

26 January 2016

Lee M

fyi-request-3499-d0190259@requests.fyi.org.nz

Dear Lee M

Official Information Act Requests

Thank you for your request of 19 December 2015 (at 8.13pm) asking for information under the Official Information Act 1982 (the Act). Your questions and ACC's responses are set out below. Due to the similarity in subject matter and the response given, some answers have been grouped.

Question 1

1. Referring to a paragraph in ACC's response to Mr David Lawson, uploaded to the www.fyi.org.nz website and dated 16 December 2015, which stated:

ACC staff are guided by the following principles in how we use a client's authority:

- *Requesting authority at the right time*
- *Being specific about what information we need and why*
- *Returning or destroying records received and not asked for*
- *Only using records for the purposes for which they were requested.*

...you requested a copy of the document that contains the aforementioned policy, guidelines or principles.

ACC is pleased to attach information on ACC's Authority Principles. Please note that the two small diagrams on this page ("Authority principles diagram" and "Process on a page") are reproduced in full size as separate documents. The document containing Frequently Asked Questions is designed to accompany the Process on a page document.

As this information comes from ACC's staff intranet, staff contact names have been removed in accordance with section 9(2)(a) of the Act, in order to protect their privacy. ACC does not believe there to be any public interest considerations that outweigh this need for protection.

Questions 2-5

2. *If the ACC were to receive personal health information not asked for - in other words "unsolicited" information - about a client in circumstances where that client had not given their consent or authority (by way of signature) to the ACC 45 claim form, would it be ACC policy to then refuse a request from the client for the "unsolicited" information to be returned to him/her?*

3. *In the abovementioned circumstances and where the ACC may have assured the client that the "unsolicited" information has not been used to assess the client's claim for cover, would it be ACC policy to add the "unsolicited" information to the client's claim and party file*

records in the ACC's EOS system which can then be read by Branch Medical Advisors, managers and staff of the ACC who give "opinions" and make decisions about claims for cover?

4. In the abovementioned circumstances, and where the client has complained to the ACC about the refusal to return the "unsolicited" information, would it be ACC policy to assure the client that it has removed/deleted the "unsolicited" information from the client's claim and party file records in the ACC's EOS system, only to subsequently advise the client that because the "unsolicited information" has been attached to correspondence it has to be retained as an "administrative record" for reasons that the ACC is subject to the Public Records Act 2005 and Health (Retention of Health Information) Regulations 1996?

5. In the abovementioned circumstances, and where the ACC may have advised Fairway Resolution Limited in writing that the "unsolicited" information will not be used in association with any of the client's claims, it has been removed from the claim file, and should not be used in any of the reviews, would it be ACC policy to subsequently tell the client that the ACC has changed its mind and not only has a Branch Medical Advisor been given access to the "unsolicited information" but has also given an "opinion" about same?

There is no ACC policy that exactly matches the scenario you describe. Therefore, this part of your request is declined under section 18(e) of the Act as the information you request does not exist.

In general, however, client requests for personal information and ACC's decisions to provide or redact any of that personal information are managed under the provisions of the Privacy Act 1993.

In addition, ACC can collect information on individual clients for the purpose of managing their ACC claims. Once the information is held by ACC, its obligations under the Privacy Act and Health Information Privacy Code 1994 apply in terms of the storage and use of that information. You can access this legislation on this website: <http://www.legislation.govt.nz>.

ACC has obligations under the Public Records Act 2005, Health (Retention of Health Information) Regulations 1996 and section 66 of the Accident Compensation Act 2001 to retain information for periods that range from 10 to 75 years. More detail on ACC's retention and disposal schedule relating to claim information can be found here: <http://www.archway.archives.govt.nz/ViewEntity.do?code=DA442>.

Questions 6-7

6. What can an ACC client do in similar circumstances as those described above to ensure that the ACC returns the "unsolicited" information to him/her?

7. What can an ACC client do in similar circumstances as those described above to ensure that all copies and references to the "unsolicited" information are removed/deleted from the client's claim and party file records, the ACC's "administrative records", and the Branch Medical Advisor "opinions"?

As above, ACC clients can always request access to their personal information under the Privacy Act. In situations where a client requests deletion or removal of the information from their file, ACC will make a decision on a case by case basis and in compliance with various legislative provisions.

For example, the Accident Compensation Act 2001 requires clients to provide information for claim decision making and to receive ongoing entitlements (see sections 55 and 72 in particular). ACC will need to determine whether the information is relevant and required for the claim before it can be returned to the individual. As mentioned previously, the provisions

of the Public Records Act 2005, Health (Retention of Health Information) Regulations 1996, Privacy Act 1993, and Health Information Privacy Code 1994 will also be considered.

ACC is happy to answer your questions

If you have any questions about the information provided, ACC will be happy to work with you to answer these. You can contact us at GovernmentServices@acc.co.nz or in writing to Government Services, PO Box 242, Wellington 6140.

You have the right to complain to the Office of the Ombudsman about our decision to withhold some of the information. You can call them on 0800 802 602 between 9am and 5pm on weekdays, or write to The Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

Government Services

Government Services

Enc. Authority principles intranet page, diagrams on Authority Principles and Process on a page, and New client authority process: Frequently asked question.

Authority principles

Here are some tips on best privacy practice when it comes to gaining client authority.

Contact:	1	Last review 22 Dec 2015	Next review 21 Dec 2016
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Introduction

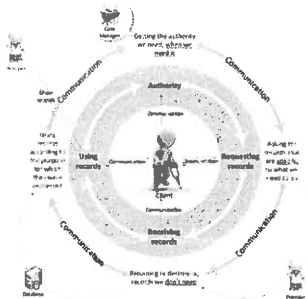
The 2012 Independent Review of ACC's Privacy and Security Independent Review of ACC's Privacy and Security noted that ACC's practices in relation to the collection of personal information could be improved both in terms of communication with clients and in ensuring we only collect or receive information that is relevant and necessary for our functions and activities.

In response, we have developed the following principles to guide ACC's approach to the way we use a client's authority, including:

- requesting **authority** at the right time
- being **specific** about what information we need and why
- **returning or destroying** records received and not asked for
- only **using** records for the purposes for which they were requested.

Encompassing all this is communication between ACC and our clients.

The picture below illustrates ACC's authority principles.



So what does this mean for you?

if you deal with clients, this means you need to be regularly talking to them to ensure that they know what we're doing with their information and why, before we do it.

You will need to tailor your communication to your particular clients. Some will not want to be told every time we need to contact a third party, others will expect it. You should have this conversation with your client when you need to obtain more information about their claim.

Clients have two options: sign the ACC6300 or provide alternative authority.

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1. ACC6300

Signing the ACC6300 means that the client **authorises ACC to collect medical and other records which are or may be relevant to their claim, for the life of the claim.**

Even though the client has signed the ACC6300, we still need to keep them informed.

It is best privacy practice to notify the client before we seek records from a third party. We need to explain to them what we're doing and why.

As we said above, you should tailor the frequency of this communication with your clients, but you **must** let your clients know what you're doing if there has been a period of inactivity on the file of greater than three months.

2. Alternative authority

You should consider any reasonable request for alternative authority.

Examples of alternative authority are:

- the client wants a copy every referral letter that is sent to a medical specialist

- the client specifies that information can only be gathered from particular sources
- the client sets a time limit on the duration of their authority

If you think a request may be unreasonable or impractical, you need to discuss this further with the client. Be transparent about who we need information from and step the client through the process of what we do with this information. Try to come to an arrangement that allows us to get the information necessary to provide them the entitlements they need, even if it means more frequent contact with the client.

There is no template form for alternative authority. But the particulars should be in writing, signed and dated by the client.

You'll need to capture these particular requests in Eos in the Consent Indicators screen in the Indicators tab using the paragraph noted above. This is really important so that other staff who deal with the claim know about the client's particular requirements.

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Using and disclosing information

We don't need authority to use or disclose information for the purpose of establishing a client's eligibility for entitlements. Under normal circumstances, you **should not** be using or disclosing information for any other purpose.

If you think do need to use or disclose information for another purpose (ie Police requests for information, Research), talk to the Privacy Team about your options.

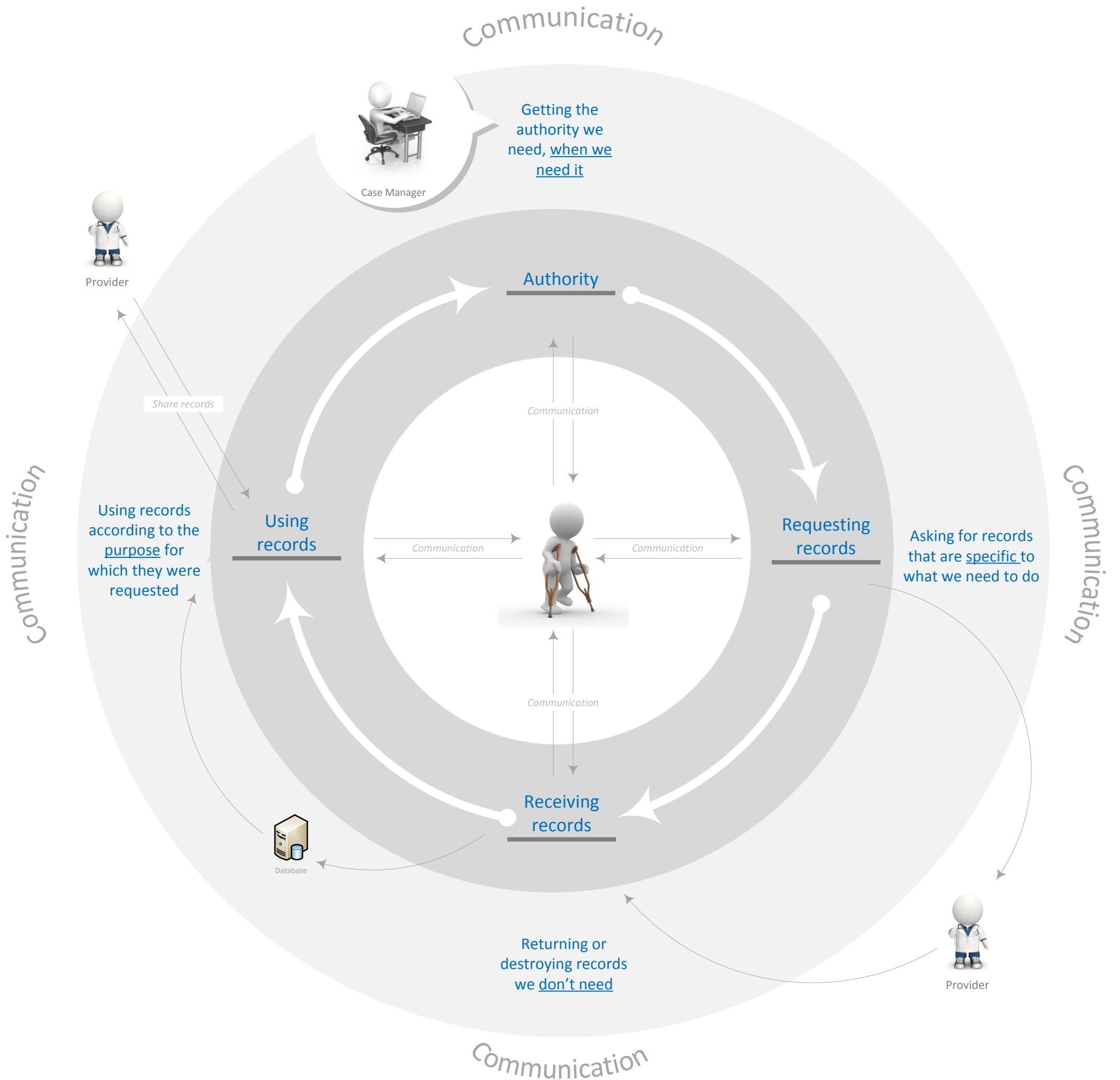
Getting Authority: the process on a page



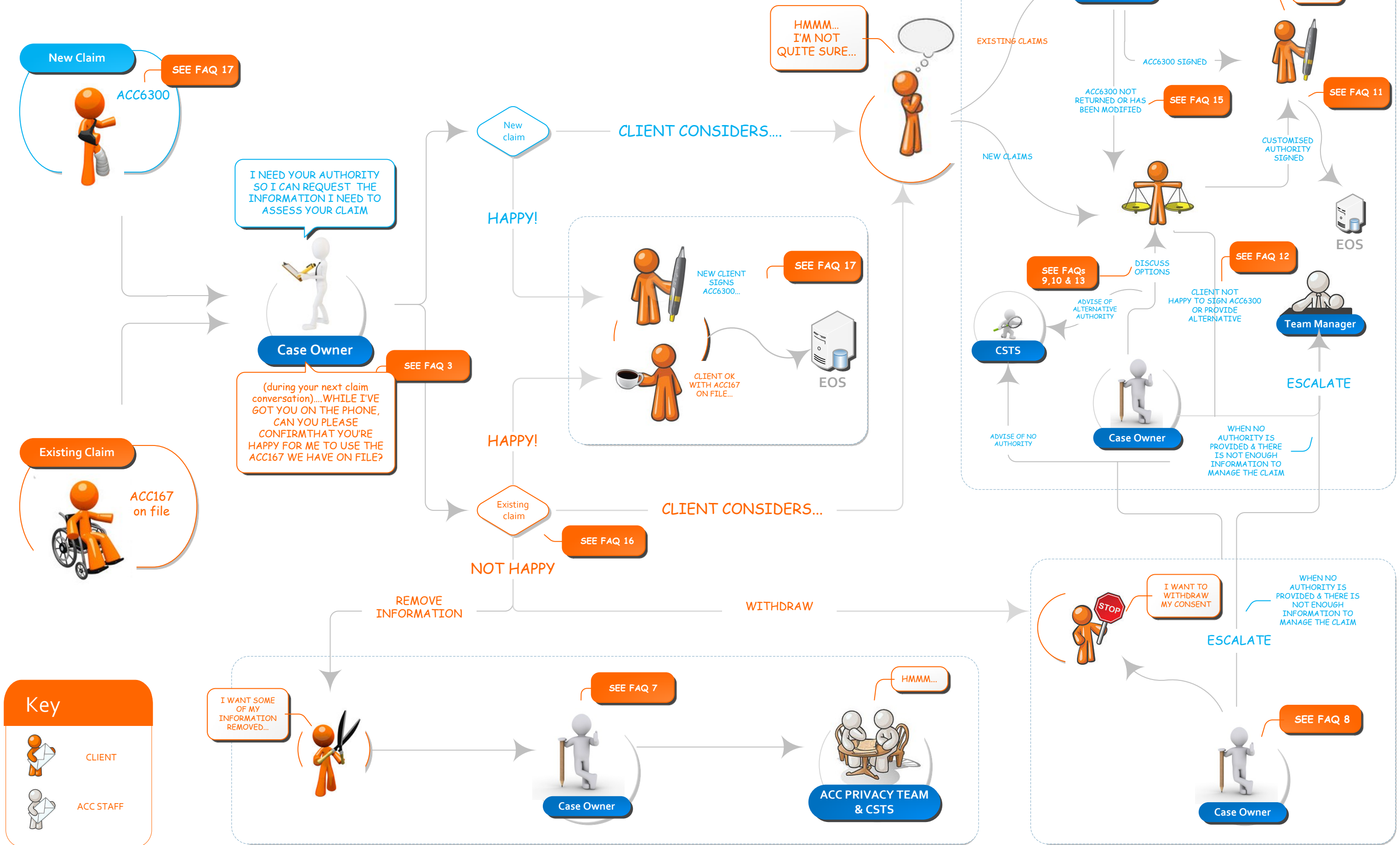
Authority Principles

How we want to work.....

Communicating clearly & openly with the client so there are no surprises.



Getting Authority: process on a page



New client authority process

Frequently asked questions (FAQs)

What's happening?

The ACC167 has been replaced with a new form as a result of a recent Court decision.

1. Why would ACC use a consent form it knew was illegal?

The current ACC167 consent form is not illegal. The Court's decision says that we cannot refuse to pay entitlements because a client declines to sign the current ACC167 form. The Court accepted that ACC had a 'clear and justified interest' in a wide range of information, but it also said the breadth of authority granted by the current wording exceeded the scope which the Court thinks is necessary for ACC to hold.

2. Does this mean ACC is no longer allowed to hold clients' medical information?

Information already held can be retained and used in the management of the client's claim. Information gathered relying on an ACC167 has not been gained illegally. But, once the new authority form is in place, *if and when* further information is required, first contact your client to check they are okay with the existing consent or if they would prefer to sign the new ACC6300 Authority to Collect Medical and Other Records.

3. Is the ACC167 that we have on current claims still useable?

Yes it is. The new ACC6300 Authority to Collect Medical and Other Records form will be used on all new claims moving forward. We are not looking to replace all of the ACC167 forms on existing files - unless a client is not satisfied with their current consent and they request to sign a new form, we require new medical or other information or the client wants to provide authority in another way.

4. What about previous forms of consent that clients have signed? Are these still valid?

Yes they are. ACC has other forms that provide us with the authority to collect information. That authority is still valid. ACC will be reviewing all of the forms that provide authority to collect information to ensure consistency.

In the meantime, if a client has concerns about any of these forms on their claim, discuss this with your Team Manager.

5. Does each claim file need to have authority, or can one authority form cover multiple claims for a client?

An Authority to Collect Medical and Other Records form should be obtained on each separate claim for a client.

6. If a client wants to make a complaint about the way ACC gathered their consent, what do I do?

Attempt to resolve the client's issues yourself, or by talking to your Team Manager, Technical Claims Manager and/or Branch Manager. If you are unable to resolve the issue, handshake the client through to the Customer Support Service team on 0800 650 222 for further resolution. If the client insists on making a formal complaint they can contact the Office of the Complaints Investigator. You should also contact the Office of the Complaints Investigator to let them know of the client's intent.

7. What if a client wants to remove previously gathered information from their file?

Ask the client why they would like to remove this information. Discuss the information which ACC needs to collect on their claim in terms of assessing entitlements.

Request that the client sends you or advises you of the information that they believe is not relevant to their claim file. Forward this information to the Customer Service Technical Support team who will liaise with the Privacy team about this matter. In the meantime, information already held by ACC can continue to be used to manage entitlements.

8. What do I do if a client wants to withdraw their consent?

Discuss with the client why they would like to withdraw their consent. If you are required to collect information on the file, discuss the information which ACC needs to collect, and why it

is necessary for that information to be obtained to progress the claim. Ask the client if they would like to sign the new Authority to Collect Medical and Other Records or provide alternative authority. If we do not need to collect any information at that time, a new Authority to Collect Medical and Other Records is not required.

9. What happens if a client refuses to sign an ACC6300 Authority to Collect Medical and Other Records?

It's important that we understand why a client might be reluctant to sign an authority to collect their records. You should talk with the client directly and investigate the grounds for their reluctance. Some points for this conversation could be:

- Remind the client that the previous form was not illegal – the Court ruling accepted that ACC had a 'clear and justified interest' in a wide range of information, but it also said that the lack of a signature alone is not sufficient basis for disentitlement.
- Explain that without their authority to do so, we may be unable to collect the information necessary to manage their claim, provide entitlements etc.
- Explain that the parties from whom we seek information will want to know that we have the client's authority to do so. Without the relevant information we will not be able to establish their level of entitlements and therefore may be unable to provide them.
- Explore options to provide alternative authority. Refer to Questions 10 and 11 for further detail.

10. What do I do if a client wants to provide alternative authority?

If the client still does not wish to sign the ACC6300 Authority to Collect Medical and Other Records find out what the client is happy to provide authority for. Ask them to provide this in writing, including their signature and the date, and it can be uploaded to the claim. If this limited authority enables you to continue to manage the claim then no further action is required. You will need to advise Customer Service Technical Support (CSTS) that alternative authority exists, so that numbers and content of alternative authority types can be collated and managed by a central point.

If this limited authority does not enable you to collect the necessary information to manage the claim then please escalate to your Team Manager.

11. How do I record alternative authority in Eos?

The document needs to be uploaded to Eos Documents using the code for the ACC6300 form. You will then need to record this in the Consent Claim Indicator in the Indicators tab. You should note the following paragraph ***“Alternative authority provided – limitations may apply. Check actual document.”*** This will prompt staff to look at the alternative authority loaded under the ACC6300 code. If the alternative authority specifies an end date, then this needs to be tasked for follow up at the appropriate time.

12. If the client refuses to sign an ACC6300 Authority to Collect Medical and Other Records or to provide alternative authority, do we continue to manage the claim?

Yes. The claim should still be managed to the extent possible without their authority – up until the point that information is required to be gathered. At this stage, a further conversation with the client will be necessary to understand why a client might be reluctant to sign an authority form or give alternative authority. You will need to advise Customer Service Technical Support (CSTS) that the client have declined to provide any type of authority, so that these instances can be collated..

13. What if the client has specific requests about the way in which their information is handled by ACC?

We'll consider any reasonable requests. Examples might be that the client would like a copy of every referral letter to medical specialists, and a copy of all information sent to the particular person you're referring them to.

It is good case management practice to be transparent and include the client in communications prior to requesting information from a third party.

You'll need to capture these particular requests in Eos in the Consent Claim Indicator in the Indicators tab using the paragraph noted in Question 11. You'll need to check the consent claim indicator before requesting information.

14. Is authority needed to use the information once it is collected?

You don't need authority if you use or disclose the information for the purpose of establishing a client's eligibility for entitlements. You should not be using or disclosing information for any other purpose.

15. How is the current non-compliance process affected?

Refusal to sign the form is not grounds to disentitle a client. We need to be clear regarding what non-compliance is in terms of ACC collecting information. If we cannot collect the required information needed or if the client's rehabilitation cannot progress due to the refusal to sign the form or provide alternative authority, this could jeopardise their ongoing entitlements. You should discuss this situation with your Team Manager and your Team Manager will escalate the issue to CSTS.

16. What if a client tells me that they signed a previous consent form under duress, i.e. they felt forced to sign?

Talk to the client about the fact that the previous form was not illegal, and ACC are still required to gain authority from clients in order to obtain records to make decisions on their claim.

If we need information on their claim, talk to them about signing a new ACC6300 Authority to Collect Medical and Other Records or options to provide alternative authority.

17. Is there a timeframe on the new Authority to Collect Medical and Other Records form?

The form is valid for the life of the claim unless you and your client have negotiated a different timeframe. This should be clearly noted in the Eos Documents tab in the Description & in the Document properties – and also entered into the Consent claim indicator in the Indicators tab. The new date should also be tasked for follow up near the expiry date. If you need more information on the claim after a period of non-activity of at least three months, check that your client is still comfortable with the authority form held on file.

18. I don't work at a Branch - how does this affect me?

Other Units generally use the ACC45 and ACC18 forms to request medical and other records. This will not change at the present time but there is a review of these forms underway. You will be notified of any changes. However, you do need to be aware of the new ACC6300 Authority to Collect Medical and Other Records in case you have queries from your clients, or if you need to use this form.