

# INFORMATION SHEET 7 - ACCESS TO INFORMATION

## Quick Reference

*This information is primarily intended for Administrative Staff and Health Practitioners*

*All individuals now have a statutory right to access their own health information, in both the private and public sectors.*

*Public sector access continues to be via FOI*

*Private sector access will be a new right available under new privacy laws*

*Section 25 sets out the requirements on access to information collected before the commencement date of the HRA*

*The right to access is limited by exceptions that are set out in the respective Acts. Some key exceptions are listed here*

*Draft Issued November 2001*

## WHAT RIGHTS OF ACCESS DO CONSUMERS HAVE?

Privacy law provides consumers with a right to access their own **personal and health information**. It also outlines a framework for the manner in which a request for access may be exercised and how a response should be actioned.

Whether the information is held in the public or private sector will determine the framework that applies:

- Personal and health information held in the **public** sector, that is Government Departments and other statutory bodies (eg public hospitals) will continue to be accessible via the **Freedom of Information Act 1982 (FOI Act)**
- Personal and health information held by **private sector organisations** will be subject to new access rights under privacy legislation. This includes information held by Department of Human Services (DHS) funded services (except in the relatively few cases where the funding and service contract provides that it is subject to FOI). Most Primary Care Partnership (PCP) member agencies will be subject to Privacy Access Principles.

All DHS funded services must provide access on request to consumers and / or former clients (or their **authorised representatives**) to their own personal and health information.

## WHICH INFORMATION IS COVERED?

The Health Records Act 2001 (HRA) Access Principle (HPP6) applies to all health information. However, in relation to the extent and form of access, the HRA distinguishes between:

- Information **collected before** the compliance date of 1 July 2002 (target date 1 March 2002), and
- Information **collected after** that date.

In summary the following applies: -

- If a request is for information **collected before** the compliance date, the organisation is only required to provide factual clinical, diagnostic and treatment or planned management material, and it may provide this in an accurate summary rather than in full. However, if the organisation **agrees** to provide a wider range of information and / or to do so in a fuller form than a summary, then it may do so.
- If a request is for information **collected after** the compliance date, the organisation must provide access to all relevant health information, in full and in an agreed form (refer Access Procedures detailed below).

The Information Privacy Act 2000 (IPA) Access Principle (IPP6) applies to all non-health personal information. This Act does **not** distinguish on the basis of when information was collected; on the contrary, all non-health personal information is subject to this principle, regardless of when it was collected.

## EXCEPTIONS TO THE RIGHT OF ACCESS RULE

The right to access is limited by prescribed exceptions that set out circumstances when access may be refused. Key exceptions include where providing access would:

- Pose a **serious threat** to the life or health of any person
- Unreasonably affect the privacy of **other** individuals
- Expose information given **in confidence** by a third party
- Be **unlawful** (eg other legislation requires you to withhold information)
- Be likely to prejudice a **law enforcement** function by a law enforcement agency

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*The Privacy Acts provide a broad framework for organisations to design their own access procedures*

## ACCESS PROCEDURES

Privacy laws provide a framework for organisations to use in designing their own procedures to facilitate access. Key aspects of this framework include:

- **Notice:** organisation must notify consumers of their right of access to their information at the time it is collected, or as soon as practicable afterwards
- **Deadline:** organisations normally have **45 days** from the date they receive a request within which to provide a decision on access
- **Written decision:** organisations must provide a **written decision** to the consumer and include **grounds** for any refusal of access, citing the exception applied
- **Serious threat of harm:** Special requirements apply to the exception for serious threat of harm – refer to Division 3 of Part 5 of the HRA
- **Forms of access:** the HRA provides for a range of forms of access, including viewing the documents, receiving copies, having information explained by an agreed practitioner and so on – the key is to reach agreement on a mutually acceptable form
- **Fees:** no charge may be made to lodge a request for access but a fee for **providing** access may be charged as prescribed in the Health Records Regulations
- **Appeals:** a consumer who is not satisfied with a decision may complain to the either the Health Services Commissioner (for health information) or the Victorian Privacy Commissioner (for non-health information) and seek conciliation of the matter

## ACCESS IN A PCP ENVIRONMENT

In a PCP (Partnership) environment an episode of care may involve a number of agencies in the delivery of services to a consumer. As a result, a request by an individual consumer for access to the same information, held in a number of different agencies, could potentially be lodged with multiple agencies. Partnerships should establish procedures within their privacy protocols to deal with such instances to enable a coordinated response in such cases.

Partnerships should ensure that privacy protocols provide clear guidance to member agencies on processes to be adopted to handle requests for access that may fall outside Privacy Access Principles such as **informal** access and **release of information** to another person.

## WHEN MIGHT INFORMAL ACCESS BE APPROPRIATE?

In limited circumstances, it may be appropriate to consider releasing information to a client without requiring them to go through a formal process. Generally speaking, the criteria for considering informal access would be when the information requested is:

- Easy to find and retrieve and
- Small in volume and
- Easily separated from other information that may be exempt from release, that is it falls within the exceptions in FOI or Privacy laws.

When informal access has been provided, as a matter of good business practice, a record should be kept detailing (at a minimum) the date on which access was provided, the form of access and the recipient of the information.

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*Access by a third party (other than an authorised representative) is dealt with in Information Sheet 5 – Use and Disclosure*

## RELEASE TO ANOTHER PERSON

In the context of privacy principles, the term 'access' refers to a person's own information (including where the access is sought by that person's authorised representative, on their behalf); the term 'disclosure' refers to access to **another** person's information.

Privacy Disclosure Principles provide for strictly limited release of one person's information to another, usually where the former consents to this. For further detail see Information Sheet 5 Use and Disclosure.

If the person is **deceased**, the information may be disclosed to their senior next of kin, or to another individual if the senior next of kin consents to this.

## SOME TIPS FOR MANAGING ACCESS IN THE NEW PRIVACY ENVIRONMENT

- Partnerships should develop within their privacy protocols clear guidance on the expectations of their member agencies when handling requests for access to personal health information, including establishing clear procedures for inspections and mediated access
- Member agencies should ensure that user-friendly information about access rights and procedures is freely available to clients and others inquiring about access to records
- Timelines for decisions on requests for access are specified within Privacy Laws – a clear monitoring process should be set in place to ensure that all requests are dealt with and a response provided to the consumer within the required timelines
- Pro forma letters for acknowledgments, requests for clarification, decisions etc should be developed and modified to individual requests as needed

## LEGAL ADVICE: DISCLAIMER

Information contained within this information sheet is not intended to substitute for legal advice. Primary Care Partnerships and / or member agencies should take advice from their legal advisors in determining whether their policies and practices comply with all relevant legislation.