
Guide to Information Sharing under the Children First Act

To be used with the Decision Tree - Information Sharing under the *Children First Act* (DT 001)

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Introduction

The *Children First Act* (the “Act”) is based on the philosophy that programs and services that support children are most effective when they are provided through a collaborative and multi-disciplinary approach. Such collaboration can only truly be effective when appropriate information sharing occurs between individuals and organizations involved in planning or providing programs and services for children. This philosophy is critical to ensuring successful outcomes for children and their families.

The information sharing provisions of the Act were proclaimed on January 1, 2014.

This guide provides recommendations on how to share personal and health information between government departments, educational bodies, health care bodies, police services, parents or guardians, and others under the information sharing provisions (Section 4) of the Act <http://www.qp.alberta.ca/documents/Acts/c12p5.pdf>.

This guide is not intended to provide legal advice and is not to be used as a substitute for legal advice. If there is any doubt about the proper application or interpretation of the Act, please review its provisions, or consult with your privacy coordinator or legal counsel.

Glossary

The Act defines key terms. Because program areas define some of these terms differently, terms and definitions that are either defined in the Act or are defined in other legislation are provided here to facilitate a common understanding.

Affiliate

An affiliate is an individual or organization that is employed by or performs a service for a custodian. This includes contractors, volunteers, students, appointees of the custodian and information managers. Refer to the *Health Information Act* (HIA) for a complete definition.

Child

Child means a person who is under the age of 18 years.

Custodian

A custodian is an organization or a regulated health professional, as defined by the *Health Information Act* (HIA) or designated in the Health Information Regulation, which provides a health service. Examples include: Alberta Health, Alberta Health Services, nursing homes, pharmacists, nurses and physicians in their own private office/clinic. Refer to the HIA and the Regulation for a complete definition and list of the designated custodians.

Guardian

Guardianship is the legal construct through which an individual exercises decision-making authority regarding a child. Generally, the *Family Law Act* provides that the parents of a child are

the guardians of the child. However, an individual other than a parent may obtain the status of “guardian” through operation of law, by court order (e.g. guardianship order), or through a testamentary appointment (.e.g. a will).

Health Information¹

Health information as defined in the HIA is:

- Registration information (includes: personal health number, address, phone number, and health service eligibility information),
- Diagnostic, treatment and care information (includes: lab results, medical conditions, medical treatments, prescription information; and
- Any other information about an individual that is collected when a health service is provided to the individual

Parent

Generally speaking, the birth mother and the biological father are the parents of a child, although it is possible for other individuals to become parents of a child (e.g. through adoption). It should be noted that an individual can be the parent of a child without being the child’s guardian (for example, when the court terminates the parent’s guardianship rights).

Personal Information

Personal Information, as defined in the *Freedom of Information and Protection of Privacy Act* (FOIP Act), is personal information that includes recorded information about an identifiable individual (e.g. name, address, age, race, family status and health care history). Click here for a comprehensive list of what kinds of information are considered personal information:

<http://www.servicealberta.ca/foip/documents/appendix1.pdf>.

Public Body

For the purposes of the Act, Public Body, as defined in the *Freedom of Information and Protection of Privacy Act*, includes:

- A department, branch or office of the Government of Alberta;
- An agency, board, commission, corporation, office or other body designated as a public body in the Freedom of Information and Protection of Privacy regulations;
- The Child and Youth Advocate; and
- A “local public body”, such as an educational body, health care body or a local government body

¹ For a comprehensive definition of health information under the *Health Information Act*, refer to the sections that address “diagnostic, treatment and care information” and “registration information”

Service Provider

Service Provider, under the Act, includes:

- A department as defined in the *Government Organization Act*;
- An educational body as defined in the *Freedom of Information and Protection of Privacy Act*;
- A police service as defined in the *Police Act*; or
- An agent or agency whose services are contracted through the Government of Alberta or whose services are designated in the regulations.

Organizations that are not subject to any privacy legislation, are not in scope of the Act.

Purpose and Scope of the Act

The Act recognizes that children's well-being, safety, security, education and health are priorities for Albertans. The Act also recognizes that the Government of Alberta, individuals, families, communities, non-governmental organizations and the private sector all have a responsibility for ensuring that children are given the opportunities they need to reach their full potential to become adults who are able to benefit society.

The Act supports and guides appropriate information sharing between individuals and organizations that plan or provide programs and services for children that is critical to ensure successful outcomes for children and families.

The Act applies to service providers, custodians and affiliates.

Information Sharing Requirements of the Act

Section 4 – Information Sharing to Provide Services

In addition to current information sharing provisions, such as those found in the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*, the *Children First Act* supplements information sharing by outlining additional circumstances where information about children can be collected, used and disclosed.

The Act enables a new approach to information sharing. It also identifies the following important considerations for sharing information:

- Whether disclosure is in the best interests of the child
- the type of information being shared
- who is disclosing the information, who is collecting and using the information, and for what purpose(s)
- whether the child has expressly prohibited a disclosure.

The Act does not override other legislation, so it is important to consider whether your organization's other legal or legislative obligations impact the ability to collect, use or disclose under the Act.

Provisions for Service Providers, Custodians and Affiliates

a. Collection and Use of Information Among Service Providers, Custodians and Affiliates

For the purposes of enabling or planning for the provision of services or benefits to a child,

- Service providers may collect and use personal information received from another service provider, where it is personal information about a child or about the child's parent or guardian.
- Service providers may collect and use health information received from a custodian or affiliate, where it is health information about the child only.

b. Disclosure of Information Among Service Providers, Custodians and Affiliates

For the purposes of enabling or planning for the provision of services or benefits to a child, and where disclosure is in the best interests of the child:

- Service providers may disclose personal information to another service provider, where it is personal information about the child or about the child's parent or guardian
- Custodians and affiliates may disclose health information to another custodian or affiliate or to a service provider, where it is health information about the child only
- Only the person determining whether to disclose personal or health information must consider whether the disclosure is in the best interests of the child.

The chart below deals with information sharing between service providers, custodians and affiliates and outlines the collection, use and disclosure provision of the Act . Also see "Best Practices" at the end of the Guide for the steps to be considered prior to disclosure:

Type of Information	Who can disclose information?	Who can collect and use information?	For what purpose or condition?
Personal information about the child	Service Provider: May disclose to other service providers	Service Provider: May collect and use from other service providers	<ul style="list-style-type: none"> • Enabling or planning the child’s services or benefits, and • Disclosure is in best interests of the child
Personal information about a parent/guardian			
Health information about the child	Custodian/Affiliate: May disclose to other custodians/affiliates and service providers	Service Provider: May collect and use from custodian/affiliate	

Only the person determining whether to **disclose personal or health information must consider whether the disclosure is in the best interests of the child.*

c. Disclosure of Information to a Guardian

The Act enables information sharing with guardians under certain conditions, which must be considered and appropriately applied before a disclosure can be made.

Service providers may disclose a child’s personal information and custodians and affiliates may disclose a child’s health information to the child’s guardian if the following conditions are met:

- Only the person determining whether to disclose personal or health information must consider whether the disclosure is in the best interests of the child. Consensus among all service providers, custodians and affiliates is not required.
- If the child has expressly requested information not be disclosed to their guardian, the information cannot be disclosed under the authority of the Act. However, if disclosure is necessary to avert or minimize the risk of harm to the health or safety of a child younger than 18, the person disclosing must consider whether disclosure is permitted by the FOIP or HIA harm provisions.
- The disclosure is in the best interests of the child.

Additionally, service providers, custodians and affiliates must consider whether or not the child has expressly requested that their personal information NOT be disclosed to the guardian.

The following deals with disclosing of information to a guardian:

Type of information	Who can disclose information?	Who can collect and use information?	For what purpose or condition?
Personal information about the child	Service Provider: May disclose to the child's guardian	Guardian	<ul style="list-style-type: none"> • Disclosure is in best interests of the child, and • Child does not expressly request no disclosure
Health information about the child	Custodian/Affiliate: May disclose to the child's guardian		

**Only the person determining whether to disclose personal or health information must consider whether the disclosure is in the best interests of the child.*

d. Best Interests of the Child

Under the information sharing provisions of the Act, any disclosure must consider the best interests of the child. Understanding how to determine the best interests of the child requires professional judgment of context-specific situations and recognition that each situation is unique.

The person disclosing the information must assess and be of the opinion that their disclosure is in the best interests of the child.²

While this determination will be unique to the circumstances of each child, the following are some examples of factors that may be relevant in making a reasonable and objective determination of the best interests of the child:

- Does the disclosure support or enable services/benefits that will benefit the child's health, safety, or mental, emotional or physical well-being?
- Will the disclosure avoid disruption or enhance stability in the child's life?
- Will the disclosure avoid or reduce a risk of harm to the child?
- Will non-disclosure delay the provision of important services or benefits for the child?

² For how to apply this part of the Act from a best practice perspective, refer to 3) Engage in a Discussion under the Best Practices section of this guide.

- Will the disclosure enhance services/benefits already being provided to a child (e.g. by enabling greater collaboration among multiple service providers?)
- If the child is capable of forming an opinion, has the child's opinion been considered?
- Would the information be considered of a highly confidential or sensitive nature?

Please note: If the disclosure is to the child's guardian and the child has expressly requested that the disclosure not be made, the information cannot be disclosed under the authority of the Act. However, if disclosure is necessary to avert or minimize the risk of harm to the health or safety of a minor, consider whether disclosure is permitted by the FOIP or HIA harm provisions.

Documentation and Records Management

In accordance with the procedures set out in the *Children First Act Regulations*³, a service provider, custodian or affiliate must maintain records about information that is disclosed under this section. This means that when a service provider, custodian or affiliate discloses information in accordance with information sharing provisions (Section 4), the disclosure, the reason for the disclosure and the name of the person(s) the information was disclosed to must all be documented.

The record must contain:

- A description of the information disclosed
- The reason for the disclosure
- The date on which the information was disclosed; and
- The name of the person(s) or entity to whom the information was disclosed.

Disclosure records must be retained for 10 years after being created and must be disposed of in accordance with the service provider's, custodian's or affiliate's records disposition policy or, if the service provider, custodian or affiliate has no applicable records disposition policy, in a manner approved by the Minister.⁴

Relationship to other Acts

Paramountcy

Alberta's *Freedom of Information and Protection of Privacy Act* and *Health Information Act* are paramount legislation over the *Children First Act*. This means that where there is a conflict between the *Freedom of Information and Protection of Privacy Act* and the *Children First Act* or the *Health Information Act* and the *Children First Act*, the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act* prevail.

³ See Section 6, *Children First Act*, Regulations.

⁴ Children First Act Disclosure of Information Regulation:

http://www.qp.alberta.ca/documents/gazette/2014/pdf/01_Jan15_Part2.pdf

Be aware that the *Children First Act* does not replace existing legislation, but rather supplements it.

Consequential Amendments

The Act amended other legislation, changing the threshold for the health or safety of a minor⁵ from “imminent danger” to “**risk of harm**”⁶ to the health or safety of a minor” in the *Freedom of Information and Protection of Privacy Act*⁷ and in the *Health Information Act*^{8,9}.

Best Practices

In using this guide, information sharing best practices are identified as they relate to the *Children First Act*.

1. Understanding Legislation

Custodians, affiliates and service providers involved in delivering programs and services to children are responsible for understanding their own governing legislation, regulations and policies, and their relation to the provisions of the Act.

- a. **Ensure that no other privacy obligations, including your own program legislation, prohibit disclosure.**

2. Disclose Information Properly

Sharing information may involve one or more of the following: collecting information, using information, or disclosing information. Under the Act, each part of information sharing has different capacities, which must be understood (see Table on page 9).

When making a decision to *disclose* information under the Act, it is a best practice to minimally do the following:

- a. **Understand the purpose:**
 - What information is being requested?
 - For what purpose? The purpose must be permitted by legislation.

⁵ See Section 7, *Children First Act*, Consequential and Related Amendments to the Act

⁶ Our emphasis – does not appear this way in the Act.

⁷ s.40(1)(ee)

⁸ s.35(1)(m)(i)

⁹ *Children First Act: Enhancing Supports and Protection for Alberta Children*
<http://humanservices.alberta.ca/16594.html>

b. Understand to whom you are disclosing information:

- You may need to verify a person's identity and relationship to a child in order to disclose information. Follow your organization's policies and practices on verifying identification for this purpose.

c. Understand how much to disclose:

- Use your discretion to determine what is reasonable and necessary information to disclose to meet the purpose.
- Apply professional judgment on a case-by-case basis.

d. Ensure that any conditions have been met prior to disclosure:

- Example: Have the child's best interests been assessed?
- Example: Have the child's express wishes been considered?

3. Engage in Discussion

If a service provider, custodian or affiliate is unsure about whether sharing information is in the best interests of the child, you may need to provide them with the following:

a. Information about the child where reasonable and necessary:

- Sharing information about the child's circumstances may provide the context needed by another service provider, custodian or affiliate to make a professional decision about whether or not disclosing is in the best interest of the child.)
- Use your own discretion in determining:
 - If the situation requires that you share information about the child's circumstances, and;
 - How much information is reasonable and necessary to share in order for a professional decision to be made.

b. Information about your role:

- You may be able to justify your need for the child's information by clearly explaining your role supporting the child and identifying what information you need to serve the child's best interests. Apply your own discretion in such situations on a case-by-case basis.

Further Information

Further information on the information sharing requirements in the *Children First Act* may be obtained by contacting the Information Sharing Strategy Office:

Email: hs.informationsharingstrategy@gov.ab.ca

Phone: 780-638-1372

Internet: infosharing.alberta.ca