

Guidance on information exchange

Voluntary out-of-home care

This fact sheet provides an overview of information exchange that supports the Keep Them Safe goals of shared responsibility and collaboration. The care and protection of children and young people is dependent upon shared information and access to accurate and relevant information that will assist organisations working with children and young people, especially when assessing risk, making decisions and identifying and delivering appropriate services.

The Wood inquiry into the child protection services in 2008 found a number of issues that hampered collaboration and exchanging of information. The state privacy laws and regulations in place at the time were a major barrier to interagency work. The complexity of those laws resulted in reluctance from organisations to exchange information, doubting whether it was lawful. In January 2010 legislation changes were made to the Act to free up the exchange of information between Government and NGOs. With Chapter 16A any organisation considered a prescribed body can exchange information that relates to a child or young person's safety, welfare or wellbeing.

Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 provides the legislative framework for the exchange of information about children and young people between prescribed bodies. Importantly, Chapter 16A overrides NSW privacy laws.

Organisations that provide or arrange voluntary out-of-home care are prescribed bodies for the purposes of information exchange under Chapter 16A. As such, voluntary out-of-home care agencies are authorised to exchange information that helps deliver services and supports to promote the safety, welfare and wellbeing of a child or young person.

Chapter 16A permits, and sometimes requires, organisations to share information about children or young people, irrespective of their client's consent. It takes precedence over the protection of confidentiality or an individual's privacy because the safety, welfare and wellbeing of children and young people is paramount.

Voluntary out-of-home care agencies are only expected to share information with other prescribed bodies involved in the safety, welfare or wellbeing of children and young people who are currently in, have been in, or are being assessed for voluntary out-of-home care.

Other prescribed bodies include:

- a designated agency (an agency accredited to provide statutory out-of-home care)
- a registered agency (an agency registered to provide voluntary out-of-home care)
- a NSW government department or public authority
- a government school or a registered non-government school or a TAFE
- a public health organisation or a private hospital
- a children's service
- an accredited adoption service provider
- the NSW Police Force
- any other organisation that has direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.

Information may only be exchanged when it will assist an agency to:

- make a decision or undertake an assessment or plan relevant to the safety, welfare or wellbeing of a child or young person or class of children or young persons
- initiate or conduct an investigation relevant to the safety, welfare or wellbeing of a child or young person or class of children or young persons
- provide a service relating to the safety, welfare or wellbeing of a child or young person or class of children or young persons
- manage any risk to a child or young person or class of children or young persons.

Relevant information may include information about:

- a child or young person's circumstances or history
- a parent or other family member
- a person who has a relationship with a child or young person
- an employee or carer
- an agency's dealings with a child or young person, including past support or service arrangements, and the outcomes of those dealings.

Information exchange under Chapter 16A can be:

- in writing via letter
- by fax or email
- or orally over the phone or in person.

Where information is exchanged orally, a written record of the information exchange must be made and retained on file. This written record must include details of the person's identity that information was exchanged with as well as what steps were taken to confirm their identity.

Requesting information

A voluntary out-of-home care agency can request information from another prescribed body under Chapter 16A.

When requesting information a voluntary out-of-home care agency should:

1. Identify the person that the information request concerns. If it is not the child or young person, identify the person's relationship to the child or young person or class of children or young persons.
2. Explain how the information requested relates to the safety, welfare or wellbeing of the child or young person or class of children or young persons.
3. Explain why the information will assist the voluntary out-of-home care agency to make a decision, assessment or plan, or to initiate or conduct an investigation, or to provide any service, or to manage any risk to the child or young person or class of children or young persons.
4. Provide a sufficient level of detail to assist the prescribed body to understand the purpose of the request and to locate the relevant information in an efficient manner.
5. Provide background to the request/direction, including whether or not the voluntary out-of-home care agency has informed the child, young person or parent(s) that the information has been sought and if not, why not.
6. Indicate the time period for which the information is sought (e.g. for the last 6 months) and the type of information sought.
7. Provide a realistic timeframe for the prescribed body to provide the information - negotiating a due date can ensure urgent matters are prioritised.
8. Preferably contact the prescribed body by phone before making the request to discuss the voluntary out-of-home care agency's needs and to ensure the request is well targeted.

Responding to requests for information

A voluntary out-of-home care agency that receives a request for information under Chapter 16A must provide the requested information if it reasonably believes providing the information may assist the agency and there are no reasons to refuse the request. A voluntary out-of-home care agency is only required to provide requested information that it holds – it is not obliged to collect information to respond to a request.

Refusing a request for information

A voluntary out-of-home care agency is not obliged to provide any information requested if it reasonably believes this would:

- endanger a person's life or physical safety
- contravene any legal professional or client legal privilege
- prejudice the investigation of any contravention or possible contravention of a law, a coronial inquest or inquiry, or care proceedings
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a breach or possible breach of a law
- not be in the public interest.

If a voluntary out-of-home care agency declines to provide information, it must notify the requesting agency in writing of its refusal and the reasons for it, with reference to the above exemptions. Where there is a dispute between agencies as to the release of information, there should be a joint review of the request and refusal to provide information, escalating to chief executive level if required. An independent body should be asked to mediate such a dispute if agreement cannot be reached.

Useful training, checklists and templates for requesting, responding to or declining a request for information is available at www.community.nsw.gov.au/kts/guidelines/info-exchange/provide-request