

Disclosure of placement information to parents and significant others

Statutory guidelines

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Purpose

Family and community can experience life-long grief when their child is not in their care. They have a right to know about what arrangements have been made for the care of their child.

It is important the agency responsible for a child's care maintains contact with family and significant others, even where a child may not wish to have face-to-face contact. This is to make sure important relationships and connections are not lost. It is also critical that caregivers are supported to understand the importance of their role in supporting these relationships.

Family members and people in the child's community may also struggle to engage with the agency or child at times. Having contact with a child or participating in meetings may be painful or overwhelming. In these circumstances, the role of the agency in maintaining contact and keeping family informed of their child's placement and progress is critical for making sure that connections and relationships can be rekindled in the future. This includes maintaining contact with siblings or other family members who may also be in care.

Legislation

Section 149B-K of the *Children and Young Persons (Care and Protection) Act 1998* provides a framework for providing this information and the Children's Guardian is responsible for developing guidelines to assist agencies to manage the disclosure of placement information to parents and other people of significance to a child.¹

These guidelines are set out below and will assist agencies to comply with practice requirement 3 of the out-of-home care and adoption Code of Practice.

¹ S.149D of the *Children and Young Persons (Care and Protection) Act 1998*

Guidelines issued by the Children's Guardian on the disclosure of placement information to parents and significant others

The *Children and Young Persons (Care and Protection) Act 1998* requires the designated agency providing the placement to disclose information about the placement to the child's parents as soon as practical after the placement commences. The Act also requires the designated agency to provide information regarding the child's placement to any other person who is significant to the child, where that person has made a written request for information.

The Act defines a 'parent' as a person who had parental responsibility immediately before the child or young person was placed in out-of-home care or immediately before the Children's Court made an order placing them under the parental responsibility of the Minister of Family and Community Services or the Secretary of the NSW Department of Communities and Justice.² In most cases, this will be the biological parent of a child or young person, but it could also include a guardian or an adoptive parent.

'Significant others' may include, but are not limited to, step parents, siblings, extended family members, peers, family friends and community members. Where a person other than the parent requests information about the child's placement, the agency will need to determine whether it is appropriate to provide placement information, and the amount and type of information to provide. The child should be consulted, where age-appropriate, and provided with help to express their views. When making decisions about providing placement information for Aboriginal and Torres Strait Islander children, agencies should recognise that ties between children and their community members are not necessarily based on blood or marriage relationships, and agencies should consult with family members to understand the important connections for the child.

Principles underpinning the disclosure of placement information

Providing placement information to parents and significant others assists the child to maintain important relationships and to help both the child and their parents and people of significance cope with separation and loss. Therefore, as a general principle, agencies should provide parents and people who are significant to the child with as much information about the placement as possible.

For carers and members of the child's household, disclosing placement information may cause some anxiety, particularly where a placement is new or where carers have not had the opportunity to develop relationships with the child's family and extended network. Sensitive and skilled casework is required to assist children and their carers to understand the purpose and importance of sharing information with parents and significant others.

Agencies should talk to children about the people who are important to them and who they want to be kept informed of their placement. This information should be documented and reviewed regularly, as the people who are important to a child may change over time. The agency may proactively reach out to these people to invite them to request information about the child's placement.

The amount and type of information that is provided is decided on a case-by-case basis. Where a

² S.149B(1) of the *Children and Young Persons (Care and Protection) Act 1998*

placement is new and the agency is still developing an understanding of the child's family dynamics, the agency may choose to provide non-identifying information initially while it considers any risks in disclosing more detailed information.

For some children there may be circumstances where only limited placement information can be provided. This includes situations where:

- there are reasonable grounds to believe that disclosing identifying or high-level placement information may impact on the safety, welfare and wellbeing of the child, their carer or any member of the household in which the child lives, including residential care
- in recognising and respecting the wishes of the child it is not appropriate to release identifying information to parents or significant others
- a carer or member of the household has reasonable concerns regarding the safety, welfare and wellbeing of the child or people in the household if identifying information was to be disclosed
- there are orders from a court or tribunal regarding the disclosure of placement information.

Disclosure of placement information should be seen as an ongoing part of casework as children's wishes may change over time. The level of risk regarding disclosing placement information may also change over time and agencies should review the amount and type of information to be provided to parents and significant others as part of the annual case plan review. For example, a parent who is highly distressed following the removal of their child may not be in a position to appropriately manage high-level identifying information about the placement. However, the risk of misuse of this information may decline over time.

Types and amount of placement information that may be disclosed

The type and amount of placement information that may be disclosed is decided by the agency on a case-by-case basis, taking into account known information about risk, as well as the views and wishes of the child and their carers.

It may be helpful for agencies to consider the types of information that could be provided in terms of categories.

For example, **high-level identifying** information may include the full names of the child's carers and household members, the address and contact details for the placement, information about the carer such as their employment or other activities and identifying information about the school or educational facility attended by the child.

Information that **may allow a person to establish identity** could include a description of the child's school or information about the locality of the school, or an email address for the carer that may allow a person to work out the carer's full name.

Non-identifying contact information could include non-identifying email addresses or mobile phone numbers and general information about the locality in which the child lives. If a child lives in a small community the agency may decide not to release this information where there is reasonable grounds to believe this could place the safety, welfare and wellbeing of the child or young person, or the household, at risk.

Non-identifying information about events of significance could include events in the life of the child's household. For example, births, deaths, marriages, separations or changes to the household composition, moving house or changing school (that is, informing of the event but not providing identifying information).

Non-identifying information about the placement could include general information about the

household composition such as the number of carers, ages of other children in the placement, information about pets, family routines, cultural background and religion of the carers, and any other information that would provide a parent with a sense of the day-to-day life of their child.

When considering the type and amount of placement information to be disclosed, agencies should consider any risks to the child, their carers or members of the household. Relevant information to inform a risk assessment may include:

- a person's history of violence or threatening behaviour
- any drug or alcohol issues which may impair a person's capacity to appropriately manage their relationship with the child or their carers
- the person's views about the child being in care and their attitudes towards the carer
- any other information that indicates a person may pose a risk to the child or their carer.

When the agency has decided the amount and type of information that may be provided, the decision with a rationale for the decision should be documented. All disclosures of placement information should be approved by an appropriately authorised senior officer within the agency.

Agencies should review this decision regularly and at least annually, during case plan reviews.

Consulting with children and their carers regarding disclosure of placement information

Children must be given an opportunity to express their views regarding the type and amount of placement information to be provided, relative to their age and stage of development.³ It may therefore be necessary to assist a child to consider the implications of providing placement information, including how providing this information may help them to maintain a connection to their family. The child's views should be documented and the final decision about the information to be disclosed should be explained.

The views of the authorised carer should also inform the decision regarding the amount and type of placement information to be disclosed. Where **high-level identifying information** is disclosed, the agency must obtain **written consent** from the carer before it is disclosed.⁴ The *Children and Young Persons (Care and Protection) Act 1998* states that if the carer has not given written consent within 28 days the agency may still decide to disclose high-level identifying information.

Disclosing high-level identifying placement information where the carer has not provided consent

Where a carer has refused to provide written consent to disclosing high-level identifying information, the agency may still disclose this information, where it is satisfied that doing so would not pose a risk to the safety, welfare and wellbeing of the child, the carer or any other member of the household.

Where an agency has decided to disclose high-level identifying information without the consent

³ S149D(a) and 149I(3)(a) of the *Children and Young Persons (Care and Protection) Act 1998*

⁴ S149E of the *Children and Young Persons (Care and Protection) Act 1998*

of the carer, it must provide⁵:

- the carer with written reasons why it believes that disclosure will not pose a risk to the safety, welfare and wellbeing of the child, the carer or any member of the household
- the carer with a written notice stating that the information will not be disclosed within 21 days after the date of the notice and that the decision to disclose the information may be reviewed by the NSW Civil and Administrative Tribunal (NCAT)
- a copy of the written reasons if the child is 12 years or older, unless the agency is of the view it is not in the child's best interests to do so (for example, if the written reasons contain information about the parents that may be distressing for the child or not appropriate for their age and stage of development)
- a copy of the written reasons to any person nominated by the child if the child is less than 12 years of age, unless the agency is of the view that it is not in the child's best interests to do so. A copy of the written reasons should be kept on the child's records to be shared with them once they are 12 years, unless the agency considers that it is not in their best interest to do so.

Some private health information about carers or their household members cannot be shared unless written consent is provided, regardless of the provisions in the *Children and Young Persons (Care and Protection) Act 1998*. For example, if a parent is aware of a carer's identity and that carer has been diagnosed with a medical condition, the agency cannot provide information about that medical condition unless the carer consents to this information being shared.⁶

Review of a decision to disclose high-level identifying information without the carer's consent

A decision to disclose high-level identifying information without the carer's consent may be reviewed by NCAT⁷. The carer or the agency at the request of the carer may make an application for review within 21 days of the written notice of the agency's intention to disclose the information.

Where a carer requests that the agency makes an application for review on their behalf, the agency **must** comply with this request. However, the agency must first undertake an internal review of the decision.

Where an application for a review of the decision to disclose high-level identifying information has been made, the agency must not disclose the information until the review has been resolved.

Refusal to disclose placement information

If an agency decides not to disclose placement information to a parent or significant other, it must provide written notification to the person of the decision. There is no avenue for a parent or significant other to seek a review of this decision. While there is no requirement in the *Children and Young Persons (Care and Protection) Act 1998* to do so, it is good practice and in the interests

⁵ S149F of the *Children and Young Persons (Care and Protection) Act 1998*

⁶ See the *Health Records and Information Privacy Act 2002*

⁷ S149G of the *Children and Young Persons (Care and Protection) Act 1998*

of fairness and transparency to provide the parent or significant other with reasons for the decision not to provide placement information and to offer support and assistance where appropriate.

A decision to withhold any placement information from a parent or significant other should be clearly documented and reviewed regularly (at least annually as part of the case plan review).

Improper disclosure of placement information

The *Children and Young Persons (Care and Protection) Act 1998* establishes an offence for improperly disclosing information obtained in connection with carrying out responsibilities under the Act. This includes placement information.

However, a person who discloses placement information in accordance with sections 149B-149K of the Act and these guidelines, in good faith, does not contravene the confidentiality provisions of the Act, the *Health Records and Information Privacy Act 2022* or the *Privacy and Personal Information Protection Act 1998*. To act in good faith means to act with an honest and genuine intention or with a sincere belief. Keeping clear records about decisions made around the type and amount of placement information to be disclosed will help demonstrate that disclosure of placement information was made in good faith.

Sharing information regarding the progress of children and young people in care

The *Children and Young Persons (Care and Protection) Act 1998* requires that a designated agency provides parents with information about the progress and development of their child.⁸ This includes information such as health and educational information, information about social and emotional development, and activities the child is engaged in.

Supporting the participation of family and significant others in key decisions such as case plan reviews is one way to keep parents informed of their child's progress and development.

Agencies may share placement information and information about progress and development in whatever manner is most appropriate for the parent, including in writing or in conversations with parents and significant others. Agencies should keep a record on the child's file regarding information that has been shared, and important information should be stored safely in the event that a parent comes forward in the future seeking information about their child.

⁸ S.163 of the *Children and Young Persons (Care and Protection) Act 1998*