

The Use of Consent in the Information Sharing Guideline (ACYI)

Rationale

- A means of empowering individuals.
- Meets legislated requirements for sharing personal and/or health information.

Requirements

The requirements for proper consent are:

- Must clearly authorize **what** information will be disclosed,
- With **whom**,
- For what purpose (**why**),
- And for **how long**.
- It should also indicate that the individual understands the risks and benefits of providing or not providing consent.

The goal is to ensure that the individual who is consenting to the release of his/her personal information knows what he or she is consenting to. The individual should understand the consequences of the intended disclosure.

A sample template for a consent form is provided on the reverse of the Sample Integrated Services Terms of Reference, that meets the requirements of the government partnering organizations and their respective Acts.

Sometimes an organization is allowed to share personal information without getting prior consent. In such cases, where appropriate, the person to whom the information relates should be told that this will occur. Fully informing the individuals will help to empower them, as they will better understand why and how their information will be used.

Providing Consent on Behalf of Another

Individuals may be represented by another person. For example, a child's guardian, lawyers and/or legal representatives, may consent to disclosure of the child's personal information, providing that such disclosure is not an unreasonable invasion of the child's privacy.

Children's Consent

Children have rights to the protection of their personal information similar to adults. However, their rights may sometimes be exercised by another, in particular a parent or guardian. This is sometimes due to the child being, by reason of age or immaturity, unable to fully understand his/her rights. On the other hand, the child may sometimes be considered sufficiently mature that he/she can exercise his/her rights on his/her own. This general rule is sometimes modified by legislation that provides that the parent and child both have a role in consenting to certain types of information.

Where children can consent, in deciding whether a child can give independent consent to release her personal information, the following can be taken into account:

- The governing legislation
- The age of the child. Age 12 is a guide only.
- The child's level of maturity. Is the child able to understand the requirements of consent (what, who, why and how long?)
- The sensitivity of the information and the consequences of releasing it. For example, there may be information about a child that should not be shared with a parent; there may be information that must be shared or withheld for the safety or best interests of the child.

Additional Resources

- School Jurisdictions
http://www3.gov.ab.ca/foip/faq/school_jurisdictions.cfm
Alberta Children and Youth Initiative
<http://www.child.gov.ab.ca/acyi/page.cfm?pg=index>
- Information Sharing Policy Framework and Appendices
- FOIP and HIA Coordinators
<http://www3.gov.ab.ca/foip/coordinators/index.cfm>

Factors to Consider in Determining Whether the Disclosure is an Unreasonable Invasion of a Child's Personal Privacy

- other relevant legislation impacting the disclosure (ie. *Child Welfare Act*, *Health Information Act*),
- is the information personal information as defined in the *FOIP Act*, or health information as defined in the *Health Information Act*
- age of the child,
- the family situation,
- the sensitivity of the information,
- whether the child supplied the information in confidence
- whether the information is likely to be inaccurate or unreliable
- whether the information is relevant to a fair determination of the child's rights, not the guardian's rights
- whether there are any compelling reasons affecting anyone's health or safety.

Factors to Consider in Determining Whether a Child Can Consent

The ability to consent should be determined on a case-by-case basis through application of the mature minor (child) rule.

- agency seeking the disclosure of the child's personal information must determine if the child is capable of appreciating the nature of the intended sharing of information and the consequences of its disclosure.
- where consent is required, the student's consent should always be obtained if they qualify as a mature minor (child), unless otherwise provided by statute
- E.g.: Under the *School Act*, a student who is 16 or older may consent, in writing, to the disclosure of information contained on the "student record". Consent to the release of any other information maintained by the school board must be made in compliance with the *FOIP Act* and the mature minor (child) rule.

Additional factors:

- age of the student - students aged 12 and older should be consulted regarding the proposed sharing of information the stage, not just the age, must be assessed.
- child's level of maturity - must be assessed to determine if they understand the nature and consequences of the intended disclosure
- sensitivity of the information and to whom it will be disclosed - the disclosure of sensitive information about a child to a parent could endanger the child or not be in the best interests of the child.

A child should be given a reasonable opportunity to review the information and to state their position regarding the provision of access to the intended recipients.