

17 OCT 2017

Alex Harris

Email: fyi-request-66060a56abf34@requests.fyi.org.nz

Dear Alex

Thank you for your request dated 28 September 2017 requesting information under the Official Information Act 1982, regarding policy for handling requests by police. You requested:

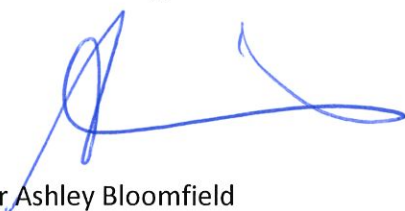
“Any policy or guidance for how staff should handle queries by police about patients.”

Hutt Valley DHB has a ‘Release of Information Requested by the Police’ policy. Please find a copy of the policy attached.

I trust this information fulfils your request.

You have the right to seek a review, under section 28(3) of the Act, by way of a complaint to the Ombudsman.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ashley Bloomfield', is written over a blue horizontal line.

Dr Ashley Bloomfield
Chief Executive
Hutt Valley District Health Board



Release of Information requested by the Police	
Type: Policy	HDSS Certification Standard [optional]
Issued by: Privacy Officer	Version: 2.0
Applicable to: All	Contact person: Privacy Officer
Lead DHB: Hutt Valley DHB	

PURPOSE:

This policy applies when employees have been asked by the Police to disclose information. It does not deal with situations of suspected child abuse or neglect (see [Child Abuse and Neglect policy](#)), or other situations where information is proactively provided to the Police; for example assisting with coroner's enquiries or assisting with locating missing persons.

The key purposes of this policy are to ensure that:

- Employees have guidelines to follow when dealing with requests for information from the Police (including requests for interviews or statements) during any inquiry into activities involving patients/clients or employees of Hutt Valley District Health Board.
- Employees are aware of their individual rights when responding to requests from the Police; and when making statements to the police
- Any information released to the police is compliant with limitations on disclosure of personal and/or health information under the Privacy Act 1993, the Health Information Privacy Code 1994 and Section 22 of the Health Act 1956.

SCOPE

All DHB staff, contractors and volunteers.

POLICY

Hutt Valley DHB recognises and respects the responsibility which the Police have on behalf of the community, to investigate circumstances which may involve breaches of the law and to assist the coroner in investigating unexpected deaths.

All health providers have legal and ethical obligations to keep patient/client health information confidential. The legal rules about health information are set out in the Health Information Privacy Code 1994. Hutt Valley DHB recognises that there may be circumstances where it is appropriate for employees to share health information, and there may be other circumstances where employees may be legally or ethically required to disclose patient/client information.

Hutt Valley DHB generally requires a Police search warrant or other court document prior to disclosing information to the Police, and employees shall not be required to release information to the Police without due consideration being given to their rights as individuals and legal limitations in respect of disclosure of information. Employees should always be

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supported by a senior manager, a union representative or a support person of their choice when speaking to the Police and responding to requests for information, whether verbal or in writing.

PROCEDURES

Guidelines to be followed by employees when dealing with the Police during any inquiry into activities involving patients/clients.

As part of a Police inquiry, Police may attend any Hutt Valley DHB property, ask for information from employees, or ask to speak to any employee. Whenever the Police arrive onsite at a DHB property, the Chief Executive or the appropriate Service Manager/Service Group Manager is to be advised immediately. After Hours the Duty Manger must be advised immediately.

Employees should not provide any patient/client health information to the Police unless:

- The DHB has received a specific request in writing or a search warrant from the Police that has been sighted and approved by a senior manager, the clinical records department manager or the Privacy Officer;
- it is an accident and emergency situation as described below.

If an employee has any doubts on whether they ought to release information to the Police, in the first instance they should decline to make a statement at that time, and seek the advice of a senior manager, or the Duty Manager, or the Chief Medical Advisor or the Executive Director of Nursing or the Privacy Officer.

Accident and emergency circumstances

Where Police are on-site in an accident and emergency situation to do with a serious crime (eg. rape, motor vehicle accident, grievous assault where death may have been or is a possibility) they may verbally request **specific** details regarding the injuries and how they have been sustained (to assist with their enquires and scene examination).

Information so requested should be released and the Police will follow up the request in writing as per the usual procedures. The Manager of the service releasing the information is responsible for ensuring the written request is received.

No statement is to be made to the Police by an employee if he / she have any doubts on whether to release information. Information should be released only when there is no doubt. This may require discussing the matter with a senior manager, the Chief Medical Advisor or the Executive Director of Nursing or the Privacy Officer, or seeking legal advice.

Documents, notes, drugs, containers, equipment or other property of Hutt Valley DHB or the patient/client are **not** to be given to the Police and permission is **not** to be given to remove any such items unless the Police produce a search warrant specifying those items, or in the case of a patient's medical notes, a written request stating the urgency of the situation. Original documents should be retained and copies provided. Written requests for

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notes are to be forwarded to the the Manager, Clinical Records department, or Duty Manager or privacy officer, for consideration and approval.

Alleged rape / sexual assault (ED attendance)

Refer to HVDHB ED guidelines – sexual health ([ED sexual assault guidelines](#))

Non identifying information

Where the information is not to be used in a form which identifies the individual concerned, disclosure of information will not be a breach of the privacy laws (Principle 11(h) or Rule 11(2)(c). If the police simply wish to sight a file and record dates and procedures without taking, or proposing to use identifying information, this will be allowed by exception Rule 11(2)(c)(i). (See Appendix 2.)

Blood and/or tissue required by police

The police may request a blood sample from a patient under the Criminal Investigation (Bodily Samples) Act 1995 if they have reasonable grounds to believe the analysis of the sample would tend to confirm or disprove the person’s involvement in an offence.

The patient, if over 17 years of age, should be asked for their consent before the blood is taken. If under 17 and over 14 years of age, that person has special protection under the Criminal Investigations (Bodily Samples) Act 1995. Advice should be sought from a senior manager, or duty manager or privacy officer or the DHB’s legal advisors.

When the police request a blood sample which has already been taken (a therapeutic blood sample) to remove it from the hospital, a search warrant should be requested unless the patient has given consent for the release of the sample. Non therapeutic tests on existing samples should not be conducted by hospital staff without a court order requesting such action.

In situations where no consent is given or if a patient is in a coma or cannot consent, advice should be sought from a senior manager, or duty manager, or the privacy officer, or the DHB’s legal advisors.

Alleged rape / sexual assault (ED attendance)

Refer to HVDHB ED guidelines – sexual health ([ED sexual assault guidelines](#)).

Discretionary disclosure in response to police requests

Exercise of discretion

DHB staff may exercise their discretion in deciding whether or not to disclose personal or health information in response to a police request.

Consent/authorisation

Obtaining a patient or staff member’s consent/authorisation to disclose health/personal information will eliminate the possibility of DHB or an individual employee being held liable for an unauthorised disclosure. It is therefore always preferable to obtain a patient’s consent to disclose information.

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Disclosure without consent

Where a patient or staff member refuses to consent to disclosure of requested information; or where obtaining the staff member's or patient's consent is either not desirable or not practicable, disclosure may still be made where appropriate in reliance on either Principle 11 of the Privacy Act or Rule 11 of the Health Information Privacy Code. The grounds for disclosure are set out below.

Disclosure of fact of death

The fact of death may be disclosed by clinical staff to:

- any person nominated by the patient before death;
- the deceased's next-of-kin, representative, partner, spouse, close relation; or
- any other person that it is reasonable in the circumstances to inform. (Rule 11(1)(f)).

All medical staff at HVDHB are authorised to disclose this information.

Official Information Act

The Official Information Act 1982 must always be considered by the DHB, because the Board is subject to that Act, where it receives a request from someone who is not:

- the subject of the information; or
- that person's representative or agent.

This means that almost any information held by the DHB may be requested by the police. This does not mean that the health information must be disclosed or that all the information requested is disclosed. Information may be withheld if it is necessary to do this to protect the privacy of a person, including that of a dead person. Individual privacy interests, however, must be balanced against any considerations favouring disclosure in the public interest. If there is any doubt about disclosure, it is recommended that advice be sought from a senior manager, or duty manager, or the privacy officer, or the DHB's legal advisors. Any DHB staff member releasing information in good faith to the police is protected from liability.

If staff refuse a request to disclose information it is possible the police will get a search warrant. It is recommended that advice be sought from a senior manager, or duty manager, or the privacy officer, or the DHB's legal advisors.

Disclosure under the Health Act 1956

Personal or health information may be disclosed to specified individuals for specified purposes (including the police acting in the execution of his/her official powers, duties or functions) under s.22C of the Health Act 1956 (see Appendix 1). This does not mean the information must be disclosed.

If you are satisfied that the person requesting the information is a person specified in s.22C, and that they require the information for the purpose set out in sub section 2, CCDHB has a discretion as to whether or not it discloses the information. In many cases, the disclosure

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will benefit the patient. In other cases, it may be for public safety or policy reasons. If in doubt, you can delay giving the information in order to seek further legal advice.

Police functions include investigating offences and assisting with coroners' enquiries. Information about the circumstances of a patient's death may be communicated to the police that are helping a coroner.

Relevant personal/health information may also be disclosed for the purposes of search and rescue, and locating missing persons which are legitimate functions of the police.

Disclosure on the initiative of HVDHB (no request from police)

Rule 11 (2) of the Health Information Privacy Code 1994 provides that staff are permitted to disclose health information to the police without the consent of the patient under certain conditions.

Disclosure of information should only be initiated by an employee where the matter has first been discussed with senior clinical staff, or following legal advice. For example, if a patient discloses information which implicates that patient, or any other person in a criminal act, it may be justified to disclose the relevant information to the police, although there is no obligation to do so. Care must be taken where a patient gives such information in confidence, particularly where that information is necessary for the purposes of their treatment.

Staff may wish to consider initiating a disclosure to the police where:

- a patient threatens self-harm/suicide or to harm or kill another person
- a patient appears to be acting in a dangerous manner, e.g. insisting on driving when intoxicated
- the patient's injuries appears to have been caused by serious violence, or criminal activity but only where the patient has given consent
- There is suspected abuse/neglect of a child (refer [Child Abuse and Neglect policy](#)).

Staff may approach the police with a general non-identifying description of a situation to establish if there is a police interest. No specific information about a patient or should be disclosed.

Information for employees approached by the Police in connection with any inquiry involving patients / clients or employees

Any employee approached by the Police should take into consideration and be guided by the following information:

- In general no one can be compelled to answer questions put by the Police, except to supply name, occupation and address.
- You are not obliged to say anything to the Police by yourself, and you have the right to speak to your immediate supervisor, a senior manager, your lawyer or support person before speaking to the Police or making a decision on what information to

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provide to the Police. You can also have a support person of your choice present at any Police interview.

- Police may also request a statement from or an interview with DHB employees. The objective of any interview between DHB personnel and police must be that it will assist with police enquiries without causing detriment to the provision of care of patients, especially in acute care areas, and to ensure that staff feel safe in an unfamiliar situation.
- If you are in any doubt whatsoever about your own position or that of others who may be involved, speak with your immediate supervisor or a senior manager **before** speaking to the Police. The senior manager will ensure that legal support is made available to be present at your interview, should this be necessary.
- If you are blameless and have nothing to hide, it can still be difficult to appreciate the significance of questions, and what consequences different answers may produce. Adopt a cautious conservative considered approach, and if in doubt, say nothing or ask for clarification on any questions.
- If you think there is a possibility that you may in some way be responsible for the incident being investigated, and that you may be held accountable, you **should not** make any statements to the Police **before** obtaining advice from a senior manager familiar with your area of work who will consult with the DHB lawyer if in any doubt. The appropriate way to convey this to the Police is: "I do not wish to be interviewed or to say anything until I have consulted my manager or lawyer and received advice".
- Brief details of the patient's name and address can be given by the doctor or nursing staff, but, details concerning the patient's medical condition can only be given by the doctor looking after the patient. The doctor should then ask the patient's permission before giving simple and brief details to the police (full police statements should not be given at the time of treatment).
- In general, the police should not interview a patient who is being assessed and treated in the ED. Statements are not given to the police in the ED. The police give the clerical staff details of the person from whom they wish to take a statement. Police are then told by staff when the statement can be collected. The police do not have to be present for the statement.

Key things to remember when you provide information to Police or are interviewed by the Police:

- Tell the truth and be honest.
- Stick to the facts and what you know – do not guess, speculate or offer opinions.
- If you cannot remember something for sure, say "*I don't remember*", don't guess.
- Try not to talk about things you only know second hand or that you have been told by others (hearsay) – this may be unreliable or incorrect. If you are talking about things you know second hand, make it clear that you have not heard or seen that directly.
- Try not to make assumptions - you will not know all the facts, and inferences and assumptions may be misleading or incorrect.
- Don't be afraid to say "*I don't know the answer to that*" or to ask for clarification if you do not understand the question.

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- Do not make statements on any areas of medical or surgical practice or procedure with which you are not 100% familiar and experienced, as there is a risk of inaccurate description.
- Do not make statements that involve admissions of guilt or expressions of remorse as often these are inappropriate and unnecessary
- It is not your role to attribute motives or intentions to the actions of other people - they should be able to explain themselves if they choose to do so.
- Don't transfer responsibility to or blame other people as this can make your situation worse, and could implicate other people who need not or should not be involved. Just answer truthfully about what you remember and tell the truth.
- Don't discuss any information about the patient/client or any other person which may be subject to obligations of confidentiality– if you have doubts, ask to take a break or to discuss this with senior management or legal support.
- Do not make statements that involve ethical issues
- Do not make statements to the police that involve critical opinion of systems, procedures or the Board - if anything is stated it should be facts alone, not opinion.

Remember that you may well be unaware of the possible significance of the questions or consequences of the investigation or the statements you make, and that you may also not be in a position to know where the truth lies. When answering Police questions, remember that you are simply providing the Police with information and your version of events. You are not required to make any conclusions for the Police or come to any findings. Focus on the answer to the question, tell the truth and seek advice or support where needed.

If staff think there is a possibility that they may in some way be responsible for the incident being investigated, and that they may be held accountable, they should not make any statements to the police before obtaining advice, preferably legal advice, but at least from a senior manager familiar with their area of work. The appropriate way to convey this to the police is:

"I do not wish to be interviewed or say anything until have consulted my manager or lawyer and received legal advice".

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Appendix 1: Extract from Health Act 1956

[22C Disclosure of health information

(1) Any person (being an agency that provides services or arranges the provision of services) may disclose health information—

(a) if that information—

(i) is required by any person specified in subsection (2); and

(ii) is required (or, in the case of the purpose set out in paragraph (j) of that subsection, is essential) for the purpose set out in that subsection in relation to the person so specified; or

(b) if that disclosure is permitted—

(i) by or under a code of practice issued under [section 46](#) of the Privacy Act 1993; or

(ii) if no such code of practice applies in relation to the information, by any of the information privacy principles set out in [section 6](#) of that Act.

(2) The persons and purposes referred to in subsection (1)(a) are as follows:

(a) any medical officer of a prison within the meaning of the [Corrections Act 2004](#), for the purposes of exercising or performing any of that person's powers, duties, or functions under that Act;

(b) any probation officer within the meaning of the [Corrections Act 2004](#), for the purposes of exercising or performing any of that person's powers, duties, or functions under any enactment;

(c) a Social Worker or a Care and Protection Co-ordinator within the meaning of the [Oranga Tamariki Act 1989](#), for the purposes of exercising or performing any of that person's powers, duties, or functions under that Act;

(d) any employee of the department for the time being responsible for the administration of the [Social Security Act 1964](#), for the purposes of administering [section 75](#) of the Social Security Act 1964;

(e) any member of the New Zealand Defence Force, for the purposes of administering the [Armed Forces Discipline Act 1971](#) or the [Defence Act 1990](#);

(f) any constable, for the purposes of exercising or performing any of that person's powers, duties, or functions;

(g) any employee of the Ministry of Health, for the purposes of—

(i) administering this Act or the Hospitals Act 1957; or

(ii) compiling statistics for health purposes;

(h) any employee of the Ministry of Agriculture and Forestry authorised by the chief executive of that Ministry to receive the information, for the purposes of administering the Meat Act 1981 or the [Animal Products Act 1999](#);

(i) any employee of the New Zealand Transport Agency, for statistical or research purposes in relation to road safety or the environment;

(j) any employee of a district health board, for the purposes of exercising or performing any of that board's powers, duties, or functions under the [New Zealand Public Health and Disability Act 2000](#).

(3) For the purposes of [principle 11\(d\)](#) of the Privacy Act 1993, the disclosure of health information about an individual may be authorised—

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- (a) by that individual personally, if he or she has attained the age of 16 years; or
- (b) by a representative of that individual.]

Appendix 2: Rule 11 of the Health Information Privacy Code

Limits on Disclosure of Health Information

(1) A health agency that holds health information must not disclose the information unless the agency believes, on reasonable grounds:

(a) That the disclosure is to:

- i) The individual concerned; or
- ii) The individual's representative where the individual is dead or is unable to exercise his or her rights under these rules;

(b) That the disclosure is authorised by:

- i) The individual concerned; or
- ii) The individual's representative where the individual is dead or is unable to give his or her authority under this rule;

(c) That the disclosure of the information is one of the purposes in connection with which the information was obtained;

(d) That the source of the information is a publicly available publication;

(e) That the information is information in general terms concerning the presence, location, and condition and progress of the patient in a hospital, on the day on which the information is disclosed, and the disclosure is not contrary to the express request of the individual or his or her representative;

(f) That the information to be disclosed concerns only the fact of death and the disclosure is by a registered health professional, or by a person authorised by a health agency, to a person nominated by the individual concerned, or the individual's representative, partner, spouse, principal caregiver, next of kin, whanau, close relative or other person whom it is reasonable in the circumstances to inform [; or]

(g) The information to be disclosed concerns only the fact that an individual is to be, or has been, released from compulsory status under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and the disclosure is to the individual's principal caregiver.

(2) Compliance with paragraph (1)(b) is not necessary if the health agency believes on reasonable grounds that it is either not desirable or not practicable to obtain authorisation from the individual concerned and:

(a) That the disclosure of the information is directly related to one of the purposes in connection with which the information was obtained;

(b) That the information is disclosed by a registered health professional to a person nominated by the individual concerned or to the principal caregiver or a near relative of the individual concerned in accordance with recognised professional practice and the disclosure is not contrary to the express request of the individual or his or her representative;

(c) That the information:

- i) Is to be used in a form in which the individual concerned is not identified;
- ii) Is to be used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or

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iii) Is to be used for research purposes (for which approval by an ethics committee, if required, has been given) and will not be published in a form which could reasonably be expected to identify the individual concerned;

(d) That the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:

i) Public health or public safety; or

ii) The life or health of the individual concerned or another individual;

(e) That the disclosure of the information is essential to facilitate the sale or other disposition of a business as a going concern;

(f) That the information to be disclosed briefly describes only the nature of injuries of an individual sustained in an accident and that individual's identity and the disclosure is:

i) By a person authorised by the person in charge of a hospital;

ii) To a person authorised by the person in charge of a news medium; for the purpose of publication or broadcast in connection with the news activities of that news medium and the disclosure is not contrary to the express request of the individual concerned or his or her representative;

(g) That the disclosure of the information:

i) Is required for the purposes of identifying whether an individual is suitable to be involved in health education and so that individuals so identified may be able to be contacted to seek their authority in accordance with paragraph (1)(b); and

ii) Is by a person authorised by the health agency to a person authorised by a health training institution;

(h) That the disclosure of the information:

i) Is required for the purpose of a professionally recognised accreditation of a health or disability service;

ii) Is required for a professionally recognised external quality assurance programme; or

iii) Is required for risk management assessment and the disclosure is solely to a person engaged by the agency for the purpose of assessing the agency's risk;

and the information will not be published in a form which could reasonably be expected to identify any individual nor disclosed by the accreditation or quality assurance or risk management organisation to third parties except as required by law:

(i) That non-compliance is necessary:

i) To avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution and punishment of offences; or

ii) For the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);

(j) That the individual concerned is or is likely to become dependent upon a controlled drug, prescription medicine or restricted medicine and the disclosure is by a registered health professional to a Medical Officer of

Health for the purposes of section 20 of the Misuse of Drugs Act 1975 or section 49A of the Medicines Act 1981;

(k) That the disclosure of the information is in accordance with an authority granted under section 54 of the Act.

(3) Disclosure under subrule (2) is permitted only to the extent necessary for the particular purpose.

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(4) Where under section 22F(1) of the Health Act 1956, the individual concerned or a representative of that individual requests the disclosure of health information to that individual or representative, a health agency:

(a) Must treat any request by that individual as if it were a health information privacy request made under rule 6; and

(b) May refuse to disclose information to the representative if:

i) The disclosure of the information would be contrary to the individual's interests;

ii) The agency has reasonable grounds for believing that the individual does not or would not wish the information to be disclosed; or

iii) There would be good grounds for withholding the information under Part IV of the Act if the request had been made by the individual concerned.

(5) This rule applies to health information about living or deceased persons obtained before or after the commencement of this code.

(6) [Despite subrule (5), a health agency is exempted from compliance with this rule in respect of health information about an identifiable deceased person who has been dead for not less than 20 years.]

Note: Except as provided in subrule 11(4) nothing in this rule derogates from any provision in an enactment which authorises or requires information to be made available, prohibits or restricts the availability of health information or regulates the manner in which health information may be obtained or made available – Privacy Act, s.7. Note also that rule 11, unlike the other rules, applies not only to information about living individuals, but also about deceased persons – Privacy Act, s.46(6).

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