welfare The use or disclosure is part of an investigation of unlawful activity or making a report of unlawful activity to, for example, the Police The use or disclosure is required or authorised by law (this is the part of the Information Privacy Act 2000 which makes authorisations under the Children Youth and Families Act 2005 – and any other legislation – applicable The preparation of and conduct of court or tribunal proceedings and the implementation of court or tribunal orders

<p>3. Data quality Take reasonable steps to ensure health information you hold is accurate, complete, up-to-date and relevant to the functions you perform.</p>	<p>3. Data quality Make sure personal information is accurate, complete and up-to-date.</p>
<p>4. Data security and retention Safeguard the health information you hold against misuse, loss, unauthorised access and modification. Only destroy or delete health information in accordance with HPP.4</p>	<p>4. Data security Take reasonable steps to protect personal information from misuse, loss, unauthorised access, modification or disclosure.</p>
<p>5. Openness Document clearly expressed policies on your management of health information and make this statement available to anyone who asks for it.</p>	<p>5. Openness Document clearly expressed policies on management of personal information and provide the policies to anyone who asks.</p>
<p>6. Access and correction Individuals have a right to seek access to health information held about them in the private sector, and to correct it if it is inaccurate, incomplete, misleading or not up-to-date.</p>	<p>6. Access and correction Individuals have a right to seek access to their personal information and make corrections. Access and correction will be handled mostly under the Victorian Freedom of Information Act.</p>
<p>7. Identifiers Only assign a number to identify a person if the assignment is reasonably necessary to carry out your functions efficiently.</p>	<p>7. Unique identifiers A unique identifier is usually a number assigned to an individual in order to identify the person for the purposes of the organisation's operations. Tax File Numbers and Driver's Licence Numbers are examples. Unique identifiers can facilitate data matching. Data matching can diminish privacy. limits the adoption and sharing of unique numbers.</p>
<p>8. Anonymity Give individuals the option of not identifying themselves when entering transactions with organisations where this is lawful and practicable.</p>	<p>8. Anonymity Give individuals the option of not identifying themselves when entering transactions with organisations if that would be lawful and feasible. For instance, reporters may opt not to provide their name or other details. Reports must still be accepted from them.</p>
<p>9. Transborder data flows Only transfer health information outside Victoria if the organisation receiving it is subject to laws substantially similar to the HPPs.</p>	<p>9. Transborder data flows Basically, if your personal information travels, your privacy protection should travel with it. Transfer of personal information outside Victoria is restricted. Personal information may be transferred only if the recipient protects privacy under standards similar to Victoria's IPPs. Most transfers of information by Child Protection take place under the scheme set out in Schedule 1 of the CYFA.</p>

<p>10. Transfer/closure of practice health service provider</p> <p>If you're a health service provider, and your business or practice is being sold, transferred or closed down, without you continuing to provide services, you must give notice of the transfer or closure to past service users.</p>	<p>10. Sensitive information</p> <p>The law restricts collection of sensitive information like an individual's racial or ethnic origin, political views, religious beliefs, sexual preferences, membership of groups or criminal record. Collection of sensitive information (including racial, ethnic, political, religious, trade union, sexual and criminal information about an identifiable person) is more tightly regulated, as described in IPP 10 in the table above.</p> <p>In particular: "... an organisation may collect sensitive information about an individual if--</p> <p>(a) the collection--</p> <p>(ii) is of information relating to an individual's racial or ethnic origin and is collected for the purpose of providing government funded targeted welfare or educational services"</p>
<p>11. Making information available to another health service provider</p> <p>If you're a health service provider, you must make health information relating to an individual available to another health service provider if requested by the individual.</p>	

Standards and procedures

Gathering or sharing information with authorised people

When contacting a person to gather or disclose information the Child Protection practitioner should explain:

- The purpose of the contact.
- How the person is authorised to receive information related to the case (for example, because they are a member of a class of authorised people, or because they are authorised specifically by the practitioner).
- Whether their identity is protected, and why it may be helpful for them to consent to their identity being disclosed as the source of the information.
- How the information they provide may be used, for example, it may be used for the purposes of inclusion in a court report.

The following sections describe what information can be shared with whom, during the various phases of the Child Protection process, and reference the relevant sections of the CYFA.

Except where otherwise stated, the disclosure of information by authorised persons or any other person is voluntary.

Intake phase

Receiving reports and protecting the reporter's identity

- s. 28 Report to Secretary about child
- s. 29 Report to Secretary about unborn child.
- s. 183 Report to protective intervener

- s. 184 Mandatory reporting
- s. 41 and s. 191 Identity of reporter confidential

The identity of all people who make any type of report is confidential.

Where a report has been received, it is an **offence** for a Child Protection practitioner, (without the reporter's **written** consent), to disclose the identity of the reporter (or any information that is likely to lead to the reporter being identified) to anyone, except to:

- Another protective intervener
- Child FIRST when a report is being referred there for a response to be determined or
- In court proceedings where leave is granted to do so by the court or tribunal.

New reports on existing cases

When a report is received where a case is currently open, the report will be classified as a protective intervention report and dealt with as a new allegation on an existing case. As for all other reports, the reporter's identity is protected.

Information gathering and sharing regarding intake assessments

The CYFA enables Child Protection to consult and receive information from the three classes of persons referred to in the Legislation Section of this Advice (information holders, community services and service agencies).

Information holders, community services and service agencies

- s. 35 Who may the Secretary consult?

Where a report has been received Child Protection may consult with an information holder, a community service or a service agency to determine the most appropriate response to the report or to complete a risk and needs assessment of a child. The information holder, community service or service agency are authorised to disclose information to Child Protection and protected if they do, but they are not obliged to. For example:

1. In order to determine the most appropriate response to a report, a Child Protection practitioner may, for example, contact the person in charge of a relevant mental health service (a 'service agency') which is providing services to a parent. Child Protection may identify the child and the concerns that have been reported. The practitioner may request, and the professional (for example, a psychiatrist, nurse) is authorised to disclose relevant information about whether the service is able to discuss the concerns with the parent, or be involved in a joint response with Child Protection or a family service.
2. In order to complete an assessment of the risks to the child, a Child Protection practitioner may contact a worker employed by a government funded drug or alcohol treatment service (an 'information holder'), identify the child and the parent and the concerns that have been reported. The practitioner can request, and the drug and alcohol worker is authorised to disclose, relevant information about the parent and child.

Information gathering and sharing with other persons at intake

The CYFA (Section 35) sets out whom child protection may consult following receipt of a report for the purpose of assessing and classifying the report. CYFA Section 35 - Who may the Secretary consult? specifies that the Secretary may consult a community service a service agency or an information holder and may provide and receive information for the purposes of seeking advice about or assessing risk to a child; or, in seeking advice or determining which child and family service or other service may be appropriate to assist the child and/or family.

The CYFA enables information sharing specifically with the categories of persons listed above, during the intake assessment process, and does not provide for consultation with other persons at Intake.

It is not advisable for Child Protection (or Child FIRST) to consult with persons who are not members of any of the authorised classes, during the Intake phase (ie. prior to classification of the report as a Protective Intervention Report or a Wellbeing Report).

Such other people include:

- professionals who are not a member of any of the authorised classes
- non-professionals, including relatives, community members and friends.

Disclosure to the child or family for the purposes of providing advice or assistance is permitted if in the best interests of the child.

Providing feedback to reporters

- s. 30 Response by Secretary to report (see also s. 187)

Reporters play a critical role in protecting children, and should generally receive feedback regarding the report they have made.

Child Protection intake must make reasonable attempts to contact all professional reporters, to inform them of the outcome of the report, unless there are exceptional circumstances or it is not in the child's best interests. This should occur in a timely manner (usually within 2 days of the classification of the report).

Information provided to a reporter should generally be restricted to the intake outcome (or classification). The reporter should not be informed of the outcomes of any referral, or an offer of assistance, or an investigation unless the reporter is actively involved in ongoing service provision, care or support relevant to the child's protection and wellbeing.

Investigation and assessment phase

Information gathering/sharing with community services and information holders during an investigation

- s. 192 Secretary may request provision of information.
- s. 193 Disclosers protected

At any time after a report has been classified as a protective intervention report community services and information holders are authorised to disclose information relevant to the protection and development of a child in response to a request from Child Protection and are protected from liability in respect of disclosures made in good faith. A 'Request for information' letter can be provided to information holders, if requested, when seeking information under s. 192 of the CYFA - see Related content.

Information gathering/sharing with other persons during an investigation

- s. 205(2) Investigation by protective intervener

During an investigation, Child Protection practitioners must not disclose any information arising from the investigation except as provided for in s. 205(2)(b)(iii). Information can be disclosed to an authorised person.

Such an authorisation can be made if the practitioner reasonably believes that disclosure is necessary to assist in the investigation of the subject matter of the report, and may be oral or written. Prior to discussing details of the case, practitioners should state that they are authorising the person with whom they are speaking to receive information in accordance with the requirements of the CYFA. It is good practice where possible for this authorisation to be provided and accepted in writing (a standard form is available for this purpose). Where this is not possible a note that the person was authorised to receive information by Child Protection should be made on the client information system.

This authorisation enables a practitioner to disclose details (including the child's identity, the status of the report, for example, that it is under investigation, relevant information about the child and family, the nature of the concerns) to someone they reasonably believe has information about a child or their family that will assist the investigation.

A person authorised under s. 205(2)(b) may then disclose relevant information to the practitioner and are protected in the same way as reporters if they do so (ss. 208, 209).

Information can also be shared with people who are authorised to have access to the record of an investigation (s. 205(2)(b)(ii)), either as individuals (any Child Protection practitioner can authorise an individual orally or in writing) or as members of an authorised class.

Protection of the identity of persons providing information during an investigation

- s. 209 Confidentiality

The identity of persons who provide information to Child Protection during an investigation is protected in the same way as the identity of a reporter.

Standard

Child Protection must not disclose the identity of persons providing information in confidence during the course of an investigation of a report, to anyone except a person in connection with a court hearing or VCAT or Section 332 review, unless,

- The person gives their written consent.
- The Secretary believes on reasonable grounds that the disclosure is necessary to ensure the provision of treatment or assistance to the child.

Record of investigation

- s. 206(2) Record of investigation

Following an investigation where a decision is made not to issue a protection application, it is an offence to disclose the record of an investigation (by enabling access to the client file on the database, by disclosing printed documents from the client file or by informing unauthorised people of the outcome of an investigation or of any information obtained during the investigation) to anyone other than the child, their parents, another Child Protection practitioner, a police member, or a person in connection with a review by VCAT or a panel appointed under section 332, or a member of a class of people authorised in writing by the Secretary or the Chief Commissioner of Police.

Collecting information under a temporary assessment order

- s. 234 Protection of privileges

Where a temporary assessment order is made, a person can refuse to provide information if doing so may lead to self-incrimination or if the information is subject to legal professional privilege or client legal privilege. The Child Protection practitioner must advise them of their rights in this regard.

- s. 238 Report to court by Secretary

The Child Protection practitioner must provide a report to the Children's Court by the date specified in the temporary assessment order. A copy must be provided to the child, the child's legal representative, the child's parent and the child's parent's legal representative (unless the Court has made an order under s.531 or an order under s.238(3).dispensing with service on that person,)

Protective intervention phase

Information sharing with community services and information holders at protective intervention phase

- s. 192 Secretary may request provision of information.
- s. 193 Disclosers protected

Where an investigation has been completed but there is no protection order, community services and information holders are authorised to disclose information relevant to the protection and development of a child in response to a request by Child Protection. Information can also be collected and disclosed with the consent of the person to whom the information relates. A 'Request for information' letter can be provided to information holders, if requested, when seeking information under s. 192 of the CYFA - see Related content.

Child Protection may provide relevant information regarding the child and the nature of the concerns to assist the discloser to determine what is relevant.

Any person can provide information to Child Protection at any time where the information constitutes a report under ss. 28, 29, 183 or 184.

Reports to the Children's Court

All reports

- s. 552 Confidentiality of reports

Where a protection report (sometimes referred to as an application report), disposition or additional report is prepared for the Children's Court, the report or any part of its content may be disclosed by the Child Protection practitioner, only to the child or their lawyer, a parent or their lawyer, another Child Protection practitioner, a lawyer representing the Department of Human Services, a person representing the department in the Family Court or, where necessary, to an honorary youth justice or youth parole officer.

Protection (application) and disposition reports

- s. 556 Access to protection report
- s. 559 Access to disposition report

Copies of a protection report (application report) or disposition report prepared by a Child Protection practitioner must be provided before the hearing of the proceeding to the subject child, the child's parent, the child's legal representative, the parent's legal representative, the police (if they made the protection application), a party to the proceeding, any other person specified by the court.

Upon application by any of the above, the court may order Child Protection to withhold the report or part of it from the child or their parent or any other person specified by the court, if the court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

If the court makes such an order **it is an offence** for any person who receives a copy of the report to provide it, or any of its content, to a person that the court has ordered it to be withheld from.

Additional reports (for example, extension reports, breach reports, clinic reports)

- s. 561 Access to additional report

Copies of an additional report prepared by a Child Protection practitioner must be provided before the hearing of the proceeding to the subject child, the child's parent, the child's legal representative, the parent's legal representative, the police (if they made the protection application), a party to the proceeding, any other person specified by the court.

If the Child Protection practitioner who writes the report is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child or a parent of the child, or the child or a parent of the child or another party to the proceeding notifies him or her of his or her objection to the forwarding of copies of the report, then the practitioner is not required to forward a copy to the child, the child's parent or a person specified by the court. A part of the report may be forwarded if appropriate. The practitioner must notify the registrar of any reports or parts of reports being withheld and also inform any parties that a report, or a part of a report, is being withheld from them.

- s. 562 Access to reports prepared by the Secretary to the Department of Justice

A copy of a report prepared by the Children's Court Clinic must be provided to the Children's Court between 3 and 21 days prior to the hearing.

The court must release a copy of the report to the Secretary, the legal representative of the Secretary or an employee authorised by the Secretary to appear in the family division, the subject child, the child's parent, the child's legal representative, the parent's legal representative, the police (if they made the protection application), a party to the proceedings and any other person specified by the court.

If the court is satisfied that the release of the report or a particular part of the report to the Secretary may cause significant psychological harm to the child, the court may:

- refuse to release the report or part of the report to the Secretary
- determine a later time for the release of the report or part of the report to the Secretary
- release the report to the Secretary anyway.

Therapeutic treatment or therapeutic treatment (placement) application reports

- s. 566 Access to therapeutic treatment application report
- s. 570 Access to therapeutic treatment (placement) report

Copies of a therapeutic treatment application report or therapeutic treatment (placement) report prepared by a Child Protection practitioner must be provided before the hearing of the proceeding to the subject child, the child's parent, the child's legal representative, the parent's legal representative, the police (if they made the protection application), a party to the proceeding, any other person specified by the court.

Upon application by any of the above, the court may order Child Protection to withhold the report from the child or their parent or any other person specified by the court, if the court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

If the court makes such an order it is an offence for any person who receives a copy of the report to provide it, or any of its content to a person that the court has ordered it to be withheld from.

Protection order phase

Information sharing with community services and information holders at protection order phase

- s. 192 Secretary may request provision of information

Where a protection order has been made, community services and information holders are authorised to disclose information relevant to the protection and development of a child to Child Protection, and Child Protection can disclose relevant information to the community service or information holder. 'Request for information' letter can be provided to information holders, if requested, when seeking information under s. 192 of the CYFA - see Related content.

Information sharing with other people at protection order phase

Any person may disclose information to Child Protection at any time where the information constitutes a report under ss. 28, 29, 183 or 184.

Providing a copy of the case plan

- s. 167 Preparation of case plan

Child Protection must prepare a case plan within six weeks of the making of a supervision, supervised custody, custody, guardianship, long term guardianship or therapeutic treatment (placement) order. A copy of the endorsed case plan must be provided to the child and the child's parent within 14 days of the plan being finalised.

A decision regarding the distribution of the plan to other people should be made in accordance with the relevant privacy principles and the best interests of the child. Wherever information or written plans are provided to third parties, practitioners should caution recipients that the information provided is confidential and should not be relayed to others.

It is preferable that personal written information provided for meetings is retrieved from participants where it is not essential they retain it.

Therapeutic treatment investigations

- s. 210(2) Investigation by Secretary

When investigating a therapeutic treatment report, a Child Protection practitioner may authorise a person to receive information arising from the investigation (the child's identity, relevant information about the child and their family) where this is reasonably believed to be necessary to assist in the investigation of the report. Practitioners should state that they are authorising the person with whom they are speaking to receive information in accordance with the requirements of the CYFA. It is good practice where possible for this authorisation to be provided and accepted in writing (a standard form is available for this purpose). Where this is not possible a note that the person was authorised to receive information by Child Protection should be made on the client information system.

- s. 211(2) Record of investigation

Following an investigation of a therapeutic treatment report where a decision is made not to issue a therapeutic treatment application, it is an offence to disclose the record of an investigation of a therapeutic treatment report (either by enabling access to the client file on the database or by disclosing printed documents from the client file) to anyone other than the child, their parents, another Child Protection practitioner, a police member, or a person in connection with a review by VCAT or a panel appointed under s. 332, or a member of a class of people authorised by the Secretary in writing (delegated to the manager, Assistant Director, Child Protection Operations in the Child Protection, Placement and Family Services Branch) or the Chief Commissioner of Police.

- s. 213 Confidentiality

The identity or information likely to lead to the identity of people who provided information in confidence during the investigation of a therapeutic treatment report may only be disclosed to the Therapeutic Treatment Board or a person in connection with a court hearing or VCAT or s. 332 review, unless:

- the person gives their written consent
- Child Protection believes on reasonable grounds that the disclosure is necessary to ensure the provision of treatment or assistance to the child.

Information disclosure restricted for other reasons

Dispute resolution conferences

- s. 226 Confidentiality of dispute resolution conferences

It is an offence for a Child Protection practitioner (or anyone else) who attends a dispute resolution conference to disclose the details of the conference without the leave of the court or the consent of all the parties to the conference.

Children in out of home care

Note: See Advice number 1403, 'Information sharing in out of home care' – refer to Related content for a link.

Media publication of a child's identifying details

Note: See Advice number 1050, 'Release of identifying information to the media regarding a missing child' – refer to Related content for a link.

Interstate liaison

- Schedule 1, Part 5, s. 26 Disclosure of information

Any information may be disclosed to an officer of a child protection authority of a state or territory of Australia or of New Zealand if the information is required to assist them in carrying out duties or exercising powers under a child welfare law of their state or territory.

So, for example, information which would otherwise not be able to be disclosed, such as reporter details and the content of dispute resolution conferences, may be disclosed to the officer from the interstate/New Zealand child protection authority if necessary. All Australian states and territories and New Zealand are subject to legislation enabling information provision across state/national boundaries.

Each divisional Child Protection program has an interstate liaison officer (ILO) who should be consulted before contact with interstate departments is undertaken.

Compulsory disclosure of information

- ss. 194-203 Compulsory disclosure of information

The CYFA provides, in specific situations, for the Secretary of the Department of Human Services to authorise a direction to be given to an information holder to disclose information they may have which is relevant to the protection or development of a child.

The compulsion power is limited in several key ways. It can only be used:

- Where a child is the subject of a Children's Court protection order (order requiring a persons to give an undertaking, a supervision order, a custody to third party order, a supervised custody order, a custody to Secretary order, a guardianship to Secretary order, a long term guardianship order, an interim protection order).
- Where the Secretary has personally authorised an officer who is a Child Protection Operations Manager or someone more senior to direct the disclosure. The power to authorise is not a power that can be delegated by the Secretary to anyone else.
- To compel an information holder to provide information, and exempts police members (s. 195) and Children's Court Clinic practitioners (s. 196(4))
- To collect information relevant to the protection or development of the child.

Every reasonable effort should be made to collect relevant information voluntarily before recommending use of the Secretary's power to authorise a direction to provide information. Compelling the disclosure of information is to be used as a last resort, where other means of gathering the required information have failed.

Where attempts to obtain the information by other means have failed, and a Child Protection practitioner believes authorisation should be sought, in the first instance they should consult with their supervisor, who must obtain the endorsement of the Child Protection Operations Manager and the divisional Child Protection Director or divisional Assistant Child Protection Director.

A Child Protection Operations Manager must approve any request to seek the Secretary's authorisation to direct information from an information holder. The standard form seeking the Secretary's authorisation will include information about the relevant senior manager (Child Protection Operations Manager or above) to be authorised to give the direction to an information holder and the team manager to be authorised to collect the information (ss.194-203 of the CYFA).

A request to the Secretary for authorisation to direct information disclosure will use the standard form and indicate:

- the name of the child
- the type of protection order the child is subject to
- that the person to be directed is a member of an authorised class of information holder and which class
- that the information holder has been properly informed
- why the information holder declined to voluntarily disclose the relevant information required
- what information is required
- the grounds for believing the information holder has the required information
- what form it should take (for example, oral or written)
- what its relevance is
- why it cannot otherwise be obtained.

In approving a direction to be given to an information holder, the Secretary will also authorise a Child Protection Operations Manager, or a more senior manager to give this direction, and a team manager to collect the information. The relevant manager (Child Protection Operations Manager or above) will then forward a signed standard form, to the information holder, which will indicate:

- what information is authorised to be directed
- what form it should take (for example, oral or written)
- what its relevance is
- how the information will be used
- who the information holder is directed to disclose to
- that the information holder may be required to give evidence in the Children's Court in relation to the information that they provide
- what the potential consequences of non-compliance are.

A copy of the authorisation and of the direction will be placed on the child's Child Protection case file. The authorised team manager may collect the information in a variety of way, including through a telephone conversation, a meeting, receiving advice in writing or collecting documents from the information holder. Where written documents are required, these may not be immediately available, but should be provided within a reasonable timeframe.

The information holder may require confirmation of the authorised protective intervener's identity before making any disclosure.

If the information holder refuses to comply with a request for oral information, they will be informed that, if they do not respond as directed without reasonable excuse, their refusal can be notified to the police as an offence.

Where written documentation is requested the information holder will be informed that they may be notified to the police if the documentation is not produced within a reasonable amount of time.

Delegations

Note: This is a summary guide only. Use the Delegations link on the home page to view exact wording.

Section	Type of decision	Delegate
28-29 183-5	Receive a child wellbeing, child protection or therapeutic treatment report	Child protection practitioner
178	Provide information to parents about a child in out of home care	Child protection practitioner
205(2)(b)(iii) 210(2)(b)(iii)	Authorise a person to receive information arising from the investigation	Child protection practitioner
206(2)(f) 211(2)(f)	Authorise a person to have access to the record of an investigation (the client file)	Child protection practitioner.
206(2)(f) 211(2)(f)	Authorise a class of people to have access to the record of an investigation.	Child protection practitioner
194-5	Authorise an officer to direct an information holder to disclose relevant information	The Secretary of the Department of Human Services
196(2)	Direct an information holder to disclose relevant information	Child Protection Operations Manager and above [Once personally authorised by the Secretary]
209(2)	Disclose the identity of people who provide information in confidence during the investigation of a report	Child protection practitioner

Considerations for good practice

Note: Use the Practice Resources link on the toolbar to access further Practice Guidance and Research.

Protecting client privacy

Nearly all information routinely collected by Child Protection is personal or health information, and is sensitive. Child Protection involvement itself is something which most people would prefer to keep private and confidential.

Where information is exchanged in accordance with the requirements of the CYFA, Information Privacy Act and Health Records Act, practitioners and managers should take care that the manner in which the information is communicated protects the privacy of the client to the extent that this is consistent with the child's best interests.

This requires that all information should be handled with care. Only Child Protection practitioners and community service contracted case management staff are authorised to have direct access to the client file. Certain other people (including the client) are allowed to see printed material from the client file in certain circumstances (for example, court reports). See Advice number 1095, 'Freedom of Information (FOI)' – refer Related content for a link.

Where information is shared with other people, this must be done with great care. People should not be provided with more information than they need to know in order to assist the process of promoting a child's best interests and providing advice and assistance to the child and family.

It is sometimes necessary to provide written information to other people about a client, for instance when making a referral. Every effort should be made to ensure that only the person or organisation that needs the information is given access to it. Some simple measures to ensure the confidentiality of information are:

- delivering reports and referral forms personally and directly to the intended recipient
- only using registered mail where material has to be posted
- ensuring that a fax number is correct before faxing material
- always using a fax cover sheet marked 'confidential'
- ensuring that the recipient is available to receive the fax and asking them to confirm receipt by phone
- only using email where any personal information is confined to an attachment that is password protected, and providing the password to the recipient by phone
- when making first visits to a family home, ensure the address is correct and verify the identity of the occupant before divulging you are from Child Protection and the name or client details.

Contact for further procedural advice

- Department of Human Services maintains a Privacy website at <http://www.dhs.vic.gov.au/privacy>
- The Department maintains a network of Privacy Contact Officers (PCO) in all divisions and branches. PCOs who are not Child Protection practitioners may have difficulty providing advice sufficiently specific to the needs of child protection. Contact can be made for advice directly with the Privacy Unit regarding specific cases.

- Health Services Commissioner

30th Floor, 570 Bourke Street Melbourne Victoria 3000

Telephone: 1800 136 066

Website: www.health.vic.gov.au/hsc

- Victorian Privacy Commissioner

Level 11, 10-16 Queen Street Melbourne Victoria 3000

Telephone: 1300 666 444

Website: www.privacy.vic.gov.au

For information about Freedom of Information (FOI) requests

Telephone: (03) 9616 9910

Mail: dhsfoi@dhs.vic.gov.au

Website: <http://www.dhs.vic.gov.au/foi/access.htm>

- Supervisor
- Divisional solicitor/Court Officer
- Child Protection Litigation Office (CPLO)
- Legal Services Branch - Central Office
- Statutory and Forensic Services Design Branch - Child Protection Unit

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:

1050 - Release of identifying information to the media regarding a missing child

1091 - Security of information in Child Protection practice

1093 - Breaches of confidentiality by Child Protection staff

1094 - Case recording

1095 - Freedom of Information (FOI) and Administrative Release Guidelines (ARG)

1154 - Receiving and processing reports

1403 - Information sharing in out of home care

1498 - Use of private information regarding family members within a court report

1524 - Criminal records check

Request for information under s.192 - letter template

A guide to information sharing for Child Protection, Child FIRST and Family Service workers [PDF, 73.9 KB]

Protocol for the Transfer of Child Protection orders and Proceedings and Interstate Assistance [PDF, 179.8 KB]

All protocols contain specific guidelines about information sharing between Child Protection and the protocol agency

External Links:

For this Advice, there are no specific external links.

Checklist of required standards

Note: A checklist of the required standards follows. It can be utilised as a reference point for practitioners and supervisors or printed and utilised in supervision to assist in ensuring required tasks are undertaken.

No.	Standard	Completion due
	<p>Child protection must not disclose the identity of persons providing information in confidence during the course of an investigation of a report, to anyone except a person in connection with a court hearing or VCAT or Section 332 review, unless,</p> <ul style="list-style-type: none"> • The person gives their written consent. • The Secretary believes on reasonable grounds that the disclosure is necessary to ensure the provision of treatment or assistance to the child. 	