

# Privacy Policy

Function: Clinical

Business Activity: Privacy & informed consent

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## 1. Background

- 1.1. The obligations Peke Waihanganga and Employees have in relation to Personal and Health Information is primarily found in the Privacy Act and Health Information Privacy Code. The new Privacy Act 2020 (**PA**) and new Health Information Privacy Code 2020 (**HIPC**) came into force on 1 December 2020. This Policy is based on the obligations in the new PA and HIPC.
- 1.2. The new PA is based around 13 information privacy principles (**Principles**) that set out individual's rights and 'agencies' obligations when collecting, storing, using and disclosing Personal Information.
- 1.3. The HIPC is a regulation under the PA and applies specific rules (**Rules**) that replace the Principles in the PA in relation to Health Information. Peke Waihanganga and individual Employees are 'agencies' under the PA and must comply with these Principles and Rules and additional obligations in the PA and HIP.
- 1.4. Peke Waihanganga and Employees also have obligations in relation to Information held by Peke Waihanganga under the: Health Act (sections 22B – 22H); Official Information Act; Public Records Act; Health (Retention of Health Information) Regulations; and Code of Health and Disability Services Consumers' Rights (**the Code of Rights**).

## 2. Purpose

The purpose of this Policy is to set out Peke Waihanganga's expectations in relation to how Peke Waihanganga and Employees will meet their legal obligations in relation to managing, using and disclosing patient and employee Personal and Health Information, including managing a privacy breach or complaint.

## 3. Scope

This Policy applies to all information held by Peke Waihanganga and to all Peke Waihanganga Employees, including employee's personal information, as defined in this Policy.

## 4. Definitions

**Business Information** - means all information relating to Peke Waihanganga business matters, including but not limited to:

- a) contracts, confidential operations, policies, processes or dealings, including any confidential incident reviews or other reports;
- b) any information concerning the organisation, business, finances, transactions or Peke Waihanganga affairs of services or Centres; and
- c) Any data that has been deemed commercial in confidence by the Chief Executive Officer.

**Confidential Information** - Includes, but is not limited to:

- a) "Health Information" as defined below;
- b) "Business Information" as defined above; and
- c) "Personal Information" as defined below.

**Employee** – means all Peke Waihanganga current and former employees, Board members, persons providing services under contract to Peke Waihanganga, volunteers, students and any other person involved in Peke Waihanganga operations.

**Health practitioner** – ‘Health practitioners’ are health professionals who are registered under the Health Practitioners Competence Assurance Act. Health practitioners have some additional rights to disclose information under Rule 11(2) of the HIPC that do not apply to other health professionals.

**Health Information** is defined in the HIPC to mean:

- a) information about the health of an individual, including his or her medical history; or
- b) information about any disabilities an individual has, or has had; or
- c) information about any health services or disability services that are being provided, or have been provided, to an individual; or
- d) information provided by an individual in connection with the donation, by that individual, of any body part or any bodily substance of that individual or derived from the testing or examination of any body part, or any bodily substance of that individual; or
- e) information about an individual which is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual.

**Information** –is not confined to what is written and includes any knowledge that is gained or held. For examples, information may be contained in: written notes; emails; records; audio; CCTV; recordings; and/or photos.

**Personal Information** - is information about an identifiable individual.

**Representative**, in relation to an individual, is defined in the HIPC and Health Act to mean:

- a) where that individual is dead, that individual’s personal representative; or
- b) where the individual is under the age of 16 years, that individual’s parent or guardian; or
- c) where the individual, not being an individual referred to in paragraphs (a) or (b), is unable to give his or her consent or authority, or exercise his or her rights, a person appearing to be lawfully acting on the individual’s behalf or in his or her interests (e.g. a welfare guardian or Enduring Power of Attorney).

**Working day** – The definition of ‘working day is the same in the PA and OIA. The working day count for responding to request for information under the PA or OIA starts the day after a request is ‘received’. A calculator that works out the 20 working day limit is available at: <https://www.privacy.org.nz/>.

## 5. Policy overview

5.1. This Policy sets out:

- a) The framework for managing Personal and Health Information held by Peke Waihanga;
- b) Peke Waihanga and Employees key legal obligations in the PA, HIPC and other relevant legislation in relation to Personal and Health Information held by Peke Waihanga;
- c) Requirements when investigating and managing an actual or potential privacy breach or complaint.

5.2. This Policy must be read in conjunction with other key related documents set out in the Policy.

## 6. Collecting Information (Principles and Rules 1 – 4)

- 6.1. The general purposes for which Peke Waihanga collects a patient's Health Information is set out in the Peke Waihanga Privacy Statement. The Privacy Statement is available in the Peke Waihanga website. Peke Waihanga should only collect Health Information necessary for the purposes set out in the Privacy Statement unless collection is authorised by the patient or by some lawful authority (Rule 1). The patient's Peke Waihanga Clinician should: discuss the information in the Statement with all new patients; give the patient a copy of the statement; and record this in the patient's clinical file.
- 6.2. Personal or Health Information should usually be collected from the person concerned unless one of the exceptions in Principle/Rule 2 the PA/HIPC applies. The person concerned should be aware of what Information is being collecting about them, why Peke Waihanga is collecting it, who will see it, if the person is required to give the Information and what may happen if the Information is not provided (for instance, if this could affect what services could be provided). (Principle/Rule 3(1)).
- 6.3. The exceptions that apply to the rules around collecting Health Information in Rule 2 and 3 that are most likely to apply to Peke Waihanga include:
  - a) When the patient has authorised collection from someone else (e.g. a family member, friend, or other organisation). The person should clearly understand who they are allowing to give what Information (Rule 2(2)(a)). Where practicable the person's authorisation should be obtained in writing and should be recorded on their file;
  - b) If collecting Information directly from the patient would prejudice their interests; or the purpose of collection (such as treatment), or it may prejudice the safety of another person (Rule 2(2)(c));
  - c) If the patient cannot be found or contacted, or does not know the Information sought (Rule 2(2)(d));
  - d) Where the Information is collected from a publicly available source (Rule 2(2)(f));
  - e) If the Information collected will not be used in a form in which the person concerned is identified; or will be used for statistical purposes, or research purposes (for which approval by an ethics committee, if required, has been given), and will not be published in a form that could reasonably be expected to identify the person concerned (Rule 2(2)(g));
  - f) If complying with the rule would undermine the purpose for which the information is collected or prejudice the interests of the person concerned (Rule 3(4)(a));
  - g) If it is not reasonably practicable in the circumstances to tell the person concerned (Rule 3(4)(b));
  - h) That noncompliance was necessary to avoid prejudice to the maintenance of the law (Rule 2(2)(h) and 3(4)(3)).
- 6.4. If Personal Information, not associated with a patient is collected (for instance about an Employee), the exceptions in Principles 1- 4 of the PA (not Rules 1-4) will apply.

### Collecting Health Information from other health or disability service providers

- 6.5. Peke Waihanga may request relevant Health Information about a patient it is providing, or will be providing, services to from other services providers such as the DHB under section 22F of the Health Act. Only Information necessary for Peke Waihanga to provide the service(s) should be

requested. In all instances where a request is made for Information under section 22F of the Health Act, the request and any discussion with the patient must be recorded in the patient's clinical file.

## Clinical photographs and recordings

- 6.6. The collection, use, storage, retention, and disclosure of photographs and recordings about an identifiable patient is governed by the HIPC, in the same way as all other Health Information. A photograph or recording must only be taken for appropriate purposes which the patient has been informed of, and agrees to, and must:
  - a) Only be used for the purpose it was obtained for or a directly related purpose;
  - b) Only be used for another purpose if the patient consents to the use, or the use is permitted by the HIPC, or any other statutory provision;
  - c) Be stored securely against unauthorised access or use.
- 6.7. If a photograph or recording is to be used for anything other than clinical care and maintaining a record in the clinical record the patient must have given explicit consent for the additional use. This includes uses such as training and education, publication, promotion, and research. The patient's consent must be recorded in the clinical record.
- 6.8. If a photograph or recording is to be used for education or research, the photograph or recording should be de-identified where possible and any research activity must comply with relevant research or ethical guidelines.
- 6.9. Peke Waihanga does not permit patient photography or recordings to be taken on personal devices, including smart phones.

## Patients recording own consultations

- 6.10. Patients have a right to record their health care consultations (audio or video recordings) as the information is about them. The patient can make a recording for their own use as it forms the patient record, with or without a staff member's consent. No other patient must be included in the recording (audio or video).
- 6.11. Staff should explain to the patient that there are clear limitations on the use of such recordings. Patients should be told that recordings may only be used for their own purposes and for referring to later to help clarify advice (can be shown to family members or caregivers). It cannot be shared via social media or put in the public domain.
- 6.12. If a patient or their support person starts recording without permission, or staff are suspicious that they are covertly recording a consultation or discussion, staff can ask them if they are recording and if they are, they should then be informed of the limitations of use (it could be helpful to have this captured on the recording).
- 6.13. Try to ascertain why the patient or support person felt it necessary to surreptitiously record the discussion or consultation. Patients may forget what they have been told during a consultation so they may wish to record it so they can later reference what has been said. It may also be a good way for patients to involve their support persons or carers in their care and treatment. If there are concerns that the patient or support person is recording the discussion or consultation because the therapeutic relationship has broken down, the requirements of the Clinician Allocation Policy should be followed and a meeting triggered with the patient, the clinician and their manager (or other appropriate senior person) to discuss the wider issues that have led to the patient taking this action.

- 6.14. While staff may feel anxious about patients recording consultations or discussions, they can also be valuable in showing that the interaction was professional and that the staff member concerned acted appropriately in the circumstances.

## 7. Storage and security of information (Principle/Rule 5)

- 7.1. Peke Waihanga has reasonable security safeguards in place to protect against unauthorised access, use, modification or disclosure, loss, or other misuse of Personal and Health Information. How Peke Waihanga meets its obligations in relation to ensuring the physical, electronic, and operational security of Information held by Peke Waihanga or its agents applies to both Personal and Health Information.
- 7.2. A patient's Health information may only be accessed by Employees in the course of providing services to the patient, or as set out in Peke Waihanga Privacy Statement or otherwise authorised by the Privacy Officer or CEO. Only persons authorised to access a particular Employee's Personal Information may access that Information.
- 7.3. Any unauthorised access, use, modification or disclosure of Confidential Information (including Personal or Health Information) may be misconduct or serious misconduct under the Peke Waihanga [Discipline and Misconduct Policy](#).

## 8. Requests for access to Personal or Health Information (Principle/Rule 6)

- 8.1. Under Principle/Rule 6, any person is entitled to:
- Know whether Peke Waihanga holds Personal or Health Information about them; and
  - Access Personal or Health Information Peke Waihanga holds about them that is readily retrievable.
- 8.2. A request may be made orally or in writing and there is no requirement for the person to explain why they want their Information, or to say that they are making the request under the PA or HIPC. However, Peke Waihanga policy is to ask for the request to be put in writing (i.e. email) so that it has a record of the request. This process applies for both patient and employee information.
- 8.3. A person can also appoint an agent to act on their behalf. Peke Waihanga must verify that the person requesting Personal or Health Information on another person's behalf actually does have the authority of the person concerned. Peke Waihanga should request the authorisation in writing and check the identity of the agent before releasing any Information to the agent. This verification must be recorded in the person's file.
- 8.4. An access request should be forwarded to the Privacy Officer in the first instance. The Privacy Officer will be responsible for logging the request and ensuring the timeframe and obligations under the PA or HIPC for responding to the request are met. These obligations include:
- Providing assistance to the person if required (s 42 PA);
  - Transferring the request to another agency within 10 working days if Peke Waihanga does not hold the Information or if the Information is more closely related to that other agency, and informing the person you have transferred the request (s 43 PA);
  - Informing the person of the decision regarding their request as soon as reasonably practicable and within 20 working days (s 44 PA);

- d) Making the Information available in the form requested by the person unless to do so would: impair the efficient administration of Peke Waihanga; be contrary to any legal duty Peke Waihanga has in respect of the Information; or prejudice the interests protected under sections 49-53 of the Privacy Act (s 56 PA).
- 8.5. Information can only be withheld following a request by the person concerned or their agent in limited circumstances set out in the PA. The main reasons that may be relevant to Peke Waihanga are set out in sections 49 - 53 of the PA and include that:
- a) Providing the Information would be likely to pose a serious threat to the life, health or safety of any person, or public health or safety;
  - b) Providing the Information would prejudice the maintenance of the law including detection and investigation of criminal offences; or
  - c) Providing the Information would involve the unwarranted disclosure of someone else's affairs; or
  - d) The Information is evaluative material (as defined in the PA), or is not readily retrievable, cannot be found, or does not exist; or
  - e) The Information is subject to legal professional privilege.
- 8.6. If the decision is to refuse access to some or all the Information requested, the requestor must be told of the reason for the refusal, and that they have a right to make a complaint to the Privacy Commissioner and/or request correction of any Information they believe is incorrect (s 56 PA). A request cannot be refused on the basis that the person does not 'own' the Information.
- 8.7. A copy of the request, the Information released, and/or any refusal to release the Information, and the date the decision and Information is provided to the requestor must be recorded in the person's HR or clinical file and be logged in Smartsheet.

## 9. Requests for correction of information (Principle/Rule 7)

- 9.1. A person may ask for their Personal or Health Information to be corrected if they think the Information is wrong. All requests for correction of Information must be referred to the Privacy Officer and be logged in Smartsheet and be dealt with in compliance with sections 58 – 65 of the PA.
- 9.2. If Peke Waihanga agrees there the Information is inaccurate, incomplete or misleading, it must correct it. Correction may include altering Information by way of correcting, deleting, or adding Information.
- 9.3. Information should not normally be changed if:
- a) Peke Waihanga is satisfied the Information is correct;
  - b) The Information is clearly identified as opinion material and correctly represents the opinion held at the time – removing or changing the earlier Information would leave a course of action unexplained;
  - c) The Information was believed to be correct at the time, circumstances have changed, and now there is no means of verifying its accuracy.
- 9.4. The requestor must be informed of Peke Waihanga's decision on the request as soon as reasonably practicable and within 20 working days of receiving the request. If Peke Waihanga does not agree to correct the Information, it must give the person the opportunity to add their

views by attaching a statement of correction to the Information in question. Peke Waihanga must also take reasonable steps to:

- a) Inform everyone who has previously received the Information (this could be by way of an email, a telephone call or a letter) of any changes made; and
- b) Ensure that any statement or correction will be read in conjunction with the disputed Information.

## 10. Accuracy of information (Principle/Rule 8)

10.1. Before Personal or Health Information is used or disclosed reasonable steps should be taken to ensure the Information is up-to-date, complete, accurate and not misleading. This is particularly relevant when health care, disability, or welfare entitlements, or treatment decisions and alternatives are based on the Information or the Information has been obtained from a source other than the person concerned.

## 11. Retention of information (Principle/Rule 9)

11.1. Personal and Health Information must not be retained for longer than is required by law or for the purposes for which it may lawfully be used. Peke Waihanga is subject to legal obligations to retain Information including to retain all:

- a) Health Information for at least 10 years from the last time a service was provided to the patient) unless the Information has been transferred to another provider or given to the patient (Health (Retention of Health Information) Regulations);
- b) Information, including Health Information, held by Peke Waihanga for the periods stipulated by the Public Record Act. Peke Waihanga's **Data and Records Management Policy** establishes a framework to ensure that all Information is managed and disposed of in a way that meets Peke Waihanga's legal obligations under the Public Records Act.

## 12. Using information (Principle/Rule 10)

12.1. Personal and Health Information should only be used for purposes it was collected except:

- a) With the consent of the person concerned; or
- b) Where an exception in Principle/Rule 10, or another legal authority applies.

12.2. Relevant exceptions in Principle/Rule 10 may include:

- a) When the other use was **authorised by the person** (Principle 10(1)(c)/Rule 10(1)(a)(i)), or in relation to Health Information **the patient's Representative** (Rule 10(1)(a)(ii)). The authorisation must be recorded in the patient's clinical file, or in the case of Personal Information relating to an Employee in the Employee's HR file.
- b) When the Information may be used for **directly related purposes** under Principle 10(1)(a)/Rule 10(1)(b) (e.g. Information obtained for care and treatment may be used for administrative purposes related to that care and treatment).



- c) Where it is necessary to use the Information to prevent or lessen a **serious threat to public health or public safety, or somebody's life or health** (Principle 10(1)(f)/Rule 10(1)(d)) For more information on what constitutes a serious threat refer to paragraph 5.37(e) of this Policy.
  - d) Where it is necessary to **avoid prejudice to the maintenance of the law** by a public sector agency (e.g. Police, Oranga Tamariki, WINZ/MMBIE), or for the **conduct of proceedings before a Court or Tribunal** (Principle 10(1)(e)/Rule 10(1)(f)).
  - e) Where the Information is **de-identified**; or used for **statistical or research purposes** (for which approval by the ethics committee is required, has been given) and **will not be published in a form that could identify the person concerned** (Principle 10(1)(b)/Rule 10(1)(e)).
- 12.3. The Privacy Officer or Regional Manager should be consulted for advice if Personal or Health Information is to be used in a way that is not connected to the original purpose it was collected. The reason for using the Information in that way, and the exception to Principle/Rule 10 or other legal authority that authorises the use, should be recorded in the person's file (the patient's clinical file, or the Employee's HR file).

## 13. Disclosing Personal or Health Information (Principle/Rule 11)

- 13.1. Personal or Health Information **must not be disclosed** without the person's authorisation, unless:
- a) The person concerned consents to the disclosure;
  - b) An exception in Principle/Rule 11 applies; or
  - c) Another statute or legal authority allows or requires the disclosure. The more common examples that apply to Peke Waihanga include:
    - I. **Section 22F of the Health Act:** Under section 22F a patient's Representative, caregiver, or a person or organisation that is, or is to, provide health and disability services to the patient can **request** relevant Health Information about the patient and Peke Waihanga **must** provide it unless a withholding ground applies (see further below).
    - II. **Section 22C of the Health Act:** An employee of an organisation covered by section 22C, can **request** Health Information necessary for them to perform their functions. Following a request Peke Waihanga has a **discretion** to disclose relevant Information. Organisations covered under section 22C include the Police, Prison Officers, and Oranga Tamariki social workers or care and protection coordinators.
    - III. **The Coroner, Health and Disability Commissioner and Privacy Commissioner** may require Information for the purposes of carrying out their functions in accordance with their authorising legislation.
    - IV. **A court order, production order, or search warrant** that **requires** disclosure of the Information.
    - V. **The Official Information Act (OIA):** If a third party requests Personal or Health Information about another person, and the request is specifically made under the OIA and no other legal authority applies, the request must be considered under the OIA.
- 13.2. All requests for disclosure of Health or Personal Information made by a person other than the person concerned **must** be:

- a) **In writing**, and must include what legal authority the requestor is relying on, and the reason for requesting the information;
  - b) **Referred to the Privacy Officer** to be logged in Smartsheet. The Privacy Officer will then work with the appropriate manager and/or health professional to determine what if any Information is to be released, and the timeframes Peke Waihanga is required to meet; and
  - c) **Recorded in the person's HR or clinical file**. This includes recording: the request, the information disclosed, the reasons why it was disclosed (or why the request was refused), and whether the person concerned was informed of the request and/or disclosure of their Information.
- 13.3. If Information is to be disclosed, only Information necessary for the purpose for which it is being disclosed, should be disclosed. If a request is very broad, or includes Information that does not appear to be relevant or necessary in order to satisfy the purpose of the request then the Privacy Officer should be consulted.
- 13.4. There is no legal requirement to obtain authorisation from the person concerned to the disclosure of the information, and (in most cases) the person concerned cannot veto the disclosure. However, in most circumstances, where it is practicable and appropriate, it will be good practice to speak with the person concerned about the request before responding to the request. If the person concerned did not want the Information disclosed this is an important factor that Peke Waihanga should take into account in determining whether to refuse a request for information by someone other than the person concerned.
- 13.5. A request for **Personal or Health Information about another person, from an individual** who is not the other person's agent, or Representative, or where the request is not a request under some statutory authority must be dealt with under the OIA. The request must be referred to the Privacy Officer and the **Official Information Policy** must be followed.

### Exceptions that allow disclosure under Principle/Rule 11 of the PA or HIPC

- 13.6. If an exception in Principle/Rule 11 applies, Peke Waihanga **may, but does not have to**, disclose the Information. This applies when Peke Waihanga wants to disclose Personal or Health Information and has not received a request or, has received a request and an exception in Principle/Rule 11 applies.
- 13.7. The exceptions in Principle/Rule 11 that are most likely to apply if Peke Waihanga wants to disclose Personal or Health Information include:
- a) The disclosure is to, or is **authorised** by, the **person concerned** (Principle 11(1)(b) or (c)/ Rule 11(1)(a) or (b));
  - b) The disclosure of Health Information is to, or is **authorised** by, the person's **Representative and** the person is dead or is unable to exercise his or her rights under the HIPC (Rule 11(1)(b));
  - c) The disclosure is **one of the purposes** for which the information was obtained. (Principle 11(1)(a)/Rule 11(1)(c));
  - d) Peke Waihanga obtained the information from a **publicly available** publication (Principle/Rule 11(1)(d));
  - e) Disclosure is **necessary to prevent or lessen a serious threat to public health or any person's health or safety** (Principle 11(1)(f)/Rule 11(2)(d)). To rely on this exception:

- I. The threat must be serious; and
- II. The threat must be to public health or safety, or the life or health of the person or another person; and
- III. The information must be given to someone who can act to prevent or lessen the threat (such as the Police or a Oranga Tamariki social worker); and
- IV. Only the information necessary to achieve that purpose may be given (Rule 11(4)).

Note: Serious is defined in section 7 of the PA and means a threat Peke Waihangā reasonably believes to be serious having regard to:

- the likelihood of the threat occurring; and
- the severity of the consequences if it did occur; and
- the time at which the threat may occur (when is it likely to happen).

- f) The disclosure is necessary to avoid **prejudice to the maintenance of the law** by a public sector agency or for the conduct of court or tribunal proceedings (Principle 11(1)(e)/Rule 11(2)(j));
  - g) The information will be used in a form that **does not identify** the person concerned or for research and statistical purposes, and will not be published in a form which could identify the person, and ethical committee approval has been obtained if necessary (Principle 11(1)(h)/Rule 11(2)(c));
  - h) The disclosure is for a **directly related purpose** in connection with which the Information was obtained (Principle 11(1)(a)/Rule 11(2)(a));
  - (i) The Information is disclosed **by a Health Practitioner** to a person closely associated with the patient. The person receiving the disclosure must be **a contact person** (i.e. named as contact on a consent form or service agreement), **principal caregiver or a near relative**. The disclosure must be in line with recognised practice, and not be contrary to the express veto by the patient or their representative (where the patient is not competent to make a decision). This exception only applies to Health Practitioners registered under the HPCA Act (Rule 11(2)(b)).
- 13.8. Before disclosing **Health Information under any of the exceptions in Rule 11(2) of the HIPC**, consideration **must** be given to obtaining the person's authorisation to the disclosure. If Peke Waihangā believes it is **either not desirable or not practicable to obtain authorisation from the person concerned** (for example the person might be unconscious, not competent, or may have refused to consent to the disclosure) then it may not be required to obtain the person's authorisation but, this decision should be made in consultation with the Privacy Officer and/or legal advice, if required.
- 13.9. Where Peke Waihangā wants, or is asked, to disclose Personal Information about an Employee, an exception in Principle 11 of the PA or some other statutory provision allowing the disclosure must apply. The exceptions in Principle 11 are similar, but slightly different to the exceptions in Rule 11.
- 13.10. The exceptions in Principle/Rule 11 are subject to the Principle/Rule 12 disclosure of Personal or Health Information outside of New Zealand (see paragraph 5.62 and 5.63 of this Policy).

## Special circumstances

### *Disclosure to parents or guardians of a child under 16 years*

- 13.11. Parents and guardians of children **under 16 years of age** have a strong right to access their child's Health Information. However, this right is not absolute and in some circumstances a child's Health Information should not be provided to his or her parents or guardians. Parents and guardians of a child under 16 years of age:
- a) Are the child's Representative under the HIPC and section 22F of the Health Act;
  - b) May **request** their child's (under 16 years) Health Information. Following a request relevant Information must be provided unless:
    - I. The disclosure of the information would be contrary to the individual's interests; or
    - II. Peke Waihanga has reasonable grounds for believing that the child does not or would not wish the information to be disclosed; or
    - III. There would be good grounds for withholding the information under ss 27 – 29 of the PA if the request had been made by the child concerned.

Note: The withholding grounds are discretionary there is no requirement to withhold the Information if a withholding ground applies.

- 13.12. One parent or guardian cannot veto the release of Information to another parent or guardian and there is no requirement that the consent or authority of all parents or guardians must be obtained before Information can be released.
- 13.13. If Peke Waihanga wants to disclose Health Information to a parent or guardian, **without a request**, then the disclosure must come within one of the exceptions in Rule 11 or some other lawful authority.
- 13.14. Where a parent or guardian is required to give consent to services or treatment for their child, they will be a 'consumer' for the purposes of the Code of Rights. In this case, they must be provided with the information that a reasonable person in that person's circumstances needs to make an informed decision and give informed consent. Disclosure of the child's Health Information necessary for this purpose would not breach the HIPC.
- 13.15. If there is any disagreement between the parents as to whether the Information should be provided the Privacy Officer and Regional Manager should be consulted and legal advice sought if necessary.

***Request from a caregiver or other agency providing health or disability services to the person***

- 13.16. Persons providing health or disability services to a person, including other health or disability providers and a family member who is providing care to the person, can request relevant Health Information about the patient. Such requests must be dealt with under section 22F of the Health Act. **Section 22F only applies if a request is made**, Peke Waihanga must then provide relevant Information unless a withholding ground applies. A withholding ground includes:
- a) Peke Waihanga has a lawful excuse not to disclose (i.e. a withholding ground in ss 51 – 53 of the PA applies); or
  - b) It would be contrary to the 'interest' of the patient to disclose the Information (e.g. abuse by the person requesting the Information is suspected); or
  - c) Peke Waihanga has reasonable grounds for believing that the patient does not or would not wish the Information to be disclosed.

***Requests from other third parties and organisations***

- 13.17. Some public sector organisations may **request** relevant Information from Peke Waihanga in accordance with their authorising legislation. This includes ACC under the accident compensation legislation, Oranga Tamariki under the Oranga Tamariki Act, and Work and Income under the Social Security Act. In most cases these organisations should have sought the consent of the person concerned to obtain their Information from Peke Waihanga.
- 13.18. When a request is received from another organisation, Peke Waihanga should check that the person's consent has been obtained prior to releasing the Information, unless to do so would prejudice the reason for requesting the Information.
- 13.19. If the person has not consented to the release of the Information or refuses to have the Information disclosed to the requesting organisation, the Information should **not** be disclosed without seeking advice from the Privacy Officer, Regional Manager and/or legal advice if necessary.
- 13.20. In addition, certain employees of some organisations can request relevant Information under section 22C of the Health Act. This includes the Police, Oranga Tamariki social workers and care and protection coordinators, DHB employees, and corrections medical officers. Disclosure under section 22C is **discretionary and only applies following a relevant request**.
- 13.21. All requests **must be in writing** and must state the **statutory provision** being relied on, the reason why the Information is necessary, and whether the person concerned has authorised the release of their Information.

#### *Disclosure to the Police*

- 13.22. The Police may request relevant Information under section 22C of the Health Act or in reliance on one of the following exceptions in Principle or Rule 11:
- a) Principle 11(1)(f) or Rule 11(2)(d): Serious risk of harm exception
  - b) Principle 11(1)(e) or Rule 11(2)(i): Prejudice to the maintenance of the law exception.
- 13.23. Section 22C and the exceptions in Principle or Rule 11 **allows** Peke Waihanga to disclose relevant Personal or Health information to the Police without a search warrant or production order. Health professionals should exercise the discretion in accordance with their professional and ethical obligations.
- 13.24. To **compel** the disclosure of Personal or Health Information the Police must obtain a production order, search warrant or other order of the court. Peke Waihanga would be required to comply with any such order.
- 13.25. If Peke Waihanga wants to disclose Personal or Health Information to the Police without a request it must rely on one of the exceptions in Principle or Rule 11. Section 22C of the Health Act only allows disclosure following a request from the Police.

#### *Family violence and child abuse, neglect or harm situations*

- 13.26. Where family violence or child neglect, harm, or abuse is suspected Peke Waihanga and its registered Health Practitioners may have a **duty to consider disclosing** relevant Information to a Family Violence Agency or Social Service Practitioner under the Family Violence Act, or a Child Welfare and Protection Agency or Independent Person under the Oranga Tamariki Act. In these situations Peke Waihanga may also have a **discretion** to disclose relevant Information to a Family Violence Agency for a purpose set out in the Family Violence Act, or a Child Welfare Agency for a purpose set out in the Oranga Tamariki Act.
- 13.27. There are also limited situations when Oranga Tamariki may **require** disclosure of certain Information. The Regional Manager must be involved in any decision to disclose information in these situations, and consideration should be given to obtaining legal advice.

### *Requests for information about a deceased person*

- 13.28. Health Information continues to be covered by Rule 11 for 20 years beyond the death of a person (or until it is no longer kept by Peke Waihangā) (Rule 11(6) and (7)).
- 13.29. The administrator or executor of the deceased's estate is the deceased's Representative under the HIPC and is entitled to request the deceased's Health Information. The requested Information must be provided unless one of the grounds for withholding the Information set out Rule 11(5) applies:
- The disclosure of the information would be contrary to the person's interests;
  - Peke Waihangā has reason to believe that the deceased person would not wish the information to be disclosed; or
  - There would be good grounds for withholding the information under ss 51-53 of the PA if the request had been made by the person concerned.
- 13.30. A request from one executor/administrator cannot be refused just because one administrator or executor does not want the Information released.
- 13.31. If a request is received for a deceased person's information by anyone other than the executor or administrator of the deceased's estate, including family members and next of kin, the request must be decided under the Official Information Act. Refer to the [Official Information Act Policy](#).

## **14. Transfer of Information outside of New Zealand (Principle/Rule 12)**

- 14.1. From 1 December 2020 the new PA introduces a new Principle/Rule 12 which regulates the way Personal or Health Information can be sent overseas. Under Principle/Rule 12, before sending Personal or Health Information overseas, Peke Waihangā must ensure the overseas entity has similar levels of privacy protection to those in the NZ PA. If the overseas country does not offer similar protections to the NZ PA, the person concerned (or in the case of Health Information the patient's Representative where the person concerned is dead or unable to exercise their rights under the HIPC) must be informed that their Personal or Health Information may not be adequately protected and they must expressly authorise the disclosure. This does not apply to the use of cloud storage facilities.
- 14.2. These requirements do not apply if the Personal or Health information is to be disclosed to the overseas person or agency in reliance on the serious threat exception (Principle 11(1)(f)/Rule 11(2)(d)) or the prejudice to the maintenance of the law exception (Principle 11(1)(e)/Rule 11(2)(f)).

## **15. Use of unique identifiers (Principle/Rule 13)**

The National Health Index number (NHI number) system is used by Peke Waihangā and other health providers to provide a unique number to ensure that all patients are able to be safely identified.

## **16. Managing a data or privacy breach or complaint**

- 16.1. A privacy breach is:
- Any unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of, Personal or Health Information; or

- b) An action that prevents an entity from accessing the Information on either a temporary or permanent basis, including destroying the Information. (Section 112(1) of the PA)
- 16.2. All suspected privacy breaches must be reported to the Privacy Officer without delay.
- 16.3. From 1 December 2020 the PA includes a mandatory **notifiable privacy breach reporting regime**. A **notifiable privacy breach** is one that that has caused (or is likely to cause) **serious harm**. To assess whether a privacy breach is likely to cause serious harm and the following must be considered:
- Any action taken to reduce the risk of harm following the breach;
  - Whether the Personal or Health Information is sensitive in nature;
  - The nature of the harm that may be caused to affected persons;
  - The person(s) or body that has obtained or may obtain Personal or Health Information as a result of the breach (if known); and
  - Whether the Personal or Health Information is protected by a security measure.
- 16.4. A notifiable privacy breach must be reported to the Office of the Privacy Commissioner and affected persons as soon as practicable after Peke Waihanga becomes aware that a notifiable breach has occurred. Notification of affected persons can be delayed if one of the limited exceptions in section 116 of the PA apply. However, in all cases the office of the Privacy Commissioner must be notified without delay. Notification should be made using the **reporting tool** on the Privacy Commission’s website. The **decision tool** on the Privacy Commission website can be used to help determine whether the breach reaches the serious harm threshold.
- 16.5. The Office of the Privacy Commissioner has also developed guidance material for organisations managing a privacy breach. These guidelines are available on the Privacy Commission’s website and will be used by Peke Waihanga in managing any privacy breach situation.

## 17. Privacy concerns or complaints

The Privacy Officer is responsible with the Regional Manager for managing privacy concerns and complaints and will decide whether or not a case can be handled individually or needs to be escalated for an inquiry process. A patient related complaint must be managed in accordance with the requirements in clause 7 of the HIPC and as set out in the [Peke Waihanga Complaint Policy](#).

## 18. Implementation and Compliance

The Privacy Policy is a core Policy that all Employees are required to read at induction and after any substantive update. All Employees with patient contact or HR responsibilities are required to be familiar with the Privacy Policy and related documents and are provided with relevant privacy related training.

## 19. Specific Responsibilities

Party	Responsibilities
All Employees	<ul style="list-style-type: none"> <li>Understand their obligations and person’s rights under privacy legislation and their professional standards</li> </ul>

Party	Responsibilities
	<ul style="list-style-type: none"> <li>Follow Peke Waihanga Privacy Policy and relevant procedures</li> <li>Ensure all Information requests are forwarded to the Privacy Officer</li> <li>Inform the Privacy Officer and Regional Manager of any privacy breach or complaint as soon as reasonably practicable.</li> </ul>
Regional Manager/ Team Leader	<ul style="list-style-type: none"> <li>Understand their, and their team's obligations and persons' rights under privacy legislation and professional standards.</li> <li>Follow Peke Waihanga Privacy Policy and other relevant policies and procedures.</li> <li>Ensure all Information requests are forwarded to the Privacy Officer</li> <li>Work with the Privacy Officer to respond to and manage privacy related requests, any actual or potential privacy breach, and privacy related complaints.</li> </ul>
Privacy Officer	<ul style="list-style-type: none"> <li>Is familiar with current Privacy legislation and practice, and all related Peke Waihanga policies and procedures.</li> <li>Available to provide privacy guidance as required to Managers on how to ensure Peke Waihanga's practices comply with privacy requirements.</li> <li>Logs and coordinates all requests for Personal or Health Information and privacy related complaints.</li> </ul>
CEO	<ul style="list-style-type: none"> <li>Ensure all Employees are aware of, have training in, and comply with this Policy, and their obligations under privacy law and relevant professional standards.</li> <li>Ensure all privacy protection guidelines are adhered to by centres.</li> </ul>
Board	<ul style="list-style-type: none"> <li>Provide responsible governance and monitoring of compliance with legal and professional obligations.</li> </ul>
Regional Managers	<ul style="list-style-type: none"> <li>Manage centre imprest accounts and petty cash</li> <li>Manage repairs and maintenance budget</li> <li>With the CEO determine the appropriate response when offers of gifts or inducements are made or reported by employees.</li> </ul>

## 20. Legal Compliance

- [Health Information Privacy Code 2020](#)
- [Health Act 1956](#)
- [Health \(Retention of Health Information\) Regulations 1996](#)
- [Health and Disability Commissioner Act 1994](#)
- [Health and Disability Services Consumers' Rights 1996 \(Code\)](#)
- [Official Information Act 1982](#)



- [Privacy Act 2020](#)
- [Public Records Act 2005](#)
- [State Services Commission Code of Practice](#)

## 21. Key Related Documents

- [Clinical Record Procedure](#)
- [Code of Conduct Policy](#)
- [Discipline and Misconduct Policy](#)
- [Information Protection Policy](#)
- [Information Request Policy](#)
- [Information Technology \(IT\) Users' Procedure](#)
- [Informed Consent Policy](#)
- [Management of Deceased and Inactive Patient Records Procedure](#)
- [Privacy Statement](#)
- [Privacy Statement- Te Reo](#)
- [Privacy and Informed Consent Conversation Procedures](#)
- [Privacy Poster](#)
- [Privacy Poster- Te Reo](#)
- [Privacy Request - Letter Templates.docx](#)
- [Privacy Request Checklist.pdf](#)
- [Privacy Request Procedure.pdf](#)
- [Records Management Policy.pdf](#)
- [Staff Access to IT Procedure](#)
- [Telehealth Clinical Consultations Procedure](#)

## Document development and approval

Review period	3 years	Next review date	March 2025
Legal review required?	✓ for major changes	Board approval required?	✓
Interconnected processes and documents affected by this document?	Information Protection Policy Privacy and Informed Consent Conversation Procedures Information Technology (IT) Users' Procedure Records Management Policy Informed Consent Policy		

## Version history

Version No.	Version Date	Description of Change
4.1	March 2022	Update to clinical photographs and recording section
4.0	November 2020	Updated Policy
3.1	August 2016	Breach Links Updated
3.0	November 2015	Updated Policy
2.1	February 2014	Updated Policy
2.0	Dec 2013	Original Policy review

## Authors and reviewers

Content owner name and role	Claire Rumble, Policy Advisor
Content author(s)	Claire Rumble, Policy Advisor
Was there a review committee?	
Internal peer reviewer names and roles	
External reviewer names, organisations, and roles	
Tikanga consultant	

## Implementation history

<input checked="" type="checkbox"/> Internal communication <input type="checkbox"/> Manager in-team training <input checked="" type="checkbox"/> National roll-out via group workshops <input type="checkbox"/> Self-learning:	<b>Roles affected:</b> All Peke Waihanga personne;
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Implementation history	
<input type="checkbox"/> Other (describe)	
Procurement, IT, or other budgetary considerations	
When updated, these people need to be notified	