

Guidelines on internal information sharing

Introduction

The Children's Guardian may make guidelines regarding information sharing within the Office of the Children's Guardian (OCG) pursuant to s 174(2)(d) of the *Children's Guardian Act 2019*.

These guidelines summarise the legislative framework and processes for internal sharing of personal information between Directorates within the OCG and are published on the OCG website.

What information do the Guidelines apply to?

The OCG obtains information from multiple sources, including external agencies and individuals. This includes information about individuals and organisations for the purpose of administering its broad range of functions.

The different kinds of information collected and generated by the OCG include:

- **information about individual workers**, including personal information, health information, criminal history and workplace misconduct information, assessments, references, interview records, the individual's responses to allegations, and decisions.
- **information about children and young people**, including personal information, health information, case plan and assessment information.
- **information about other individuals**, such as alleged victims, co-accused, or referees, including personal information, health information, police, court and other information.
- **information about organisations**, including contact details, financial, human resources, corporate, policy and procedural information, assessments, investigation records, decisions and records of regulatory action taken against the organisation. For example, warnings, conditions placed on accreditation.

'Personal information' is defined in section 4 of the *Privacy and Personal Information Protection Act 1998* (PPIPA) to mean:

information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

What is Information Sharing?

'Information Sharing' within the OCG means passing information gathered from one area in accordance with a function of the OCG to another area exercising a different function. Where necessary this ensures the Children's Guardian can make well-informed decisions.

When making decisions under the *Children's Guardian Act 2019* and the *Child Protection (Working with Children) Act 2012*, the safety, welfare and wellbeing of children, including protecting children from child abuse, is the paramount consideration.

The sharing of information from one area to another within the OCG is a 'use' of that information for the purposes of the PPIPA, even if the information is not taken into account in decision making.

The PPIPA does not define the term 'use', so it should be given its ordinary meaning, i.e. action taken by an agency internally to utilise information for its own purposes. Information will only be shared internally when there is an operational need to know the information.

These guidelines do not address the sharing of information external to the OCG.

Information Sharing Principles

Information Sharing principles that underpin these Guidelines are based on legislative requirements which are in place to address confidentiality, privacy and procedural fairness considerations.

The following pieces of legislation set the parameters for Information Sharing:

1. *Children's Guardian Act 2019* (CG Act)
2. *Child Protection (Working with Children) Act 2012* (WWC Act)
3. *Privacy and Personal Information Protection Act 1998* (PPIPA), specifically sections 16, 17 and 24.

All the Children's Guardian's statutory functions under the CG Act and WWC Act are undertaken for directly related purposes within the meaning of section 17 (b) of PPIPA.

This means that information can be shared regardless of the purpose of collection and use and there is no need to rely on ss 24 or 25 of PPIPA, but s 16 of PPIPA must be satisfied (i.e. relevant, accurate, up to date, complete and not mis-leading). This would apply to general information sharing in view of the objects of the legislation being commonly aligned with child protection.

There may be occasions where information was obtained for a different reason, such as through an OCG investigation. For these matters, the information needs to meet criteria in section 24 and 25 of the PPIPA. These matters should be escalated to the relevant Directors for assessment and decision.

Functions of the OCG

The monitoring functions of the OCG encompass the scrutiny, oversight and supervision of other agencies and can involve education, capability building and general guidance by the OCG. Generally monitoring does not involve a finding or decision from the OCG or obtaining any third-party information apart from that already obtained by the entity.

Monitoring can lead to preliminary inquiries for the purpose of investigation, and in these instances the OCG can request other information to decide whether to carry out an investigation. Information gathered for this purpose can only be used for other investigations. The OCG's monitoring functions are exercised by the OOHC Systems and Regulation Directorate, the Child Safe Organisations Directorate (Compliance) and the Reportable Conduct Directorate.

The OCG can also make its own findings (which may be reviewed by the NSW Civil and Administrative Tribunal or involve an appeal to another court). In administering the WWC Act, the WWCC Directorate obtains and uses other agency information to review, assess and make decisions about child related employment applications. Investigative functions are undertaken by the OOHC Systems and Regulation Directorate (when assessing an accreditation application or renewal), the Child Safe Organisations Directorate (when investigating an alleged breach of either the CG Act or the WWC Act) and the Reportable Conduct Directorate.

What are the relevant privacy provisions?

Section 16 of the PPIPA requires a public sector agency before using any personal information about an individual – for any purpose or function – to take ‘all reasonable steps’ in the circumstances, to ensure the information is:

1. Relevant – for example, it must be closely connected to what is being considered; logically and rationally assists in decision-making; and rumour, hearsay, gossip and innuendo that is unsubstantiated should not be taken into account
2. Accurate – for example, it must be correct
3. Up to date – for example, it must be current or incorporate the latest available information
4. Complete – for example, it must be whole and thorough, in its entirety, not wanting in detail or incomplete
5. Not misleading – for example, it must not give the wrong idea or impression

The basic premise of this section is to make sure agencies do not rely on incorrect information when making decisions. Many matters in the OCG involve a combination of both direct and circumstantial evidence, as well as evidence about tendency or pattern. It is important the receiving Directorate weighs and applies that information appropriately, in accordance with the parameters for its own decision-making. There will be occasions where the information needs to be assessed first, to determine if more detailed information is required.

Taking all of the above into account will ensure the probative value, or that the information serves to prove fact (that is, that there is a risk to the safety of children). This is important because the information being shared can be used as evidence against a person and if it lacks in probative value (that is, if it is irrelevant, inaccurate, not up to date, incomplete or misleading), it could lead to a miscarriage of justice.

Section 25 of the PPIPA exempts a public sector agency from the privacy principles if the agency is lawfully authorised not to comply or non-compliance is otherwise permitted, necessarily implied or reasonably contemplated under an Act or law. The agency must act in good faith with information, in the circumstances. However, none of the exemptions apply to section 16 of the PPIPA.

Sharing information required by legislative provisions

Under section 56(1) of the CG Act certain information must be shared between the Reportable Conduct Directorate and the WWCC Directorate.

Section 56 (1) of the CG Act requires a report to the WWCC Directorate where a finding of reportable conduct or a finding of a reportable conviction has been made in relation to sexual misconduct, a sexual offence or a serious physical assault.

Section 56(2) requires the referral of information to the WWCC Directorate where there is an opinion that there is a real and appreciable risk to the safety of children during the course of an investigation.

Although required by law, these referrals and reports must be undertaken in compliance with section 16 of PPIPA. This means that Reportable Conduct Directorate must take reasonable steps to ensure that the information is relevant, accurate, up-to-date, complete and not misleading.

Sharing information not required by legislative provisions but permissible

Information that is not required to be shared by legislative provisions may nevertheless be shared between directorates of the OCG. However, when doing so, it is imperative that section 16 of the PPIPA is taken into consideration before sharing the information.

This means the OCG is required to take reasonable steps to ensure that the information is relevant, accurate, up-to-date, complete and not misleading. One way this obligation can be discharged in these circumstances is by disclosing the information to the applicant for the purposes of allowing the person to respond to the information and verifying the accuracy of the information.

Where information is held by one Directorate and this information would also be available to another Directorate during the course of exercising their function, this information may be shared between each Directorate to avoid the situation where a person or agency is required to provide the information twice or more to the OCG. For example, this would apply to sharing information between the OOHC Systems and Regulation Directorate and the Reportable Conduct Directorate relating to reportable conduct notifications and findings.

Where the Children's Guardian requires information under section 40 of the WWC Act, in exercising its monitoring and auditing function, this information may be kept for a period as necessary for the monitoring and auditing function and cannot be shared for an investigative function.

Process to share information internally

Under these guidelines, OCG Directorates take the approach set out below to share information lawfully with other Directorates or teams administering different statutory functions. This process is designed to ensure compliance with section 16 of the PPIPA.

Steps for sharing information

Step 1

- Document the basis on which the information is relevant to share

Step 2

- Consider the purpose for which the information was collected and the purpose for which the information is proposed to be used. In most instances, the purposes will be the same, ie to protect children - if so, move to Step 3
- However, if the purposes are different, consider:
 - if the information was specifically obtained for an investigative purpose, the information must be reasonably necessary to enable the receiving Directorate to exercise its own investigative or complaint handling functions (s24). If appropriate, consider verifying the information with the person of interest.
 - only share information to be used for a monitoring purpose if the sharing is authorised by law (s25).

Step 3

- Consistent with section 16 of the PPIPA and the Information Privacy Protection Principles (at Tab A), take reasonable steps to ensure the information is:
 - accurate
 - up to date
 - complete
 - not misleading

Step 4

- Consider whether any irrelevant personal information should be deidentified before sharing with the other Directorate or team. If so, deidentify any irrelevant personal information.

Step 5

- Share the information with the other Directorate/team

Step 6

- Both Directorates/teams document the date, purpose and nature of information shared in their respective ICT systems/databases.

Governance arrangements for these guidelines

The implementation of these guidelines is monitored through the Information Coordination Group, comprising Directorate and team representatives. The Information Coordination Group monitors the implementation of the guidelines, raises any emerging practice issues, and develops further internal tools and resources to continuously improve practice.

Any related operational issues are to be resolved between Directorates in the first instances, or to the OCG Board as necessary.

Review of the Guidelines

The Guidelines will be updated on an ongoing basis, as needed. They will be formally reviewed annually.

Tab A

NSW Information Privacy Protection Principles

Collection

- 1. Lawful:** Only collect personal information for a lawful purpose, which is directly related to the agency's function or activities and necessary for that purpose.
- 2. Direct:** Only collect personal information directly from the person concerned, unless they have authorised collection from someone else, or if the person is under the age of 16 and the information has been provided by a parent or guardian.
- 3. Open:** Inform the person you are collecting the information from why you are collecting it, what you will do with it and who else might see it. Tell the person how they can view and correct their personal information, if the information is required by law or voluntary, and any consequences that may apply if they decide not to provide their information.
- 4. Relevant:** Ensure that the personal information is relevant, accurate, complete, up-to-date and not excessive and that the collection does not unreasonably intrude into the personal affairs of the individual.

Storage

- 5. Secure:** Store personal information securely, keep it no longer than necessary and dispose of it appropriately. It should also be protected from unauthorised access, use, modification or disclosure.

Access and Accuracy

- 6. Transparent:** Explain to the person what personal information about them is being stored, why it is being used and any rights they have to access it.
- 7. Accessible:** Allow people to access their personal information without excessive delay or expense.
- 8. Correct:** Allow people to update, correct or amend their personal information where necessary.

Use

- 9. Accurate:** Make sure that the personal information is relevant, accurate, up to date and complete before using it.
- 10. Limited:** Only use personal information for the purpose it was collected unless the person has given their consent, or the purpose of use is directly related to the purpose for which it was collected, or to prevent or lessen a serious or imminent threat to any person's health or safety.

Disclosure

- 11. Restricted:** Only disclose personal information with a person's consent or if the person was told at the time that it would be disclosed, if disclosure is directly related to the purpose for which the information was collected and there is no reason to believe the person would object, or the person has been made aware that information of that kind is usually disclosed, or if disclosure is necessary to prevent a serious and imminent threat to any person's health or safety.
- 12. Safeguarded:** An agency cannot disclose sensitive personal information without a person's consent, for example, information about ethnic or racial origin, political opinions, religious or philosophical beliefs, sexual activities or trade union membership. It can only disclose sensitive information without consent in order to deal with a serious and imminent threat to any person's health or safety.