



Health Information Privacy Code 1994

*Incorporating
Amendments No 2, No 3, No 4, No 5, No 6, No 7
and No 8*

Privacy Commissioner
Te Mana Matapono Matatapu

NEW ZEALAND

This version of the code applies from 15 October 2015 and incorporates the changes made by Amendments No 2, No 3, No 4, No 5, No 6, No 7 and No 8.

Health Information Privacy Code 1994

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This version of the code includes various notes which are set out in italics. This material is not part of the code but is included to assist users of the code. Reference must always be made to the rules or clauses themselves.

Part 1: Preliminary

1. Title

This code of practice may be referred to as the Health Information Privacy Code 1994.

2. [Commencement]

[This code is to come into force on 30 July 1994.]

Note: Clause 2(2) was revoked, and clause 2(1) accordingly renumbered as clause 2, by Amendment No 5. Amendment No 5 also altered the heading of clause 2 from "Commencement and Review" to "Commencement".

Note: Provisions affected by Amendments No 2, No 3, No 4, No 6, No 5, No 7, No 8, No 9 and No 10 had commencement dates given in these amendments. These amendments commenced as follows:

- *Amendment No 2 – 30 July 1995;*
- *Amendment No 3 – 30 September 1998;*
- *Amendment No 4 – 10 April 2000;*
- *Amendment No 5 – 30 July 2000;*
- *Amendment No 6 – 1 November 2007;*
- *Amendment No 7 – 30 April 2013; and*
- *Amendment No 8 – 15 October 2015*

3. Interpretation

In this code:

commencement, in relation to this code, means the coming into force of the code

[disability services includes goods, services, and facilities -

- (a) provided to people with disabilities for their care or support or to promote their inclusion and participation in society, and independence; or
- (b) provided for purposes related or incidental to the care or support of people with disabilities or to the promotion of the inclusion and participation in society, and independence of such people]

Note: The definition of 'disability services' was substituted by Amendment No 6.

[ethics committee means:

- (a) the Ethics Committee of the Health Research Council of New Zealand or an ethics committee approved by that committee;
- (b) the National Advisory Committee on Health and Disability Support Services Ethics;

- (c) an ethics committee required to operate in accordance with the currently applicable Operational Standard for Ethics Committees promulgated by the Ministry of Health; or
- (d) an ethics committee established by, or pursuant to, any enactment]

Note: The definition of 'ethics committee' was substituted by Amendment No 6.

health agency means an agency referred to in subclause 4(2) and, for the purposes of rules 5 to 11, is to be taken to include:

- (a) where an agency holds health information obtained in the course of providing health or disability services but no longer provides such services - that agency; and
- (b) with respect to any health information held by a health agency (being a natural person) at the time of the person's death - his or her personal representative

health information means information to which this code applies under clause 4(1)

[health practitioner has the meaning given to it by section 5(1) of the Health Practitioners Competence Assurance Act 2003]

Note: The definition of 'health practitioner' was inserted by Amendment No 6.

[health professional body means an authority empowered to exercise registration and disciplinary powers under the Health Practitioners Competence Assurance Act 2003]

Note: The definition for 'health professional body' was inserted by Amendment No 2 and substituted by Amendment No 6.

[...]

Note: Amendment No 2 substituted the definition for 'health registration statute' with a definition for 'health registration enactment'. Amendment No 6 revoked the definition of 'health registration enactment'.

[health services means personal health services and public health services]

Note: The definition of 'health services' was substituted by Amendment No 6.

health training institution means a school, faculty, or department referred to in paragraph [4(2)(d)]

Note: An error in the paragraph referred to in the definition of 'health training institution' has been corrected.

[...]

Note: An amended definition of 'hospital' was inserted by Amendment No 4. The definition of 'hospital' was revoked by Amendment No 6.

[personal health services means goods, services and facilities provided to an individual for the purpose of improving or protecting the health of that individual, whether

or not they are also provided for another purpose; and includes goods, services, and facilities provided for related or incidental purposes]

Note: The definition of 'personal health services' was inserted by Amendment No 6.

principal caregiver, in relation to any individual, means the friend of the individual or the member of the individual's family group or whānau who is most evidently and directly concerned with the oversight of the individual's care and welfare

[public health services means goods, services, and facilities provided for the purpose of improving, promoting, or protecting public health or preventing population-wide disease, disability, or injury; and includes –

- (a) regulatory functions relating to health or disability matters; and
- (b) health protection and health promotion services; and
- (c) goods, services and facilities provided for related or incidental functions or purposes]

Note: The definition of 'public health services' was inserted by Amendment No 6.

[...]

Note: An amended definition for 'registered health professional' was inserted by Amendment No 2. The definition for 'registered health professional' was revoked by Amendment No 6.

representative, in relation to an individual, means:

- (a) where that individual is dead, that individual's personal representative;
- (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

rule means a rule set out in clause 5

the Act means the Privacy Act 1993.

Note: Clause 3(2) was revoked, and clause 3(1) accordingly renumbered as clause 3, by Amendment No 5.

4. Application of code

- (1) This code applies to the following information or classes of information about an identifiable individual:
 - (a) information about the health of that individual, including his or her medical history;

- (b) information about any disabilities that individual has, or has had;
- (c) information about any health services or disability services that are being provided, or have been provided, to that individual;
- (d) information provided by that 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 that 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.

[(2) This code applies in relation to the following agencies or classes of agency:

Health and disability service providers

- (a) an agency which provides health or disability services;
- (b) with a larger agency, a division or administrative unit (including an individual) which provides health or disability services to employees of the agency or some other limited class of persons;
- (c) a person who is approved as a counsellor for the purposes of the [[Accident Compensation Act 2001]];

Note: Clause 4(2)(c) was amended by Amendment No 6 and by Amendment No 8.

Training, registration, and discipline of health professionals, etc

- (d) a school, faculty or department of a tertiary educational institution which provide the training or a component of the training necessary for the registration of a [health practitioner];
- (e) an agency having statutory responsibility for the registration of any [health practitioners];

Note: Clause 4(2)(d) was amended by Amendment No 6.

Note: Clause 4(2)(e) was amended by Amendment No 6.

- (f) a health professional body;
- (g) persons appointed or designated under the Health and Disability Commissioner Act 1994;

Health insurance, etc

- (h) [...]

Note: Clause 4(2)(h) was revoked by Amendment No 6.

- (i) an agency which provides health, disability, accident or medical insurance, or which provides claims management services in relation to such insurance, but only in respect of providing that insurance or those services;
- (j) an accredited employer under the [[Accident Compensation Act 2001]];

Note: Clause 4(2)(j) was amended by Amendment No 6.

Other

- (k) an agency which provides services in respect of health information, including an agency which provides those services under an agreement with another agency;
- (l) a district inspector, deputy district inspector or official visitor appointed pursuant to section 94 of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- [(la) a district inspector or deputy district inspector appointed pursuant to section 144 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003;]

Note: Clause 4(2)(la) was inserted by Amendment No 6.

- (m) an agency which manufactures, sells, or supplies medicines, medical devices or related products;
- (n) an agency which provides health and disability services consumer advocacy services;
- [(o) the department responsible for the administration of the Coroners Act 2006, but only in respect of information contained in documents referred to in section 29(1) of that Act;]

Note: Clause 4(2)(o) was substituted by Amendment No 6.

- (p) the agencies specified in Schedule 1.]

Note: Subclause 4(2) was substituted in its entirety by Amendment No 5.

Part 2: Health Information Privacy Rules

5. Health information privacy rules

The information privacy principles are modified in accordance with the Act by the following rules which apply to health information and health agencies:

Rule 1 Purpose of Collection of Health Information

Health information must not be collected by any health agency unless:

- (a) the information is collected for a lawful purpose connected with a function or activity of the health agency; and
- (b) the collection of the information is necessary for that purpose.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 2
Source of Health Information

- (1) Where a health agency collects health information, the health agency must collect the information directly from the individual concerned.
- (2) It is not necessary for a health agency to comply with subrule (1) if the agency believes on reasonable grounds:
 - (a) that the individual concerned authorises collection of the information from someone else having been made aware of the matters set out in subrule 3(1);
 - (b) that the individual is unable to give his or her authority and the health agency having made the individual's representative aware of the matters set out in subrule 3(1) collects the information from the representative or the representative authorises collection from someone else;
 - (c) that compliance would:
 - (i) prejudice the interests of the individual concerned;
 - (ii) prejudice the purposes of collection; or
 - (iii) prejudice the safety of any individual;
 - (d) that compliance is not reasonably practicable in the circumstances of the particular case;
 - (e) that the collection is for the purpose of assembling a family or genetic history of an individual and is collected directly from that individual;
 - (f) that the information is publicly available information;
 - (g) that the information:
 - (i) will not be used in a form in which the individual concerned is identified;
 - (ii) will be used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (iii) will 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 that could reasonably be expected to identify the individual concerned;
 - (h) 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;
 - (ii) for the protection of the public revenue; or
 - (iii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or

- (i) that the collection is in accordance with an authority granted under section 54 of the Act.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 3
Collection of Health Information from Individual

- (1) Where a health agency collects health information directly from the individual concerned, or from the individual's representative, the health agency must take such steps as are, in the circumstances, reasonable to ensure that the individual concerned (and the representative if collection is from the representative) is aware of:
 - (a) the fact that the information is being collected;
 - (b) the purpose for which the information is being collected;
 - (c) the intended recipients of the information;
 - (d) the name and address of:
 - (i) the health agency that is collecting the information; and
 - (ii) the agency that will hold the information;
 - (e) whether or not the supply of the information is voluntary or mandatory and if mandatory the particular law under which it is required;
 - (f) the consequences (if any) for that individual if all or any part of the requested information is not provided; and
 - (g) the rights of access to, and correction of, health information provided by rules 6 and 7.
- (2) The steps referred to in subrule (1) must be taken before the information is collected or, if that is not practicable, as soon as practicable after it is collected.
- (3) A health agency is not required to take the steps referred to in subrule (1) in relation to the collection of information from an individual, or the individual's representative, if that agency has taken those steps in relation to the collection, from that individual or that representative, of the same information or information of the same kind for the same or a related purpose, on a recent previous occasion.
- (4) It is not necessary for a health agency to comply with subrule (1) if the agency believes on reasonable grounds:
 - (a) [...]
Note: Subrule 3(4)(a) was revoked by Amendment No 4.
 - (b) that compliance would:
 - (i) prejudice the interests of the individual concerned; or
 - (ii) prejudice the purposes of collection;
 - (c) that compliance is not reasonable practicable in the circumstances of the particular case; or

- (d) that non-compliance is necessary to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 4
Manner of Collection of Health Information

Health information must not be collected by a health agency:

- (a) by unlawful means; or
- (b) by means that, in the circumstances of the case:
 - (i) are unfair; or
 - (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 5
Storage and Security of Health Information

- (1) A health agency that holds health information must ensure:
 - (a) that the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against:
 - (i) loss;
 - (ii) access, use, modification, or disclosure, except with the authority of the agency; and
 - (iii) other misuse;
 - (b) that if it is necessary for the information to be given to a person in connection with the provision of a service to the health agency, including any storing, processing, or destruction of the information, everything reasonably within the power of the health agency is done to prevent unauthorised use or unauthorised disclosure of the information; and
 - (c) that, where a document containing health information is not to be kept, the document is disposed of in a manner that preserves the privacy of the individual.
- (2) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 6
Access to Personal Health Information

- (1) Where a health agency holds health information in such a way that it can readily be retrieved, the individual concerned is entitled:
 - (a) to obtain from the agency confirmation of whether or not the agency holds such health information; and
 - (b) to have access to that health information.
- (2) Where, in accordance with subrule (1)(b), an individual is given access to health information, the individual must be advised that, under rule 7, the individual may request the correction of that information.
- (3) The application of this rule is subject to:
 - (a) Part 4 of the Act (which sets out reasons for withholding information);
 - (b) Part 5 of the Act (which sets out procedural provisions relating to access to information); and
 - (c) clause 6 (which concerns charges).
- (4) This rule applies to health information obtained before or after the commencement of this code.

Note: This rule is subject to provisions in enactments which authorise or require personal information to be made available or Acts which prohibit, restrict, or regulate the availability of personal information: Privacy Act, sections 7(1) and (2). Under section 7(3) it is also subject to certain regulations which prohibit, restrict or regulate the availability of personal information.

Rule 7
Correction of Health Information

- (1) Where a health agency holds health information, the individual concerned is entitled:
 - (a) to request correction of the information; and
 - (b) to request that there be attached to the information a statement of the correction sought but not made.
- (2) A health agency that holds health information must, if so requested or on its own initiative, take such steps (if any) to correct the information as are, in the circumstances, reasonable to ensure that, having regard to the purposes for which the information may lawfully be used, it is accurate, up to date, complete, and not misleading.
- (3) Where an agency that holds health information is not willing to correct the information in accordance with such a request, the agency must, if so requested, take such steps (if any) as are reasonable to attach to the information, in such a manner that it will always be read with the information, any statement provided by the individual of the correction sought.
- (4) Where the agency has taken steps under subrule (2) or (3), the agency must, if reasonably practicable, inform each person or body or agency to whom the health information has been disclosed of those steps.
- (5) Where an agency receives a request made under subrule (1), the agency must inform the individual concerned of the action taken as a result of the request.
- (6) The application of this rule is subject to the provisions of Part 5 of the Act (which sets out procedural provisions relating to correction of information).
- (7) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 8
Accuracy etc of Health Information to be Checked Before Use

- (1) A health agency that holds health information must not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant and not misleading.
- (2) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 9
Retention of Health Information

- (1) A health agency that holds health information must not keep that information for longer than is required for the purposes for which the information may lawfully be used.
- (2) Subrule (1) does not prohibit any agency from keeping any document that contains health information the retention of which is necessary or desirable for the purposes of providing health services or disability services to the individual concerned.
- (3) This rule applies to health information obtained before or after the commencement of this code.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 10
Limits on Use of Health Information

- (1) A health agency that holds health information obtained in connection with one purpose must not use the information for any other purpose unless the health agency believes on reasonable grounds:
- (a) that the use of the information for that other purpose is authorised by:
 - (i) the individual concerned; or
 - (ii) the individual's representative where the individual is unable to give his or her authority under this rule;
 - (b) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained;
 - (c) that the source of the information is a publicly available publication [and that, in the circumstances of the case, it would be by unfair or unreasonable to use the information];

Note: Subrule 10(1)(c) was amended by Amendment No 8.

- (d) that the use of the information for that other purpose is necessary to prevent or lessen a serious [...] threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;

Note: Subrule 10(1)(d) was amended by Amendment No 7.

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

- (g) that the use of the information is in accordance with an authority granted under section 54 of the Act.

[(1A) A health agency that holds health information that was obtained from the testing or examination of a blood sample collected in connection with the Newborn Metabolic Screening Programme shall not use that information unless it believes, on reasonable grounds, that the use is in accordance with Schedule 3.]

Note: Subrule 10(1A) was inserted by Amendment No 7.

- (2) This rule does not apply to health information obtained before [1 July 1993].

Note: Subrule 10(2) was amended by Amendment No 2.

Note: An action is not in breach of this rule if it is authorised or required by or under law: Privacy Act, section 7(4).

Rule 11
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 [and that, in the circumstances of the case, it would not be unfair or unreasonable to disclose the information];

Note: Subrule 11(1)(d) was amended by Amendment No 8.

- (e) 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; [..]

Note: Subrule 11(1)(e) was amended by Amendment No 4.

- (f) that the information to be disclosed concerns on the fact of death and the disclosure is by a [health practitioner] 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, whānau, close relative, or other person whom it is reasonable in the circumstances to inform; [or]

Note: Subrule 11(1)(f) was amended by Amendment No 4 and Amendment No 6.

- [(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.]

Note: Subrule 11(1)(g) was inserted by Amendment No 3.

- (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 [health practitioner] 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;

Note: Subrule 11(2)(b) was amended by Amendment No 6.

- (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
 - (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 that could reasonably be expected to identify the individual concerned;
- (d) that the disclosure of the information is necessary to prevent or lessen a serious [...] threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;

Note: Subrule 11(2)(d) was amended by Amendment No 7.

- (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 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 purpose 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 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 [health practitioner] 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; or

Note: Subrule 11(2)(j) was amended by Amendment No 6.

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

[(2A) A health agency that holds health information that was obtained from the testing or examination of a blood sample collected in connection with the Newborn Metabolic Screening Programme shall not disclose that information unless it believes, on reasonable grounds, that the disclosure is in accordance with Schedule 3.]

Note: Subrule 11(2A) was inserted by Amendment No 7.

- (3) Disclosure under subrule (2) is permitted only to the extent necessary for the particular purpose.
- (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: An amended subrule 11(6) was inserted by Amendment No 3.

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 1993, section 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 1993, section 46(6).

Rule 12 Unique Identifiers

- (1) A health agency must not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the health agency to carry out any one or more of its functions efficiently.
- (2) A health agency must not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another agency, unless:
 - (a) those 2 agencies are associated persons within the meaning of [[subpart YB of the Income Tax Act 2007]]; or

Note: Subrule 12(2)(a) was amended by Amendment No 3 and by Amendment No 8.

- (b) it is permitted by subrule (3) or (4).
- [(3) The following agencies may assign the same National Health Index number to an individual:
 - (a) any agency authorised expressly by an enactment; or
 - (b) any agency or class of agencies listed in Schedule 2]

Note: Subrule 12(3) was substituted by Amendment No 5.

- [(4) Notwithstanding subrule (2) any health agency may assign to a health practitioner as a unique identifier:
 - (i) the registration number assigned to that individual by the relevant health professional body; or
 - (ii) the Common Provider Number assigned to that individual by the Ministry of Health.]

Note: Subrule 12(4) was initially substituted by Amendment No 6. The current wording of subrule 12(4) was substituted by Amendment No 7.

- (5) A health agency that assigns unique identifiers to individuals must take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.
- (6) A health agency must not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.
- (7) Subrules (1) to (5) do not apply in relation to the assignment of unique identifiers before the commencement of this code.

- (8) Subrule (6) applies to any unique identifier, whether assigned before or after the commencement of this code.

Note: An action is not a breach of this rule if it is authorised or required by or under law: Privacy Act 1993, section 7(4).

Part 3: Miscellaneous

6. Charges

- (1) For the purposes of charging under section 35 of the Act in relation to information privacy requests concerning health information, a health agency that is not a public sector health agency must not require the payment, by or on behalf of any individual who wishes to make a request, of any charges in respect of a matter referred to in paragraphs 35(1)(a) to (f) of the Act except in accordance with this clause.
- (2) Where an individual makes an information privacy request to a health agency that is not a public sector health agency, the agency may, unless prohibited by law other than the Act or this code, make a reasonable charge:
 - (a) where, on a particular day, that agency has made health information available to that individual in response to a request, for making the same or substantially the same health information available in accordance with any subsequent request within a period of 12 months after that day; or
 - (b) for providing a copy of an x-ray, a video recording[, an MRI scan photograph, a PET scan photograph] or a CAT scan photograph.

Note: Clause 6(2)(b) was amended by Amendment No 6.

- (3) Where an agency intends to make a charge under subclause (2) and the amount of the charge is likely to exceed \$30, the agency must provide the individual with an estimate of the charge before dealing with the request.

7. Complaints of breach of code

- [(1) Every health agency must designate a person or persons to deal with complaints alleging a breach of this code and facilitate the fair, simple, speedy, and efficient resolution of complaints.
- (2) Every health agency to which this subclause applies must have a complaints procedure which provides that:
 - (a) when a complaint of a breach of this code is received:
 - (i) the complaint is acknowledged in writing with 5 working days of receipt, unless it has been resolved to the satisfaction of the complainant within that period;
 - (ii) the complainant is informed of any relevant internal and external complaints procedures; and
 - (iii) the complaint and the actions of the health agency regarding that complaint are documented; and
 - (b) within 10 working days of acknowledging the complaint, the agency must:
 - (i) decide whether it:

- (A) accepts that the complaint is justified; or
 - (B) does not accept that the complaint is justified; or
 - (ii) if it decides that more time is needed to investigate the complaint:
 - (A) determine how much additional time is needed; and
 - (B) if that additional time is more than 20 working days, inform the complainant of that determination and of the reasons for it; and
 - (c) as soon as practicable after the agency decides whether or not it accepts that a complaint is justified, it must inform the complainant of:
 - (i) the reasons for the decision;
 - (ii) any actions the agency proposes to take;
 - (iii) any appeal procedure the agency has in place; and
 - (iv) the right to complain to the Privacy Commissioner.
- (3) Subclause (2) applies to any health agency specified in clause 4(2)(a), (c), (d), (e), (h), (i), (j), and (k) or items 6 and 8 of Schedule 1.
- (4) Nothing in this clause is to limit or restrict any provision of Part 4, 5, 8, or 9 of the Act or sections 55 to 57.

Note: The original clause 7 ("privacy officers") was revoked by Amendment No 3. The present clause 7 was inserted by Amendment No 5.

8. [...]

Note: The original clause 8 ("complaints of breach of code") was revoked by Amendment No 5.

[Schedule 1 SPECIFIED HEALTH AGENCIES

1. Ministry of Health

2. Health Research Council

3. [...]

Note: Paragraph 3 was revoked by Amendment No 8.

[4. Institute of Environment Science and Research Limited]

Note: Paragraph 4 was substituted by Amendment No 6.

5. The Interchurch Council on Hospital Chaplaincy

[6. New Zealand Health Partnerships Limited]

Note: Paragraph 6 was substituted by Amendment No 8.

7. [...]

Note: Paragraph 7 was revoked by Amendment No 8.

8. Accident Compensation Corporation

[9. The Regulator under the Accident Insurance Act 1998 and the [Accident Compensation Act 2001]]]

Note: Paragraph 9 was substituted by Amendment No 6 and amended by Amendment No 8.

Note: The original Schedule 1 ("HEALTH REGISTRATION STATUTES") was revoked by Amendment No 2. The present Schedule 1 was inserted by Amendment No 5.

**[Schedule 2
AGENCIES APPROVED TO ASSIGN NHI NUMBER**

1. Ministry of Health
2. District Health Boards
3. Hospitals
4. Primary Health Organisations
5. Independent Practitioner Associations
6. Health Practitioners
7. New Zealand Blood Service
8. Accident Compensation Corporation
9. Department of Corrections Health Services
10. New Zealand Defence Force Health Services
11. Pharmaceutical Management Agency of New Zealand

[11A. MedicAlert Foundation – New Zealand Incorporated]

Note: Paragraph 11A was inserted by Amendment No 7.

12. Any health agency which has a contract with the Accident Compensation Corporation or a District Health Board or the Ministry of Health to provide health or disability services.]

Note: The original Schedule 2 (“SPECIFIED HEALTH AGENCIES”) was revoked by Amendment No 5. The present Schedule 2 was inserted by Amendment No 5 and substituted by Amendment No 6.

[Schedule 3 USE AND DISCLOSURE OF INFORMATION DERIVED FROM NEWBORN BABIES' BLOOD SPOT SAMPLES

[Schedule 3 sets standards for how health information derived from the blood spot samples collected for the Newborn Metabolic Screening Programme may be used and disclosed.

All uses and disclosures of derived information must be:

- for one of the permitted primary or permitted secondary purposes; or
- authorised by the individual concerned or his or her representative; or
- authorised by a close available relative where the individual is deceased or under 16.

1. Interpretation

In this Schedule:

close available relative has the meaning given to it by section 10 of the Human Tissue Act 2008

derived information means health information that was obtained from testing or examination of a blood sample collected in connection with the Newborn Metabolic Screening Programme

permitted primary purpose means a purpose directly connected with conducting and administering the Newborn Metabolic Screening Programme, including to:

- (a) conduct initial and repeat screening for metabolic or genetic disorders of blood samples taken from newborn babies;
- (b) conduct quality assurance and audit; and
- (c) develop new screening procedures

permitted secondary purpose means to:

- (a) assist the New Zealand Police in an investigation where biological material, a body part or a body has been discovered and no other avenue of identifying a person who is deceased or missing is practicable;
- (b) conduct testing, intending to benefit the individual concerned or his or her family, that is authorised by:
 - (i) the individual concerned or his or her representative; or
 - (ii) a close available relative where the individual is dead or under 16;
- (c) conduct an inquiry pursuant to Part 3 of the Coroners Act 2006;
- (d) comply with a search warrant or court order;

- (e) comply with a notice in writing from the chairperson of a mortality review committee pursuant to Schedule 5 of the New Zealand Public Health and Disability Act 2000;
- (f) carry out research for which approval by an ethics committee and the Ministry of Health has been given.

2. Use and disclosure of derived information

Any health agency that holds derived information about an individual must not use or disclose the information unless it believes, on reasonable grounds, that:

- (a) the individual concerned or his or her representative has authorised the use or disclosure of derived information about himself or herself; or
- (b) where the individual is deceased or under 16, a representative or close available relative has authorised the use or disclosure of the individual's derived information; or
- (c) the derived information is to be used or disclosed for a permitted primary purpose or a permitted secondary purpose.]

Note: The original Schedule 3 ("AGENCIES APPROVED TO ASSIGN NHI NUMBER") was revoked by Amendment No 5. The present Schedule 3 was inserted by Amendment no 7.

Appendix

Extracts from enactments

Extracts are reprinted from the following statutes and regulations:

Privacy Act 1993 ss. 2-4, 7, 27-30, 32-45, 54, 126.....	33
Children, Young Persons, and their Families Act 1989 ss. 15-16.....	46
Evidence Act 2006 s. 59.....	46
Health Act 1956 ss. 22C, 22D, 22F, 22G, 22H.....	47
Health (Retention of Health Information) Regulations 1996 regs. 3, 5, 6, 11.....	50
Medicines Act 1981 s. 49A.....	51
Misuse of Drugs Act 1975 s. 20.....	52
New Zealand Bill of Rights Act 1990 ss. 10-11.....	53

Note: The reprinted extracts are believed to be correct as at October 2015. However, it is prudent, if proposing to rely on a provision in law, to check with an official published version of the statute to check for errors, amendments and repeals. Official copies of legislation can be found at <http://legislation.govt.nz/>.

Extracts from Privacy Act 1993

Note: To assist users of the code certain subsections, not of relevant in the health sector, have been omitted. Where reference is made to a particular principle, the corresponding rule in the code is shown in square brackets. For example, “principle 6” is shown as “[rule 6]”. Similar reference to clause 6 of the code is substituted in sections 35 and 40.

2 INTERPRETATION

(1) In this Act, unless the context otherwise requires,—

action includes failure to act; and also includes any policy or practice

agency —

- (a) means any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and, for the avoidance of doubt, includes a department; but
- (b) does not include —
 - (i) the Sovereign; or
 - (ii) the Governor-General or the Administrator of the Government; or
 - (iii) the House of Representatives; or
 - (iv) a member of Parliament in his or her official capacity; or
 - (v) the Parliamentary Service Commission; or
 - (vi) the Parliamentary Service, except in relation to personal information

- about any employee or former employee of that agency in his or her capacity as such an employee; or
- (vii) in relation to its judicial functions, a court; or
 - (viii) in relation to its judicial functions, a tribunal; or
 - (ix) an Ombudsman; or
 - (x) a Royal Commission; or
 - (xi) a commission of inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908; or
 - (xii) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed, pursuant to, and not by, any provision of an Act, to inquire into a specified matter; or
 - (xiii) in relation to its news activities, any news medium; or
 - (xiv) an inquiry to which section 6 of the Inquiries Act 2013 applies

collect does not include receipt of unsolicited information

Commissioner means the Privacy Commissioner referred to in section 12 of this Act and appointed in accordance with section 28(1)(b) of the Crown Entities Act 2004

correct, in relation to personal information, means to alter that information by way of correction, deletion, or addition; and **correction** has a corresponding meaning

document means a document in any form; and includes—

- (a) any writing on any material:
- (b) any information recorded or stored by means of any tape recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) any book, map, plan, graph, or drawing:
- (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

individual means a natural person, other than a deceased natural person

individual concerned, in relation to personal information, means the individual to whom the information relates

information privacy request has the meaning given to it by section 33

news activity means—

- (a) the gathering of news, or the preparation or compiling of articles or programmes of or concerning news, observations on news, or current affairs, for the purposes of dissemination to the public or any section of the public:
- (b) the dissemination, to the public or any section of the public, of any article or programme of or concerning—
 - (i) news:

- (ii) observations on news:
- (iii) current affairs

news medium means any agency whose business, or part of whose business, consists of a news activity; but, in relation to principles 6 and 7, does not include Radio New Zealand Limited or Television New Zealand Limited

publicly available information means personal information that is contained in a publicly available publication

publicly available publication means a magazine, book, newspaper, or other publication that is or will be generally available to members of the public; and includes a public register

serious threat, for the purposes of [subrule 10(1)(d) or 11(2)(d)], means a threat that an agency reasonably believes to be a serious threat having regard to all of the following:

- (a) the likelihood of the threat being realised; and
- (b) the severity of the consequences if the threat is realised; and
- (c) the time at which the threat may be realised

unique identifier means an identifier—

- (a) that is assigned to an individual by an agency for the purposes of the operations of the agency; and
- (b) that uniquely identifies that individual in relation to that agency;—

but, for the avoidance of doubt, does not include an individual's name used to identify that individual

working day means any day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

3 INFORMATION HELD BY AN AGENCY

- (1) Subject to subsection (2), information that is held by an officer or employee or member of an agency in that person's capacity as such an officer or employee or member or in that person's capacity as a statutory officer shall be deemed, for the purposes of this Act, to be held by the agency of which that person is an officer or employee or member.
- (2) Nothing in subsection (1) applies in respect of any information that any officer or employee or member of a public sector agency would not hold but for that person's membership of, or connection with, a body other than a public sector agency, except where that membership or connection is in that person's capacity

as an officer or an employee or a member of that public sector agency or as a statutory officer.

- (3) Nothing in subsection (1) applies in respect of any information that any officer or employee or member of any agency (not being a public sector agency) would not hold but for that person's membership of, or connection with, any other agency, except where that membership or connection is in that person's capacity as an officer or an employee or a member of that first-mentioned agency.
- (4) For the purposes of this Act, where an agency holds information—
 - (a) solely as agent; or
 - (b) for the sole purpose of safe custody; or
 - (c) for the sole purpose of processing the information on behalf of another agency,—

and does not use or disclose the information for its own purposes, the information shall be deemed to be held by the agency on whose behalf that information is so held or, as the case may be, is so processed.

4 ACTIONS OF, AND DISCLOSURE OF INFORMATION TO, STAFF OF AGENCY, ETC

For the purposes of this Act, an action done by, or information disclosed to, a person employed by, or in the service of, an agency in the performance of the duties of the person's employment shall be treated as having been done by, or disclosed to, the agency.

7 SAVINGS

- (1) Nothing in [rule 6] or [rule 11] derogates from any provision that is contained in any enactment and that authorises or requires personal information to be made available.
- (2) Nothing in [rule 6] or [rule 11] derogates from any provision that is contained in any other Act of Parliament and that—
 - (a) imposes a prohibition or restriction in relation to the availability of personal information; or
 - (b) regulates the manner in which personal information may be obtained or made available.
- (3) Nothing in [rule 6] or [rule 11] derogates from any provision—
 - (a) that is contained in any legislative instrument within the meaning of the Legislation Act 2012 made by Order in Council and in force—
 - (i) in so far as those [rules] apply to a department, a Minister, an organisation, or a public sector agency (as defined in paragraph (b) of the definition of that term in section 2(1)) that is established for the

- purposes of assisting or advising, or performing functions connected with, a department, a Minister, or an organisation, immediately before 1 July 1983; and
- (ii) in so far as those [rules] apply to a local authority or a public sector agency (as so defined) that is established for the purposes of assisting or advising, or performing functions connected with, a local authority, immediately before 1 March 1988; and
 - (iii) in so far as those [rules] apply to any other agency, immediately before 1 July 1993; and
- (b) that—
- (i) imposes a prohibition or restriction in relation to the availability of personal information; or
 - (ii) regulates the manner in which personal information may be obtained or made available.
- (4) An action is not a breach of any of [rules 1 to 5, 7 to 10, and 12] if that action is authorised or required by or under law.
- (5) [omitted].
- (6) Subject to the provisions of Part 7, nothing in any of the [health information privacy rules] shall apply in respect of a public register.

PART 4: GOOD REASONS FOR REFUSING ACCESS TO PERSONAL INFORMATION

Note: Section 27(2), concerning international relations, and section 29(1)(g), concerning information held by Radio NZ and TVNZ, have been omitted as being of little relevant to users of the Code

27 SECURITY, DEFENCE, INTERNATIONAL RELATIONS, ETC

- (1) An agency may refuse to disclose any information requested pursuant to [rule 6] if the disclosure of the information would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
 - (i) the Government of any other country or any agency of such a Government; or
 - (ii) any international organisation; or
 - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
 - (d) to endanger the safety of any individual.
- (2) [omitted]

28 TRADE SECRETS

- (1) Subject to subsection (2), an agency may refuse to disclose any information requested pursuant to [rule 6] if the withholding of the information is necessary to protect information where the making available of the information—
 - (a) would disclose a trade secret; or
 - (b) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
- (2) Information may not be withheld under subsection (1) if, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make the information available.

29 OTHER REASONS FOR REFUSAL OF REQUESTS

- (1) An agency may refuse to disclose any information requested pursuant to [rule 6] if—
 - (a) the disclosure of the information would involve the unwarranted disclosure of the affairs of another individual or of a deceased individual; or
 - (b) the disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise—
 - (i) which was made to the person who supplied the information; and
 - (ii) which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or
 - (c) after consultation undertaken (where practicable) by or on behalf of the agency with an individual's medical practitioner, the agency is satisfied that—
 - (i) the information relates to that individual; and
 - (ii) the disclosure of the information (being information that relates to the physical or mental health of the individual who requested it) would be likely to prejudice the physical or mental health of that individual; or
 - (d) in the case of an individual under the age of 16, the disclosure of that information would be contrary to that individual's interests; or
 - (e) the disclosure of that information (being information in respect of an individual who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that individual; or
 - (f) the disclosure of the information would breach legal professional privilege; or
 - (g) [omitted]
 - (h) the disclosure of the information, being information contained in material placed in any library or museum or archive, would breach a condition subject to which that material was so placed; or
 - (i) the disclosure of the information would constitute contempt of court or of the House of Representatives; or
 - (ia) the request is made by a defendant or a defendant's agent and is—
 - (i) for information that could be sought by the defendant under the Criminal Disclosure Act 2008; or

- (ii) for information that could be sought by the defendant under that Act and that has been disclosed to, or withheld from, the defendant under that Act; or
 - (j) the request is frivolous or vexatious, or the information requested is trivial.
- (2) An agency may refuse a request made pursuant to [rule 6] if—
 - (a) the information requested is not readily retrievable; or
 - (b) the information requested does not exist or cannot be found; or
 - (c) the information requested is not held by the agency and the person dealing with the request has no grounds for believing that the information is either—
 - (i) held by another agency; or
 - (ii) connected more closely with the functions or activities of another agency.
- (3) For the purposes of subsection (1)(b), the term **evaluative material** means evaluative or opinion material compiled solely—
 - (a) for the purpose of determining the suitability, eligibility, or qualifications of the individual to whom the material relates—
 - (i) for employment or for appointment to office; or
 - (ii) for promotion in employment or office or for continuance in employment or office; or
 - (iii) for removal from employment or office; or
 - (iv) for the awarding of contracts, awards, scholarships, honours, or other benefits; or
 - (b) for the purpose of determining whether any contract, award, scholarship, honour, or benefit should be continued, modified, or cancelled; or
 - (c) for the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property.
- (4) In subsection (1)(c), **medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

30 REFUSAL NOT PERMITTED FOR ANY OTHER REASON

Subject to sections 7, 31, and 32, no reasons other than 1 or more of the reasons set out in sections 27 to 29 justifies a refusal to disclose any information requested pursuant to [rule 6].

32 INFORMATION CONCERNING EXISTENCE OF CERTAIN INFORMATION

Where a request made pursuant to [rule 6] relates to information to which section 27 or section 28 applies, or would, if it existed, apply, the agency dealing with the request may, if it is satisfied that the interest protected by section 27 or section 28 would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, give notice in writing to the applicant that it neither confirms nor denies the existence or non-existence of that information.

PART 5: PROCEDURE PROVISIONS RELATING TO ACCESS TO AND CORRECTION OF PERSONAL INFORMATION

33 APPLICATION

This Part applies to the following requests (in this Act referred to as information privacy requests):

- (a) a request made pursuant to [subrule 6(1)(a)] to obtain confirmation of whether or not an agency holds personal information:
- (b) a request made pursuant to [subrule 6(1)(b)] to be given access to personal information:
- (c) a request made pursuant to [subrule 7(1)] for correction of personal information.

34 INDIVIDUALS MAY MAKE INFORMATION PRIVACY REQUESTS

An information privacy request may be made only by an individual.

35 CHARGES

- (1) Subject to section 36, a public sector agency shall not require the payment, by or on behalf of any individual who wishes to make an information privacy request, of any charge in respect of—
 - (a) the provision of assistance in accordance with section 38; or
 - (b) the making of the request to that agency; or
 - (c) the transfer of the request to any other agency; or
 - (d) the processing of the request, including deciding whether or not the request is to be granted and, if so, in what manner; or
 - (e) the making available of information in compliance, in whole or in part, with the request; or
 - (f) in the case of a request made pursuant to [subrule 7(1)],—
 - (i) the correction of any information in compliance, in whole or in part, with the request; or
 - (ii) the attaching, to any information, of a statement of any correction sought but not made.
- (2) Subject to subsection (4), an agency that is not a public sector agency shall not require the payment, by or on behalf of any individual who wishes to make an information privacy request, of any charge in respect of—
 - (a) the provision of assistance in accordance with section 38; or
 - (b) the making of the request to that agency; or
 - (c) the transfer of the request to any other agency; or
 - (d) the processing of the request, including deciding whether or not the request is to be granted and, if so, in what manner.
- (3) [omitted]
- (4) [omitted]

- (5) Any charge fixed by an agency pursuant to [clause 6 of the code] or pursuant to an authority granted pursuant to section 36 in respect of an information privacy request shall be reasonable, and (in the case of a charge fixed in respect of the making available of information) regard may be had to the cost of the labour and materials involved in making information available in accordance with the request and to any costs incurred pursuant to a request of the applicant for the request to be treated as urgent.
- (6) The provisions of subsections (3) to (5), in so far as they relate to the fixing, by any agency that is not a public sector agency, of any charge in respect of any information privacy request, shall apply subject to any provisions to the contrary in any code of practice issued under section 46 and for the time being in force.

36 COMMISSIONER MAY AUTHORISE PUBLIC SECTOR AGENCY TO CHARGE

- (1) Where a public sector agency satisfies the Commissioner that the agency is commercially disadvantaged, in comparison with any competitor in the private sector, by reason that the agency is prevented, by subsection (1) of section 35, from imposing a charge in respect of any of the matters referred to in paragraph (e) or paragraph (f) of that subsection, the Commissioner may authorise that agency to impose a charge in respect of either or both of those matters.
 - (1A) The Commissioner may authorise a public sector agency to impose a charge in respect of the matter referred to in section 35(1)(e) if the information privacy request is received from, or on behalf of, an individual who—
 - (a) is residing outside New Zealand; and
 - (b) is not a New Zealand citizen or a permanent resident of New Zealand.
- (2) The Commissioner may impose in respect of any authority granted pursuant to subsection (1) or (1A) such conditions as the Commissioner thinks fit.
- (3) The Commissioner may, at any time, revoke any authority granted to an agency pursuant to subsection (1) or (1A), but shall not revoke any such authority without giving the agency an opportunity to be heard.

37 URGENCY

If an individual making an information privacy request asks that his or her request be treated as urgent, that individual shall give his or her reasons why the request should be treated as urgent.

38 ASSISTANCE

It is the duty of every agency to give reasonable assistance to an individual, who—

- (a) wishes to make an information privacy request; or
- (b) in making such a request, has not made the request in accordance with the requirements of this Act; or
- (c) has not made his or her request to the appropriate agency,—

to make a request in a manner that is in accordance with the requirements of this Act or to direct his or her request to the appropriate agency.

39 TRANSFER OF REQUESTS

Where—

- (a) an information privacy request is made to an agency or is transferred to an agency in accordance with this section; and
- (b) the information to which the request relates—
 - (i) is not held by the agency but is believed by the person dealing with the request to be held by another agency; or
 - (ii) is believed by the person dealing with the request to be more closely connected with the functions or activities of another agency,—

the agency to which the request is made shall promptly, and in any case not later than 10 working days after the day on which the request is received, transfer the request to the other agency and inform the individual making the request accordingly.

40 DECISIONS ON REQUESTS

- (1) Subject to this Act, the agency to which an information privacy request is made or transferred in accordance with this Act shall, as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that agency,—
 - (a) decide whether the request is to be granted and, if it is to be granted, in what manner and, subject to [clause 6 of the code], for what charge (if any); and
 - (b) give or post to the individual who made the request notice of the decision on the request.
- (2) Where any charge is imposed, the agency may require the whole or part of the charge to be paid in advance.
- (3) Where an information privacy request is made or transferred to a department, the decision on that request shall be made by the chief executive of that department or an officer or employee of that department authorised by that chief executive, unless that request is transferred in accordance with section 39 to another agency.
- (4) Nothing in subsection (3) prevents the chief executive of a department or any officer or employee of a department from consulting a Minister or any other person in relation to the decision that the chief executive or officer or employee proposes to make on any information privacy request made or transferred to the department in accordance with this Act.

41 EXTENSION OF TIME LIMITS

- (1) Where an information privacy request is made or transferred to an agency, the agency may extend the time limit set out in section 39 or section 40(1) in respect of the request if—

- (a) the request is for a large quantity of information or necessitates a search through a large quantity of information, and meeting the original time limit would unreasonably interfere with the operations of the agency; or
 - (b) consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.
- (2) Any extension under subsection (1) shall be for a reasonable period of time having regard to the circumstances.
- (3) The extension shall be effected by giving or posting notice of the extension to the individual who made the request within 20 working days after the day on which the request is received.
- (4) The notice effecting the extension shall—
- (a) specify the period of the extension; and
 - (b) give the reasons for the extension; and
 - (c) state that the individual who made the request for the information has the right, under section 67, to make a complaint to the Commissioner about the extension; and
 - (d) contain such other information as is necessary.

42 DOCUMENTS

- (1) Where the information in respect of which an information privacy request is made by any individual is comprised in a document, that information may be made available in 1 or more of the following ways:
- (a) by giving the individual a reasonable opportunity to inspect the document; or
 - (b) by providing the individual with a copy of the document; or
 - (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the individual to hear or view those sounds or visual images; or
 - (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the individual with a written transcript of the words recorded or contained in the document; or
 - (e) by giving an excerpt or summary of the contents; or
 - (f) by furnishing oral information about its contents.
- (2) Subject to section 43, the agency shall make the information available in the way preferred by the individual requesting it unless to do so would—
- (a) impair efficient administration; or
 - (b) be contrary to any legal duty of the agency in respect of the document; or
 - (c) prejudice the interests protected by section 27 or section 28 or section 29 and (in the case of the interests protected by section 28) there is no countervailing public interest.

- (3) Where the information is not provided in the way preferred by the individual requesting it, the agency shall, subject to section 32, give to that individual—
 - (a) the reason for not providing the information in that way; and
 - (b) if that individual so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 27 or section 28 or section 29 and (in the case of the interests protected by section 28) there is no countervailing public interest.

43 DELETION OF INFORMATION FROM DOCUMENTS

- (1) Where the information in respect of which an information privacy request is made is comprised in a document and there is good reason for withholding some of the information contained in that document, the other information in that document may be made available by making a copy of that document available with such deletions or alterations as are necessary.
- (2) Where a copy of a document is made available under subsection (1), the agency shall, subject to section 32, give to the individual—
 - (a) the reason for withholding the information; and
 - (b) if the individual so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 27 or section 28 or section 29 and (in the case of the interests protected by section 28) there is no countervailing public interest.

44 REASON FOR REFUSAL TO BE GIVEN

Where an information privacy request made by an individual is refused, the agency shall,—

- (a) subject to section 32, give to the individual—
 - (i) the reason for its refusal; and
 - (ii) if the individual so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 27 or section 28 or section 29 and (in the case of the interests protected by section 28) there is no countervailing public interest; and
- (b) give to the individual information concerning the individual's right, by way of complaint under section 67 to the Commissioner, to seek an investigation and review of the refusal.

45 PRECAUTIONS

Where an information privacy request is made pursuant to subclause (1)(b) of [rule 6], the agency—

- (a) shall not give access to that information unless it is satisfied concerning the identity of the individual making the request; and
- (b) shall ensure, by the adoption of appropriate procedures, that any information intended for an individual is received—
 - (i) only by that individual; or

- (ii) where the request is made by an agent of the individual, only by that individual or his or her agent; and
- (c) shall ensure that, where the request is made by an agent of the individual, the agent has the written authority of that individual to obtain the information or is otherwise properly authorised by that individual to obtain the information.

54 COMMISSIONER MAY AUTHORISE COLLECTION, USE, OR DISCLOSURE OF PERSONAL INFORMATION

- (1) The Commissioner may authorise an agency to collect, use, or disclose personal information, even though that collection, use, or disclosure would otherwise be in breach of [rule 2 or rule 10 or rule 11], if the Commissioner is satisfied that, in the special circumstances of the case,—
 - (a) the public interest in that collection or, as the case requires, that use or that disclosure outweighs, to a substantial degree, any interference with the privacy of the individual that could result from that collection or, as the case requires, that use or that disclosure; or
 - (b) that collection or, as the case requires, that use or that disclosure involves a clear benefit to the individual concerned that outweighs any interference with the privacy of the individual that could result from that collection or, as the case requires, that use or that disclosure.
- (2) The Commissioner may impose in respect of any authority granted under subsection (1) such conditions as the Commissioner thinks fit.
- (3) The Commissioner shall not grant an authority under subsection (1) in respect of the collection, use, or disclosure of any personal information for any purpose if the individual concerned has refused to authorise the collection or, as the case requires, the use or disclosure of the information for that purpose.

126 LIABILITY OF EMPLOYER AND PRINCIPALS

- (1) Subject to subsection (4), anything done or omitted by a person as the employee of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.
- (2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express or implied authority, precedent or subsequent.
- (3) Anything done or omitted by a person as a member of any agency shall, for the purposes of this Act, be treated as done or omitted by that agency as well as by the first-mentioned person, unless it is done or omitted without that agency's express or implied authority, precedent or subsequent.
- (4) In proceedings under this Act against any person in respect of an act alleged to have been done by an employee of that person, it shall be a defence for that person to prove that he or she or it took such steps as were reasonably

practicable to prevent the employee from doing that act, or from doing as an employee of that person acts of that description.

Extracts from Children, Young Persons, and Their Families Act 1989

15 REPORTING OF ILL-TREATMENT OR NEGLECT OF CHILD OR YOUNG PERSON

Any person who believes that any child or young person has been, or is likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived may report the matter to a social worker or a constable.

16 PROTECTION OF PERSON REPORTING ILL-TREATMENT OR NEGLECT OF CHILD OR YOUNG PERSON

No civil, criminal, or disciplinary proceedings shall lie against any person in respect of the disclosure or supply, or the manner of the disclosure or supply, by that person pursuant to section 15 of information concerning a child or young person (whether or not that information also concerns any other person), unless the information was disclosed or supplied in bad faith.

Extracts from Evidence Act 2006

59 PRIVILEGE IN CRIMINAL PROCEEDINGS FOR INFORMATION OBTAINED BY MEDICAL PRACTITIONERS AND CLINICAL PSYCHOLOGISTS

- (1) This section—
 - (a) applies to a person who consults or is examined by a medical practitioner or a clinical psychologist for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct; but
 - (b) does not apply in the case of a person who has been required by an order of a Judge, or by other lawful authority, to submit himself or herself to the medical practitioner or clinical psychologist for any examination, test, or for any other purpose.
- (2) A person has a privilege in a criminal proceeding in respect of any communication made by the person to a medical practitioner or clinical psychologist that the person believes is necessary to enable the medical practitioner or clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.
- (3) A person has a privilege in a criminal proceeding in respect of information obtained by a medical practitioner or clinical psychologist as a result of consulting with or examining the person to enable the medical practitioner or clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

- (4) A person has a privilege in a criminal proceeding in respect of information consisting of a prescription, or notes of a prescription, for treatment prescribed by a medical practitioner or clinical psychologist as a result of consulting with or examining the person to enable the medical practitioner or clinical psychologist to treat or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.
- (5) A reference in this section to a communication to or information obtained by a medical practitioner or a clinical psychologist is to be taken to include a reference to a communication to or information obtained by a person acting in a professional capacity on behalf of a medical practitioner or clinical psychologist in the course of the examination or treatment of, or care for, the person by that medical practitioner or clinical psychologist.
- (6) In this section,—

clinical psychologist means a health practitioner—

- (a) who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology; and
- (b) who is by his or her scope of practice permitted to diagnose and treat persons suffering from mental and emotional problems

drug dependency means the state of periodic or chronic intoxication produced by the repeated consumption, smoking, or other use of a controlled drug (as defined in section 2(1) of the Misuse of Drugs Act 1975) detrimental to the user, and involving a compulsive desire to continue consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug.

Extracts 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 Children, Young Persons, and Their Families 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—
- (a) by that individual personally, if he or she has attained the age of 16 years; or
 - (b) by a representative of that individual.

22D DUTY TO PROVIDE HEALTH INFORMATION

- (1) The Minister may at any time, by notice in writing, require any district health board to provide, in such manner as may from time to time be required, such returns or other information as is specified in the notice concerning the condition or treatment of, or the services provided to, any individuals in order to obtain statistics for health purposes or for the purposes of advancing health knowledge, health education, or health research.
- (2) Subject to subsection (3), it is the duty of a district health board to provide the returns or other information specified in a notice given to it under subsection (1) within such time, and in such form, as is specified in the notice.

- (3) No information that would enable the identification of an individual may be provided under this section unless—
 - (a) the individual consents to the provision of such information; or
 - (b) the identifying information is essential for the purposes for which the information is sought.
- (4) For the purposes of subsection (3)(a), consent to the provision of information may be given—
 - (a) by the individual personally, if he or she has attained the age of 16 years; or
 - (b) by a representative of that individual.

22F COMMUNICATION OF INFORMATION FOR DIAGNOSTIC AND OTHER PURPOSES

- (1) Every person who holds health information of any kind shall, at the request of the individual about whom the information is held, or a representative of that individual, or any other person that is providing, or is to provide, services to that individual, disclose that information to that individual or, as the case requires, to that representative or to that other person.
- (2) A person that holds health information may refuse to disclose that information under this section if—
 - (a) that person has a lawful excuse for not disclosing that information; or
 - (b) where the information is requested by someone other than the individual about whom it is held (not being a representative of that individual), the holder of the information has reasonable grounds for believing that that individual does not wish the information to be disclosed; or
 - (c) refusal is authorised by a code of practice issued under section 46 of the Privacy Act 1993.
- (3) For the purposes of subsection (2)(a), neither—
 - (a) the fact that any payment due to the holder of any information or to any other person has not been made; nor
 - (b) the need to avoid prejudice to the commercial position of the holder of any information or of any other person; nor
 - (c) the fact that disclosure is not permitted under any of the information privacy principles set out in section 6 of the Privacy Act 1993—

shall constitute a lawful excuse for not disclosing information under this section.

- (4) Where any person refuses to disclose health information in response to a request made under this section, the person whose request is refused may make a complaint to the Privacy Commissioner under Part 8 of the Privacy Act 1993, and that Part of that Act, so far as applicable and with all necessary modifications, shall apply in relation to that complaint as if the refusal to which the complaint relates were a refusal to make information available in response to an information privacy request within the meaning of that Act.

- (5) Nothing in subsection (4) limits any other remedy that is available to any person who is aggrieved by any refusal to disclose information under this section.

22G INSPECTION OF RECORDS

- (1) In this section, **provider** means a person who has claimed payment for services from 1 or more of the following:
- (a) the Ministry of Health:
 - (b) a district health board:
 - (c) the Health Funding Authority or a person authorised by the Health Funding Authority to make payments:
 - (d) a regional health authority or a person authorised by a regional health authority to make payments:
 - (e) a hospital and health service:
 - (f) a Crown health enterprise:
 - (g) an area health board:
 - (h) a hospital board:
 - (i) the Department of Health.
- (2) Every provider must, forthwith after a request by the Director-General or the chief executive of a district health board or of Health Benefits Limited, make available any records of the provider that relate to the services concerned for inspection—
- (a) by a person authorised in writing by the Director-General or the chief executive of the district health board or Health Benefits Limited (as the case may be) for this purpose, being a person who holds a professional qualification relevant to the services provided by the provider or any other person the Director-General or the chief executive considers appropriate; and
 - (b) for the purpose of verifying the claim for payment.
- (3) Any person authorised in accordance with subsection (2) to inspect the records of a provider may copy or take notes of those records for the purposes of the inspection.

22H ANONYMOUS HEALTH INFORMATION

Notwithstanding any enactment, rule of law, or other obligation, any person may supply to any other person health information that does not enable the identification of the individual to whom the information relates.

Extracts from Health (Retention of Health Information) Regulations 1996

3 GENERAL EFFECT

- (1) The general effect of these regulations is to impose an obligation on providers of services to retain, for a minimum period, health information relating to identifiable individuals.

- (2) That obligation is imposed on the provider that for the time being holds the health information, even though the information may have been transferred to that provider.

5 DEFINITION OF MINIMUM RETENTION PERIOD

In these regulations, unless the context otherwise requires, **minimum retention period**, in relation to health information that relates to an identifiable individual, means a period of 10 years beginning on the day after the date shown in the health information as the most recent date on which a provider provided services to that individual.

6 HEALTH INFORMATION TO BE KEPT FOR MINIMUM RETENTION PERIOD

- (1) Subject to subclause (2) and to regulations 7, 8, and 9, every provider that holds health information shall retain that health information for the minimum retention period.
- (2) Subclause (1) does not prevent a provider from transferring health information that relates to an identifiable individual to,—
 - (a) another provider; or
 - (b) the individual to whom the information relates; or
 - (c) if that individual is dead, the personal representative of that individual.

11 OFFENCE

- (1) Every provider commits an offence who fails, without reasonable excuse, to comply with regulation 6(1).
- (2) Every provider who commits an offence against subclause (1) is liable on conviction to a fine not exceeding \$500.

Extracts from Medicines Act 1981

49A STATEMENTS REGARDING PERSONS DEPENDENT ON PRESCRIPTION MEDICINES OR RESTRICTED MEDICINES

- (1) If a Medical Officer of Health has reason to believe that any person is or is likely to become dependent on any prescription medicine or restricted medicine, the Medical Officer of Health may, for the purpose of preventing or restricting the supply of prescription medicines or restricted medicines to that person, or of assisting in the cure or mitigation or avoidance of the dependence of that person, publish statements relating to that person to all or any of the members of all or any of the classes of persons set out in subsection (3).
- (2) Every statement made under subsection (1) shall be privileged unless the publication is proved to be made with malice.

- (3) The classes of persons referred to in subsection (1) are as follows:
- (a) officers:
 - (b) officers and employees of any district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000:
 - (c) people providing, or employed in providing, hospital care (within the meaning of the Health and Disability Services (Safety) Act 2001):
 - (d) managers of prisons within the meaning of the Corrections Act 2004:
 - (e) managers and superintendents of institutions within the meaning of the Alcoholism and Drug Addiction Act 1966:
 - (f) authorised prescribers:
 - (g) delegated prescribers:
 - (ga) *[Repealed]*
 - (gb) *[Repealed]*
 - (h) Police employees:
 - (i) persons who deal in prescription medicines or restricted medicines in the course of business.
- (4) Nothing in subsection (1) or subsection (2) shall limit or affect any right or duty that a Medical Officer of Health may otherwise possess to publish a statement to any person.
- (5) Every person commits an offence against this Act who, except in the course of duty as a member of a class set out in subsection (3) or as an officer or servant of the Crown, publishes any information obtained, whether by that person or any other person, from a statement made pursuant to subsection (1), or any comment on any such statement.

Extracts from Misuse of Drugs Act 1975

20 STATEMENTS REGARDING DRUG DEPENDENT PERSONS

- (1) If a Medical Officer of Health has reason to believe that any person is or is likely to become dependent on any controlled drug, he may, for the purpose of preventing or restricting the supply of controlled drugs to that person, or of assisting in the cure or mitigation or avoidance of the dependence of that person, publish statements relating to that person to all or any of the members of all or any of the classes of persons set out in subsection (3).
- (2) Every statement made under subsection (1) shall be privileged unless the publication is proved to be made with malice.
- (3) The classes of persons referred to in subsection (1) are as follows:
- (a) employees of any district health board established by or under the New Zealand Public Health and Disability Act 2000:
 - (aa) *[Repealed]*
 - (b) a hospital care operator within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001:
 - (c) managers of prisons within the meaning of the Corrections Act 2004:

- (d) managers and superintendents of institutions within the meaning of the Alcoholism and Drug Addiction Act 1966:
 - (e) medical practitioners:
 - (f) dentists:
 - (fa) midwives:
 - (fb) designated prescribers:
 - (fc) nurse practitioners:
 - (fd) optometrists:
 - (g) Police employees:
 - (h) persons who deal in controlled drugs in the course of business.
- (4) Nothing in subsection (1) or subsection (2) shall limit or affect any right or duty which a Medical Officer of Health may otherwise possess to publish a statement to any person.
- (5) Every person commits an offence against this Act who, except in the course of duty as a member of a class set out in subsection (3) or as an officer or servant of the Crown, publishes any information obtained, whether by him or any other person, from a statement made pursuant to subsection (1), or any comment on any such statement.

Extracts from New Zealand Bill of Rights Act 1990

10 Right not to be subjected to medical or scientific experimentation

Every person has the right not to be subjected to medical or scientific experimentation without that person's consent.

11 Right to refuse to undergo medical treatment

Everyone has the right to refuse to undergo any medical treatment.

Legislative history:

28 June 1994	Code issued
12 July 1994	Amendment No 1 (Temporary) issued
30 July 1994	Code commenced, Amendment No 1 (Temporary) commenced.
26 June 1995	Amendment No 2 issued
29 July 1995	Amendment No 1 (Temporary) expired
30 July 1995	Amendment No 2 commenced
24 August 1998	Amendment No 3 issued
30 September 1998	Amendment No 3 commenced
1 March 2000	Amendment No 4 issued
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30 July 2000	Amendment No 5 commenced
17 September 2007	Amendment No 6 issued
1 November 2007	Amendment No 6 commenced
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