



information
and privacy
commission
new south wales

Statutory guidelines

Health Records and Information Privacy Act 2002 (NSW)

Statutory guidelines on training

Contents

From the NSW Privacy Commissioner	3
PART 1: USING AND DISCLOSING HEALTH INFORMATION FOR TRAINING	4
1.1 When can I use or disclose health information for training?	4
1.2 When can I rely on the 'training exemption' and the statutory guidelines on training?.....	6
1.3 Key terms in the 'training exemption' explained	7
Some examples of where the 'training exemption' and the statutory guidelines on training might apply	10
PART 2: STATUTORY GUIDELINES ON TRAINING	11
Appendix A	15
Health Privacy Principle 10	15

The statutory guidelines were issued in 2004 by former NSW Acting Privacy Commissioner John Dickie.

From the NSW Privacy Commissioner

The *Health Records and Information Privacy Act 2002 (NSW)* (the HRIP Act) creates a scheme to regulate the collection and handling of health information by public and private sector organisations in New South Wales. It applies to every organisation that is a health service provider or collects, holds or uses health information.

It aims to promote fair and responsible handling of health information by:

- protecting the privacy of an individual's health information held in the public and private sectors
- enabling individuals to gain access to their health information
- providing an accessible framework for resolving complaints about the handling of health information.

The objects of the HRIP Act are to:

- balance the public interest in protecting the privacy of health information with the public interest in the legitimate use of that information
- enhance the ability of individuals to be informed about their health care
- promote the provision of quality health services.

The HRIP Act contains 15 Health Privacy Principles (HPPs). These HPPs are the key to the HRIP Act. They are legal obligations that describe what organisations must do when they collect, store, use or disclose health information.

This publication outlines the requirements for the use and disclosure of health information for training. It has been prepared after public consultation. You should read it in conjunction with the HRIP Act and the Office of the Privacy Commissioner NSW 'User Manual: Handbook to Health Privacy'. If you are from the public health system, you should also read it in conjunction with the NSW Health Department's 'Privacy Manual'.

Part 1 explains some of the issues you need to consider when using and disclosing health information for training. It also includes a checklist and examples to help you decide what you should do in different circumstances.

Part 2 contains the statutory guidelines on training. You must comply with these statutory guidelines on training if you are seeking to use or disclose health information relying on the 'training exemption' in HPP 10(1)(e) or 11(1)(e). These statutory guidelines on training are issued under section 64 of the HRIP Act.

If you need any further information, please contact Office of the Privacy Commissioner NSW on (02) 8019 1600.

John Dickie, Acting Privacy Commissioner 1 September 2004

PART 1: USING AND DISCLOSING HEALTH INFORMATION FOR TRAINING

1.1 When can I use or disclose health information for training?

This checklist will tell you when you can use and disclose health information for training, and whether you need to comply with the statutory guidelines on training. The checklist assumes that:

- the information you are proposing to use or disclose is 'personal information' – that is, information about an individual whose identity can reasonably be ascertained from the information
- the information you are proposing to use or disclose is 'health information'
- you are covered by the HRIP Act

1. Could the purpose of the training be served by using or disclosing de-identified information?

Yes	<input type="checkbox"/>	You should use or disclose de-identified information only. If you de-identify the information then you do not need to read any further, and you do not need to comply with the statutory guidelines on training. [Note: although the process of de-identifying health information is a use of the information by the organisation for the purposes of training, it does not need to be conducted in accordance with the statutory guidelines on training]
No	<input type="checkbox"/>	Go to question 2.

2. Are you proposing to use or disclose the health information with the consent of the individual(s) concerned?

Yes	<input type="checkbox"/>	You can use or disclose the health information relying on the 'consent exemption' in HPP 10(1)(a) or 11(1)(a). You do not need to read any further, and do not need to comply with the statutory guidelines on training.
No	<input type="checkbox"/>	Go to question 3.

Best practice tip: Wherever possible, you should seek the consent of the person. Use or disclosure authorised by the person is almost always to be preferred to relying on one of the other exemptions, provided the consent is freely given and informed. It is important that the person does not feel pressured to participate.

3. Was the health information collected for the primary purpose of the training?

Yes	<input type="checkbox"/>	You can use or disclose the health information for the training relying on HPP 10(1) or 11(1). You do not need to read any further, and do not need to comply with the statutory guidelines on training.
No	<input type="checkbox"/>	Go to question 4.

4. Is the training directly related to the primary purpose for which the health information was collected and would the person reasonably expect you to use or disclose their health information for the training?

Yes	<input type="checkbox"/>	You can use or disclose the health information for the training relying on the 'direct relation exemption' in HPP 10(1)(b) or 11(1)(b). You do not need to read any further, and do not need to comply with the statutory guidelines on training.
No	<input type="checkbox"/>	Go to question 5.

For example:

- *Where a health service provider trains its receptionist, the use of the patient's file for the purposes of the training might be considered a directly related purpose within the reasonable expectations of the person. As long as the health information used is only strictly what is necessary for the training.*
- *Where the person has been informed that their personal information will be used or disclosed for training as part of the admission procedure in the hospital, this would generally be considered a directly related secondary purpose within the reasonable expectations of the person.*

5. Can you rely on the 'training exemption' to use or disclose the health information?

Yes	<input type="checkbox"/>	You can use or disclose health information relying on the 'training exemption' in HPP 10(1)(e) or 11(1)(e) if you: <ul style="list-style-type: none"> • meet the four exemption criteria in Part 1.2 of this publication and • comply with the statutory guidelines on training in Part 2 of this publication You should read on.
No	<input type="checkbox"/>	You cannot use or disclose the health information for the training. (Unless you have identified another exemption in the HRIP Act that permits you to do so)

1.2 When can I rely on the ‘training exemption’ and the statutory guidelines on training?

Under the ‘training exemption’ you can use or disclose health information, without the consent of the person, for the secondary purpose of training if **all** the following four criteria are met.

Criteria 1

The use or disclosure is reasonably necessary for the training of employees of the organisation or persons working with the organisation.

Criteria 2

You have taken reasonable steps to de-identify the information, or the purpose of the training cannot be served by using or disclosing de-identified information and it is impracticable to seek the consent of the person to the use or disclosure.

Criteria 3

If the information could reasonably be expected to identify individuals, the information is not published in a generally available publication.

Criteria 4

The use or disclosure of the health information is in accordance with the statutory guidelines on training.

Please note that you must meet **all four** criteria to use or disclose health information relying on the ‘training exemption’. The key terms in the criteria are explained in Part 1.3.

These four criteria are a summary of the requirements of the ‘training exemption’. Please see Appendix A for the full text of the exemption.

1.3 Key terms in the ‘training exemption’ explained

To help you decide whether you can rely on the ‘training exemption’ to use or disclose information, the key terms contained in the ‘training exemption’ are explained below.

Is the use or disclosure ‘reasonably necessary’?

When deciding whether the use or disclosure is ‘reasonably necessary’, consider to what degree the health information is needed for the training activity. For example sometimes training may be just as effectively provided using hypothetical case studies.

What is meant by ‘training’?

‘Training’ means any course, instruction or work experience offered by or in connection with an organisation for the purpose of teaching or education.

For example an induction or orientation course for new employees, grand rounds, the opportunity to observe the provision of health services or attend an educational case conference.

Who are ‘employees of the organisation or persons working with the organisation’?

The ‘training exemption’ covers the training of both ‘employees’ and ‘persons working with the organisation’ meaning people who may not be employees but who are providing a service to the organisation and / or working in conjunction with the organisation. The ‘training exemption’ therefore covers the training of people:

- employed on a contract
- working on a part time or casual basis
- working on commission
- students in medicine, nursing, and other related health professionals undertaking a clinical practice placement in a hospital
- health care professionals returning to their profession after a prolonged absence
- overseas students on scholarship or training visas.

It is important to recognise that the ‘training exemption’ does **not** provide a basis for disclosing health information to persons who are **not** working with the organisation.

Could de-identified information be used?

If the training can be provided by using or disclosing de-identified information, then you should proceed this way. This may involve you converting 'identifiable' information (information that allows identification of a specific individual) into 'de-identified' information. De-identified information is information from which identifiers have been permanently removed, or where identifiers have never been included. De-identified information cannot be re-identified.

However sometimes de-identified information cannot achieve the purpose of the training. An obvious example is where the training involves direct patient contact.

What are 'reasonable steps to de-identify'?

When de-identifying information, you should consider the capacity of the person or organisation receiving the information to re-identify it or re-link it to identifiable information. Removing the name and address may not always be enough, particularly if there are unusual features in the case, a small population, or there is a discussion of a rare clinical condition. Reasonable steps to de-identify might also include removing other features, such as date of birth, ethnic background, and diagnosis that could otherwise allow an individual to be identified in certain circumstances.

When is it 'impracticable to seek consent'?

The fact that seeking consent is inconvenient or would involve some effort or expense is not of itself sufficient to warrant it 'impracticable'. Some examples of where it might be impracticable to seek consent include if:

- the individual is unconscious
- the age and / or volume of the information is such that it would be very difficult or even impossible to track down all the individuals involved
- there are no current contact details for the individuals in question and there is insufficient information to get up-to-date contact details
- a complete sample is essential to the integrity and success of the training and the training would not be possible if any of the subjects refused to allow their information to be used.

What is a 'generally available publication'?

A 'generally available publication' is defined in section 4 of the HRIP Act to mean a publication that is generally available to members of the public, either in paper or electronic form.

What does ‘in accordance with the statutory guidelines on training’ mean?

The statutory guidelines on training are legally binding. You must comply with them to lawfully use or disclose health information relying on the ‘training exemption’. They are contained in Part 2 of this publication.

Some examples of where the ‘training exemption’ and the statutory guidelines on training might apply

You might need to rely on the ‘training exemption’ and comply with the statutory guidelines on training if:

- You are conducting an orientation or induction course for employees or persons working with your organisation. It is reasonably foreseeable that this might involve them seeing or having access to identifying health information. De-identified information will not serve the purpose and it is impracticable to seek the consent of the individual(s) that the health information relates to.

- Your organisation offers clinical practice placements to students in medicine, nursing and other health professions. It is reasonably foreseeable that the students might access identifying health information in a number of ways as part of their training including:
 - observing the provision of health services to patients or clients;
 - directly providing health services to a patient or client;
 - as a member of a team that is providing health services to a patient or client;
 - attending case conferences and team meetings where patient management issues are discussed
 - attending demonstrations of, or learning to use, clinical and administrative information systems relevant to their role; and
 - in reviewing client records.

There may be some circumstances where seeking consent is impracticable (for example where the patient is unconscious). De-identified information will not serve the purpose, and yet the training experience is considered to be a particularly valuable one (this may occur most frequently in accident and emergency placements).

PART 2: STATUTORY GUIDELINES ON TRAINING

1. Application of the statutory guidelines on training

- 1.1 Organisations seeking to use or disclose health information relying on the ‘training exemption’ in Health Privacy Principle 10(1)(e) or Health Privacy Principle 11(1)(e) must do so in accordance with these statutory guidelines on training.
- 1.2 The ‘training exemption’ and these statutory guidelines on training regulate the situation where the purpose of the training cannot be served by using or disclosing de-identified information and where it is impracticable to seek the consent of the person to the use or disclosure of their health information for the training.
- 1.3 Failure to comply with these statutory guidelines constitutes a breach of the Health Privacy Principles and the HRIP Act.

2. Respect for dignity and personal privacy

- 2.1 Each time an organisation uses or discloses a person’s health information without their consent for the purposes of training, the public interest in training is being given priority over the public interest in the protection of privacy. It is important for organisations to recognise this, and to only use and disclose health information in such circumstances where the training experience is considered to be a particularly valuable one.
- 2.2 An overriding obligation for organisations using or disclosing health information for training is at all times to respect the dignity and privacy of the individual to the greatest extent possible.

3. Undertaking to be signed by employees and persons working with the organisation

- 3.1 Prior to using or disclosing health information in the circumstances covered by the ‘training exemption’, organisations must ensure that each employee and person working with the organisation who will be trained or who will access the health information during the training process, signs an undertaking stating that they have been made aware of the requirements of the Health Privacy Principles in the HRIP Act, and that they understand they are required to comply with them.

- 3.2 Specifically, the undertaking must state that the employee or person working with the organisation:
- (a) is aware of the general requirements of the Health Privacy Principles and these statutory guidelines on training; and
 - (b) recognises that a failure to comply with the Health Privacy Principles and these statutory guidelines on training will be a breach of the HRIP Act; and
 - (c) understands that they are only entitled to access health information necessary or essential to them properly fulfilling the terms of their work/placement; and
 - (d) undertakes not to disclose health information obtained in the course of the training, except as authorised by law; and
 - (e) undertakes to minimise the taking of notes (or other forms of record) containing identifying data; and where such notes (or other forms of record) containing identifying data are made, undertakes to de-identify these before removing them from the organisation's premises; and
 - (f) undertakes to handle the health information in accordance with any information privacy and security policies or procedures operating within the organisation; and
 - (g) undertakes that if the information could reasonably be expected to identify individuals, that the information will not be published in a generally available publication.
- 3.3 The terms of this undertaking may be incorporated into any existing agreement or contract that the organisation has or will enter into with employees or persons working with the organisation.

4. Other conditions imposed on use and disclosure by organisations

- 4.1 Organisations seeking to use or disclose health information relying on the 'training exemption' in Health Privacy Principle 10(1)(e) or Health Privacy Principle 11(1)(e) must:
- (a) be reasonably satisfied that the person or organisation conducting the training will make those being trained aware of the privilege that they are being granted; and
 - (b) where the organisation itself is providing the training, take reasonable steps to ensure that any notes (or other forms of record) containing identifying data and made by persons accessing the information are kept to a minimum.

4.2 Where disclosure is being contemplated, the disclosing organisation must reasonably believe that:

- (a) the recipient of the information will not further disclose the information; and
- (b) the recipient will apply appropriate security measures for the protection of that health information (appropriate security measures may include locked filing cabinets and/or electronic security such as password protection, electronic audit trails and virus protection); and
- (c) the recipient will comply with the other requirements contained in these statutory guidelines on training.

5. Organisation may decline to disclose

5.1 An organisation from which health information is sought for the purposes of the training of employees of the organisations or persons working with the organisation may decline to agree to the information it holds being used or disclosed, even where that use or disclosure would be in accordance with the Health Privacy Principles and these statutory guidelines on training.

Best practice tip – prepare a statement of reasons

One way for organisations to monitor their own compliance with the statutory guidelines on training is by preparing a statement of reasons setting out any uses and disclosures under the 'training exemption'.

In the case of student placements, the statement of reasons could be prepared in conjunction with the teaching institution seeking to arrange the student / clinical practice placement.

The statement of reasons gives organisations the opportunity to:

- (a) identify the circumstances in which the organisation uses or discloses identifying health information without consent for the purposes of training, and review these circumstances where necessary; and

- (b) explain to patients, clients and other members of the public the valuable training and educational experience to be gained where employees and persons working with the organisation are able to train in a “real life environment”; and
- (c) ensure that patients, clients and other members of the public are fully aware that their health information will only be used without their consent for training in limited and exceptional circumstances as regulated by these statutory guidelines on training.

The statement of reasons could be made available to members of the public (for example as a pamphlet, or on a website) or incorporated into the organisation’s privacy policy document(s).

The statement of reasons could contain the following information:

- (a) reference to these statutory guidelines on training;
- (b) a summary of the training to be conducted, the purpose of that training, and the value in the training experience;
- (c) an outline of the type of health information that is to be used or disclosed;
- (d) the reasons for believing that the requirements of HPP10(1)(e) and HPP11(1)(e) have been met (having regard to the 4 criteria set out in Part 1 of this publication)
- (e) the position / category of the person/s who will be responsible for conducting the training;
- (f) the position / category of the person/s who will be trained;
- (g) the steps taken to ensure that the security of the health information will be maintained;

Organisations could prepare a generic statement of reasons covering classes of person and classes of training and revise this on an annual basis.

Appendix A

Health Privacy Principle 10

Limits on use of health information

(1) An organisation that holds health information must not use the information for a purpose (a "secondary purpose") other than the purpose (the "primary purpose") for which it was collected unless:

(e) Training

the use of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:

(i) either:

(A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or

(B) reasonable steps are taken to de-identify the information, and

(ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and

(iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph.

Health Privacy Principle 11

Limits on disclosure of health information

(1) An organisation that holds health information must not disclose the information for a purpose (a "secondary purpose") other than the purpose (the "primary purpose") for which it was collected unless:

(e) Training

The disclosure of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:

(i) either:

(A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or

(B) reasonable steps are taken to de-identify the information, and

(ii) if the information could reasonably be expected to identify the individual, the information is not made publicly available, and

(iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph.