

Privacy Personal Information Policy

Essential Summary

This **Privacy and Personal Information Policy** (the Policy) is intended to ensure that personal information, held or obtained by Youth Justice NSW (YJNSW) during its work is dealt with by YJNSW employees appropriately, confidentially and with integrity.

This Policy provides clear direction for the collection, use, security, storage, disclosure and sharing of personal information that is consistent with current legal and policy requirements.

The Policy aims to prevent inappropriate disclosure of information while promoting the safety and wellbeing of young people, their families and the community.

This policy should be read in conjunction with the [Department of Communities and Justice Privacy Management Plan](#) which outlines the obligations of all staff within DCJ to comply with the *Privacy and Personal Information Protection Act 1998* (NSW), (PPIP Act) and *Health Records and Information Privacy Act 2002* (HRIP Act).

This Policy applies to all YJNSW employees who collect, store, access, use or disclose personal information.

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Please check in the [Operations Manual \(TOM\)](#) to ensure you have the latest version before using this document.

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1. Scope

This Policy applies to all YJNSW employees and concerns the **collection, use, security, storage, disclosure and sharing of personal information** by YJNSW as well as *all* requests (requests made by government agencies, non-government agencies or individuals) to disclose or access personal information.

Personal information includes personal information of young people under the care of YJNSW as well as personal information of their family, friends and other third parties who are connected to the young person.

This Policy does **not** apply to the handling of personal information of YJNSW employees or requests for information or data that does **not** contain information capable of identifying a young person with whom YJNSW works. Such requests should be referred to the Manager, Research and Information Unit.

2. Purpose

The purpose of this Policy is to ensure that YJNSW employees:

- understand their responsibilities under the privacy legislation in relation to collecting, using, disclosing or sharing personal information
- understand the permissible exemptions from privacy legislation in relation to disclosing or sharing personal information
- have appropriate policy guidance for responding to requests for personal information in a timely, transparent, consistent and fair manner
- have mechanisms for the escalation and resolution of requests or complaints where a determination is made not to provide the personal information being requested.

3. Definitions

Access means formally or informally obtaining or retrieving of the personal information by YJNSW employees relating to a young person that is lawfully held and viewed by YJNSW employees while carrying out their responsibilities.

DCJ means the NSW Department of Communities and Justice.

Disclosure means revealing personal information to an entity or person outside of YJNSW, generally a disclosure can occur by giving a copy of the information to another individual or entity (whether responding to a request or not); allowing another entity or individual to have **access** to the information; providing sufficient general information to allow personal information to be deduced; and providing summaries or communicating the information in any other way.

Health information as defined in the *Health Records and Information Privacy Act 2002* is a special class of personal information that specifically relates to the health of a young person or a third party. It may include physical or mental health diagnoses, including a disability that a young person or third party has at any time; express wishes about the future provision of health services to a young person or third party; a health service provided, or to be provided, to a young person or third party. Health information of a young person and/or the young person's family, friends, visitors or other third parties who are connected to a young person may form part of the personal information collected or held by YJNSW.

Law enforcement agencies means NSW Police Force or the police force of another State or a Territory; Australian Federal Police; NSW Director of Public Prosecutions (or equivalent office in another State, Territory or the Commonwealth); NSW Crime Commission; Australian Crime Commission; Corrective Services NSW.

Must indicates a mandatory action to be complied with.

NDIA means the National Disability Insurance Agency.

Official Visitor is appointed by, and reports to, the Minister of Families, Communities and Disability Services. Official Visitors can enter and inspect Youth Justice Centres at any reasonable time and speak privately with young people and Youth Justice employees. The official visitor's program is overseen by the Inspector of Custodial Services in accordance with the *Children (Detention Centres) Act 1987*.

Ombudsman means the NSW Ombudsman which is an independent and impartial watchdog who ensures that agencies fulfil their functions properly and improve their delivery of services to the public.

Personal information is information, or opinion, about a person that discloses their identity, such as written records or photographs. It can also include information about a person's ethnic or racial background, political opinion, criminal history, religious belief or sexual preference. It may include such things as an individual's fingerprints, retina prints, body samples or genetic characteristics. Essentially, personal information is any information or an opinion that can identify an individual and can relate to a current or former young person to whom YJNSW has provided or is providing support or supervision as well as the young person's family, friends, visitors or other third parties who are connected to a young person.

Privacy Legislation means the *Privacy and Personal Information Protection Act 1998* (NSW), and *Health Records and Information Privacy Act 2002* (NSW) and all regulations, directions, guidelines and other statutory instruments made under those Acts.

Should indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

YJNSW means Youth Justice New South Wales.

YJNSW employee means a person who is employed by YJNSW and includes persons employed on a casual or temporary basis, contractors, volunteers and statutory appointees (for example, Conference Convenors and Official Visitors).

Young person means an individual under the age of 21.5 years to whom YJNSW provides or has provided supervision and support, whether in community or in custody. A young person is also someone who has been referred to a Youth Justice Conference as an offender under the *Young Offenders Act 1997* (NSW).

4. Core privacy principles

YJNSW respects the privacy rights of the young people it supervises and supports.

Privacy Legislation contains [Information Protection Principles](#) (IPPs) [Health Privacy Principles](#) (HPPs) which are integral to YJNSW appropriately managing personal and health information. These principles are legal obligations that describe what YJNSW must do when it collects, stores, uses or discloses personal and health information.

In respecting the privacy of young people and third parties, YJNSW adheres to the following privacy principles:

- **Collection** of personal and health information by YJNSW must be relevant, accurate, up to date and complete; not excessive or misleading; taken directly from the individual concerned, where possible, and only collected for proper and lawful purposes to provide supervision and support to young people.
- **Use** of personal and health information by YJNSW must only be for the primary purpose for which the information was collected (or a directly related secondary purpose)¹; a purpose for which the person has consented, or other purposes permitted by law (including where it is reasonably necessary to prevent or lessen a serious and imminent threat to life or health). Before using personal or health information, YJNSW will take reasonable steps to ensure that the information is relevant, accurate, up-to-date, complete, and not misleading.
- **Disclosure** of personal and health information by YJNSW will only occur when the disclosure is permitted or required by law; and/or directly related to the purpose for which the information was collected; and we have no reason to believe that the individual concerned would object to the disclosure; or the individual has been made aware of the limits to their confidentiality and that information of the kind in question is usually disclosed to the recipient in accordance with the *Client Consent – Exchange of Information (explanatory instructions)*. Disclosure is also permitted where we reasonably believe that the disclosure is necessary to prevent or lessen a serious and imminent threat to life or health.
- **Accuracy and Access** YJNSW acknowledges that young people are entitled to understand the nature and limitations to the confidentiality of their personal and health information held by YJNSW. This includes advising young people who else will receive or has access to their personal information. Young people are to be provided access to their own personal information in an appropriately supported way without excessive delay. Access will only be refused where authorised by law. We will allow people to amend their personal and health information, to ensure it is accurate, relevant, up-to-date, complete and not misleading. Where practicable, we will notify any other recipients of any changes.
- **Retention and Security** of personal and health information collected and held by YJNSW is paramount. YJNSW must take all reasonable steps to protect personal and health information from loss, and unauthorised access, use, modification or disclosure, as well as against all other misuse. This includes ensuring personal and health information is stored securely, not kept longer than necessary, and disposed of appropriately.

¹ Use can also be permitted for a directly related secondary purpose which is a purpose that is very closely related to the purpose for collection and would be the type of purpose for which people would quite reasonably expect their information to be used. Some examples of where the law permits secondary use of personal or health information for another (secondary) purpose include quality assurance activities such as monitoring, evaluating and auditing or preventing a serious threat to health and safety.

5. Collection, access, and use

5.1 Collection of personal information

YJNSW collects the personal and health information of young persons and third parties in a variety of ways, including in writing, by email, through our website, over the phone, by fax, recordings (such as CCTV footage) or in person.

YJNSW employees must collect personal information responsibly in a way that respects the privacy of young people. Personal information must be collected lawfully and be:

- in connection with a young person to whom YJNSW is providing support or services²
- because of the exercise of YJNSW's official functions³
- reasonably necessary to provide appropriate management and supervision⁴
- directly from the young person concerned or their parent or guardian unless it is information which may be collected from a prescribed agency under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* or a non-government organisation providing funded services to YJNSW with whom YJNSW are permitted to share information
- where it would be unreasonable or impracticable to collect information from an individual or authorised to collect from another source.

5.2 Informing the young person

When collecting information from or about a young person, YJNSW must let the young person know:

- that their personal information is being collected and why
- who will (or is likely to) access and/or receive their personal information
- if the young person is required to provide the information
- their rights to access and/or amend their own personal information
- that they may make a complaint regarding the use of their personal information (in accordance with the Youth Justice Complaints Guidelines)
- that if YJNSW provides their personal information to another person or entity external to YJNSW when the young person's consent is not required by law, YJNSW will inform the young person or their parent or guardian, unless it is not reasonably practicable to do so.

² The relevant person about whom Youth Justice may disclose information may be a detainee; a young person who is in custody in a Youth Justice Centre; a young offender who is released on parole; a young person who is the subject of a children's community service order under the *Children (Community Service Orders) Act 1987*; a child offender the subject of a clean-up order under the *Graffiti Control Act 2008*; a person for whom a matter has been referred to conference under the *Young Offenders Act 1997*; a young person supervised by Youth Justice as a condition of the *Bail Act 2013*, a community correction order or conditional release under *Crimes (Sentence Procedure) Act 1999* or a good behaviour bond under the *Children (Criminal Proceedings) Act 1987 (CDC Regulation 148AA)*

³ Section 102A Children (Detention Centres) Act (1987))

⁴ Regulation 148AB(1)(a) Children (Detention Centres) Act (1987)

5.3 Access to a young person's personal information

YJNSW employees may only access personal information held by YJNSW when it directly relates to their assigned duties and then only the personal information that is required for the YJNSW employee to perform their current approved duties.

If a YJNSW employee is accessing personal information, then personal records must be kept secure and handled in accordance with the DCJ Records Management Policy, respecting the privacy and confidentiality of personal and health information of the young person and third parties.

5.4 Use of personal information

When YJNSW employees use personal and health information, it means that they use it internally within YJNSW.

Generally, YJNSW employees can **only use** personal information to effectively carry out the responsibilities and functions of YJNSW or for a directly related purpose and not for any other purpose. This means, for example, that YJNSW staff may only access and use information found in CIMS to carry out their responsibilities as a YJNSW staff member.

6. Retention and Security

YJNSW holds a large amount of sensitive personal and health information and considers the security of that information fundamental to protecting privacy.

Information is stored in a variety of ways, including on our databases, cloud storage, by third parties and in various physical office locations.

YJNSW employees must maintain reasonable security measures, including technical, physical and administrative actions, to protect information from unauthorised access and misuse.

YJNSW must take reasonable steps to ensure personal and health information contained in paper or electronic is stored securely in DCJ systems and protected from loss, unauthorised access, use, modification or disclosure, as well as protecting against all other misuse.

Personal information must be kept only as long as it is necessary for the purposes for which it may lawfully be used and must be disposed of appropriately and in accordance with the *State Records Act 1998* (NSW) and YJNSW's authority for record disposal which can be found at the following link

<https://www.records.nsw.gov.au/sites/default/files/Recordkeeping/FA408%20Offender%20management%20%26%20youth%20justice.pdf>

Where it is necessary for personal or health information to be disclosed in connection with the provision of a service to YJNSW, it will take all reasonable steps to prevent unauthorised use and disclosure of that information.

The information held by the DCJ and its communication of this information within the DCJ and externally is subject to the DCJ's security policies.

If a YJNSW employee becomes aware of a privacy breach or potential privacy breach regarding personal information they must immediately notify their manager of the breach. Where the manager considers that the data breach is likely to result in serious harm to any person to whom the information relates, including young person, then the relevant individuals, and their parent or guardian, where appropriate, will be informed of the data breach as soon as practicable.

7. Young people accessing their own personal information

An adult who has been supervised or received support from YJNSW as a young person may seek access to their own personal information under the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) in the same way as any member of the public. See the [DCJ Agency Information Guide](#).

The personal information should be provided informally by YJNSW in the first instance unless it contains the personal information of other persons. Where it contains the personal information of others and it cannot be easily redacted the adult should be advised to make an application formally under the GIPA Act at the following link <https://www.facs.nsw.gov.au/about/gipa/right-to-information-policy/chapters/apply-online-to-access-information>.

If a young person currently or formerly with YJNSW, but not yet 18 years old and would like to access their own personal information, then that young person may make a request to access their information to a YJNSW employee.

The YJNSW employee will:

- take reasonable steps to ensure that the disclosure of personal information is being made to the correct young person (or their authorised representative)
- assist the young person to access their information personal information as soon as reasonably practicable
- inform the young person that accessing their personal information can bring up emotions which can be positive or upsetting or overwhelming and that it is recommended that the young person have someone with them to support them through the process of accessing their information. If the caseworker has concerns for the well-being of the young person during this process, refer to the *Self-harm and Suicide Prevention Procedure*
- inform the young person that a caseworker or youth officer can be made available to help the young person to read their records and provide support if the young person chooses to read their records at a Youth Justice Community Office or Youth Justice Centre
- keep a record of the accessing of their personal information by the young person in their case notes
- ensure that personal information relating to any **other** young person or third parties will be redacted or removed to ensure the privacy of other young people or third parties who are not part of the request for access to personal information
- if appropriate or required (where informal release direct to the young person is not appropriate), refer the young person or their family to the DCJ's Agency Information Guide which includes information on completing a formal request under the *Government Information (Public Access) Act 2009* (NSW)
- Contact the Open Government Information and Privacy Unit of DCJ legal if you need advice about release of information, including requests under the *Government Information (Public Access) Act 2009* (NSW).

For further guidance on responding to informal requests for information, see *DCJ Informal Requests for Information Factsheet*.

8. Disclosure of personal information

When we disclose information, it means that we give it to a third party outside of YJNSW.

YJNSW employees must **not disclose** personal information or health information of a young person to another person or entity outside YJNSW unless:

- The young person (or their guardian) has provided informed consent to the disclosure (see Part 9 of this Policy)
- The disclosure is permitted or required by the law.

9. Young person and family consent

YJNSW will wherever possible obtain the young person's (or their guardian's) informed consent to disclose their personal information to a requesting entity for the purpose for which it has been requested.

If the young person (or their guardian) refuses to provide their informed consent but YJNSW is permitted or required by law to disclose the personal information, then YJNSW will inform the young person (or their guardian) reasonably practicable inform the young person of the disclosure of their personal information.

If disclosure of the personal information is not lawfully permitted (as set out in Parts 11-17 of this Policy), then YJNSW employees **must** seek the informed consent of the young person, or, where required their parent or guardian, to disclose their personal information to another organisation or individual.

When seeking the young person's consent, a *Client Consent – Exchange of Information* form must be signed.

If a young person is 14 years and under, the parent or guardian must give consent for the disclosure of their personal information, when consent is required.

If the young person is under the age of 16 and parental consent is difficult to obtain, the YJNSW employee must consider the young person's capacity to provide their consent, that is, their understanding of what they are consenting to. The young person has the capacity to consent if they demonstrate they understand and communicate:

- why the information is being collected, used and disclosed or exchanged
- who the information is being collected and used by
- who the information will be exchanged with.

Consent should be:

- given freely - not coerced (including, the young person is not forced or threatened to do so)
- informed - the young person (or their guardian) has sufficient information to know what they are consenting to
- specific – the young person (or their guardian) is consenting to how YJNSW collects and uses information, to whom it can disclose information and for what purpose

- given by someone with legal capacity to give consent which means that the young person (or their guardian) must be able to understand what they are consenting to. A young person's capacity to make a particular decision should only be doubted where there is a factual basis for doubting it. This may include their age; physical or mental disability, temporary incapacity (for example through a temporary psychiatric illness, severe distress) or limited understanding of English. If there is doubt as to the capacity of the young person, then the YJNSW employee should consider if the issue can be addressed by providing the young person with appropriate support to enable them to have the capacity to consent
- regularly reviewed and updated with the young person (or their guardian).

While obtaining informed consent YJNSW must:

- give the young person (or their guardian) information on their rights and what is in their best interests
- inform the young person (or their guardian) of the avenues to complain or provide other feedback
- inform the young person (or their guardian) that they may seek legal advice with respect to the signing and giving of consent if they wish to do so.

Disclosure of personal information must not include the personal information of another young person or third party who is not the subject of the request for information unless required to be produced under a Subpoena or Search Warrant.

In some instances, the entity requesting the information may claim to have the consent of the young person, in which case, YJNSW must satisfy itself that it is appropriate consent and covers the information that is being requested, where consent is required, otherwise YJNSW should obtain its own consent.

10. Disclosure of third-party information

YJNSW may hold personal information that has been created and provided by a third-party to YJNSW for a specific purpose, for example, when Youth Justice holds a psychological report provided by the Department of Education.

If an individual or entity requests personal information from YJNSW which includes this information received from the third-party, YJNSW may not always be legally permitted to provide a copy of the third party's report without first obtaining the consent of the third party.

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) does permit the disclosure of a report prepared by a third party.⁵ However, it is good practice to clarify the purpose of the request for information and determine if information accurately extracted from the third party report adequately responds to the purpose of the requesting party (given the report may contain additional extraneous or prejudicial information); or alternatively obtain the third party's consent to release the report so that it has the opportunity to redact parts of the report as needed.

⁵ S245H *Children and Young Persons (Care and Protection) Act 1998* (NSW)

11. Permitted disclosure without consent

It is an offence under section 102 of the *Children (Detention Centres) Act 1987* (NSW) for YJNSW to disclose the personal information of a young person unless the disclosure is made within one of the exceptions in the below:

Exceptions to the right to privacy & confidentiality	Parts in this Policy
✓ The young person or their parent or guardian has given informed consent to the personal information being used or disclosed for a different purpose.	Part 9 on Young Person and Family Consent
✓ It is permitted by Chapter 16A <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW).	Part 12 for detail on disclosure of personal information
✓ It is in connection with the administration or execution of the <i>Children (Detention Centres) Act 1987</i> (NSW).	Part 13 for detail on disclosure of personal information
✓ YJNSW is requested to disclose information under specific legislation being within the meaning of any other lawful excuse ⁶ .	Part 14 on Other lawful Excuse
✓ The <i>Children (Detention Centres) Regulation 2015</i> (NSW) permits and YJNSW has entered into an information sharing arrangement with the agency seeking access to the personal information ⁷ .	Part 15 on information sharing arrangements
✓ Personal information is required for legal proceedings.	Part 16 on Summons and Subpoena
✓ YJNSW is obliged to disclose personal information because it is necessary to prevent serious and imminent threat to the life or health of the young person or someone else.	Part 17 on Limitations to confidentiality

12. Chapter 16A Disclosure

YJNSW is permitted to disclose personal information relating to the safety, welfare and wellbeing of a young person, or of a group of young people with other prescribed bodies under Chapter 16A *Children and Young Person (Care and Protection) Act 1998*.

Prescribed bodies can include the NSW Police Force, government and non-government schools, TAFE NSW and public health organisations as well as “*any organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.*” See sections 248 (6) of the *Children and Young Persons (Care and Protection) Act* and Clause 8 of the *Children and Young Persons (Care and Protection) Regulation 2012* regarding prescribed bodies.

Information may be shared with a prescribed body where a YJNSW staff member reasonably believes that providing the information will assist the prescribed body to assess risks, make

⁶ S102 (former S37D) *Children (Detention Centres) Act 1987* No 75

⁷ As permitted by S102B of the *Children (Detention Centres) Act 1987* No 75

decisions and identify and deliver appropriate services or initiate an investigation that relates to the young person (this can include giving them prioritised access to a service) or to assist the prescribed body in managing any risk to the young person that might arise in their capacity as an employer or designated agency. See the *Child Safety and Mandatory Reporting Procedure*.

It is important to note that when sharing information with a prescribed body under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the consent of the young person is not required but should be sought, where possible, and the sensitivity of the information must be clearly outlined to the receiving entity or individual. *The Child Wellbeing & Child Protection NSW Interagency Guidelines Checklist for providing information or responding to a Chapter 16A information request* provides guidance <https://intranet.internal.justice.nsw.gov.au/Divisions/Documents/corrective-services-nsw/Community%20Corrections/Policy%20and%20procedures/Annexures/Section%20B/Part%205/b5.4-chapter-16A-information-response-checklist.pdf> .

13. Disclosure under Child (Detention Centres) Act & Regulation

YJNSW **may disclose** personal information⁸ in the following circumstances:

- to administer Youth Justice Centres or for the management of parole under the *Children (Detention Centres) Act 1987* (NSW)
- to NSW Police Force (or other law enforcement agencies) where police are conducting a lawful investigation maintaining law and order or developing or implementing crime prevention or community safety strategies
- to NSW Police Force (or other law enforcement agencies) where a Search Warrant has been executed requiring the production of information
- to NSW Police where police are continuing an investigation into an offence allegedly committed by a young person while detained in a Youth Justice Centre, even once they are released
- to provide information to agencies in NSW, other states and territories of Australian or New Zealand that are responsible for the safety, welfare and wellbeing of children or young people where YJNSW believes the information is being requested in relation to the safety, welfare and wellbeing of the young person or is required to manage any risk to the young person.⁹ This disclosure relates to information already held by YJNSW and where the information will assist in:
 - making a decision, assessment or plan
 - initiating or conducting an investigation
 - providing a service relating to the safety, welfare or wellbeing of the child or young person (or class of children or young persons) and/or
- managing a risk to a child or young person, when it is reasonably necessary for the appropriate management or supervision of a young person by another corrective services or youth justice agency of the Commonwealth, another State or Territory of Australia or of New Zealand¹⁰

⁸ Section 102A Children (Detention Centres) Act (1987), Regulation 148AB (1)(a)-(d)

⁹ S245D Children and Young Persons (Care and Protection) Act 1998

¹⁰ CDC Regulation 148AB

- to facilitate the functions of the Commonwealth Department of Home Affairs (which includes immigration and citizenship, Australian Border Force, National Security, Federal crime prevention, and cyber security)
- to facilitate the functions of the Commonwealth Attorney General's Department
- to assess the young person's eligibility for a program of engagement and support for countering violent extremism
- to facilitate data matching by a government data-linkage centre to enable research into the provision of interventions or services by a NSW public sector agency.

14. Other 'lawful excuse'

In addition to Chapter 16 A of the *Children and Young Person (Care and Protection) Act 1998* (see Part 12 above) and the *Children (Detention Centres) Act and Regulation* (see Part 13 above) there are a number of other pieces of legislation which allow YJNSW to provide personal information for a specific purpose or purposes to entities that are outside YJNSW. These fall within the other 'lawful excuse' category.

YJNSW employees may disclose information to other entities where this is permitted under specific legislation (that is, *other lawful excuse*). Such permitted or required disclosures relevantly include:

Entity	Information & Legislation
Ombudsman NSW	<i>Ombudsman Act 1974</i> (NSW) ss18 & 20 Disclosure of young person information to the Ombudsman does not require the young person's consent ¹¹ and the handling of requests from the Ombudsman is set out in The Operations Manual in section 11 on <i>Professional Visits Policy: Visits by Oversight Bodies Procedure</i> .
Official Visitors	Provision of requested information to official visitors under s8A <i>Children (Detention Centres) Act 1987</i> and <i>Inspector of Custodial Services Act 2012</i> , s7. The handling of visits and requests is set out in The Operations Manual in the section on The Operations Manual in section 11 on <i>Professional Visits Policy: Visits by Oversight Bodies Procedure</i> .
Education NSW	With respect to the health and safety risks at school arising from student behaviour under s26C of the <i>Education Act 1990</i> (NSW) and Guidelines issued under Part 5A of the <i>Education Act 1990</i> (NSW).
Mental Health Review Tribunal	Where a summons has been issued under s157 <i>Mental Health Act 2007</i> (NSW).
Office of the Children's Guardian	Regarding information in relation to working with children checks s31 <i>Child Protection (Working with Children) Act 2012</i> (NSW). Information with respect to the reportable conduct, allegation or conviction of a YJNSW employee under Part 4 of the <i>Children's Guardian Act 2019</i> (NSW) which may include personal information with respect to the young person involved or allegedly the victim.
NSW Police Force	As a scheduled agency under Schedule 1 of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW), YJNSW is permitted to

¹¹ *Ombudman Act 1974* and S102 *Children (Detention Centres) Act 1987* No 75

	disclose information concerning a registrable person to the police or supervising authority. Where a search warrant has been executed requiring the documents or CCTV footage to be produced to the NSW Police Force.
Commissioner of Victims' Rights	The Commissioner of Victims' Rights may make a request for information under <i>Victims' Rights and Support Act 2013</i> (NSW) and Regulations. S100D, <i>Children (Detention Centre) Act 1987</i> (NSW) sets out the information to be provided to victims.
Centrelink	Information being sought with respect to the payment of social security benefits under <i>Division 6, Social Security (Administration) Act 1999</i> (Cth).
Commissioner of Fines Administration	Under s117 of the <i>Fines Act 1996</i> (NSW) ¹² .

The table of requests for information commonly received by YJNSW in Part 18 on page 19 of this Policy provides examples of requests for personal information and how to respond to those requests - some of which fall within 'other lawful excuse'.

15. Information sharing arrangements

The Secretary of the DCJ has the authority, (and has delegated that authority to the Executive Director of YJNSW) to enter into information sharing arrangements with law enforcement agencies, intelligence agencies, corresponding government agencies from other States and Territories, the Commissioner of Fines Administration and the National Disability Insurance Agency (NDIA).¹³

These information sharing arrangements are to set out how YJNSW may routinely disclose or exchange personal information with permitted agencies, such as access by officers of permitted agencies to the YJNSW Client Information Management System (CIMS) database or routine exchange of information.

16. Responding to Subpoenas or Summons

YJNSW employees may receive enforceable legal orders to provide personal information and will be supported to respond to subpoenas and legally enforceable orders correctly. Support includes information within this Policy, the *Giving Evidence Policy*, legal assistance from DCJ Legal, support from management and the e-Learning module, available on SuccessFactors by searching for 'Giving Evidence'

If YJNSW employees receive a subpoena or other legally enforceable document they must seek support from their supervisor and, if necessary, engage DCJ Legal, who will assist in determining what evidence should be produced. All subpoena requests must also be emailed to the Director, Strategy and Engagement via jjcorporateinformation@justice.nsw.gov.au

If requested to give evidence, employees should promptly seek the support of their Centre or Area Manager. Managers can seek advice from DCJ Legal to confirm the correct process for

¹² See section 117, Fines Act 1996 No 99

¹³ S102B of the Children (Detention Centres) Act 1987 No 75

responding to the subpoena or summons on (02) 8346 1388, or via email at enquiries-generalcounsel@justice.nsw.gov.au or infoandprivacy@dcj.nsw.gov.au. Managers must also forward the subpoena to produce operational documents for processing to Subpoenas@justice.nsw.gov.au.

All documents created by YJNSW employees including case notes can be subpoenaed for any number of reasons and therefore employees must ensure that all case notes and participant documentation is written in an accurate and timely manner (see *Case Management Policy*, *Giving Evidence Policy* and *Case Note Manual*).

17. Limits of Confidentiality

Where there are reasonable grounds to believe that disclosure of information is necessary to prevent or lessen a serious and imminent threat to the life or health of the young person concerned or another person, or to be able to locate a missing person, then YJNSW employees are required to disclose personal information.¹⁴

This section outlines how YJNSW employees should respond to disclosures made by young people in relation to:

- Children at risk of harm
- Existing court orders
- Existing court matters
- The commission or proposed commission of a crime.

17.1 Children at risk of harm

YJNSW employees must feel confident in responding to child protection concerns, both 'risk of significant harm' and 'risk of harm' reports.

Employees should be aware of their responsibilities as mandatory reporters and must be able to communicate these responsibilities to young people when discussing limits of confidentiality. See the [Child Safety and Mandatory Reporting Policy](#)

17.2 Existing court orders

There may be situations where the young person discloses information to YJNSW employees that indicates that they are in breach of an existing court order. This may include bail conditions, conditions of an Apprehended Domestic or Personal Violence Order or Family Law Orders. YJNSW employees must manage non-compliance in accordance with the [YJNSW Managing Non-Compliance and Breach Policy](#)

17.3 Existing court matters

A YJNSW employee must not discuss an offence with the young person when a young person is appearing before the court for that offence and has:

¹⁴ Section 18 of the *Privacy and Personal Information Protection Act 1998* and Schedule 1 of the *Health Records and Information Privacy Act 2002*,

- not yet entered a plea
- pleaded not guilty, or
- not yet been found guilty.

The caseworker or YJNSW employee must only conduct offence focused interventions, such as CHART, using offences for which the young person has entered a guilty plea, made admission of guilt, or been found guilty.

If a young person commits a new offence while under the supervision of YJNSW, the same process should apply.

This does not apply where a young person has been diverted as an offender to a Youth Justice Conference under the *Young Offenders Act 1997* (NSW).

17.4 The commission or proposed commission of a crime

A young person may disclose that they have committed crimes that they have not been charged or convicted for, or they intend to commit a crime in the future.

YJNSW employees should remind the young person that YJNSW employees will need to report the following offences where information is disclosed to them:

- Serious indictable offences that have been committed or will be committed; or
- Any offence where the young person or carer has provided detailed disclosure regarding who, when, where or how it occurred or will occur; and
- At any time that the YJNSW employee believes that a person is at risk of significant harm.

17.5 Serious indictable offences

A serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. It generally refers to the more serious crimes including murder, manslaughter, arson or aggravated sexual assault. A child abuse offence includes most sexual assaults, serious physical assaults and attempts to murder, failure to provide the necessities of life and any assault which occurs within a school.

When YJNSW employees know or believe that a young person or carer has committed a serious indictable offence or a child abuse offence or have information which might be of material assistance in securing the apprehension of an offender, then YJNSW employees have a duty to report this to the police. Failure to report such knowledge or belief is an offence under Sections 316 and 316A of the *Crimes Act 1900* (NSW) and is punishable by imprisonment for up to 5 years.

This situation arises when a YJNSW employee knows or believes a young person has committed a serious indictable offence or child abuse offence. This information must be provided to the NSW Police Force. The report must be made on the same day as when the young person discloses the information. Failure to report such knowledge or belief is an offence under Sections 316 and 316A carrying up to a maximum of 5 years imprisonment.

The *Child Safety and Mandatory Reporting Policy* provides advice on responding appropriately to disclosures or allegations of child protection concerns.

The YJNSW employee must record the details disclosed by the young person in the case notes, along with the details of the police officer to who they made the report and when they made the report.

17.6 Detailed disclosure of offences

If a young person or carer discloses to YJNSW employees that they are intending to commit or have committed a less serious offence (not a serious indictable offence) and the young person (or carer) has provided particular details of the offence and YJNSW employees form it should still be reported to the police on the same business day however a failure to do so may not be an offence.

Where appropriate, YJNSW employees should tell the young person that a report was required to be made to the police, unless this would put the YJNSW employee at risk, for example during a home visit. This is because informing the young person may also jeopardise the investigation of the offence. Before informing the young person check with the investigating officer first.

Details disclosed by the young person must be recorded on the young person's case notes along with the details of the police officer who took the report and when the report was made.

18. Common Requests for Personal Information

Below is a table of Common Requests which provides examples of requests for information with direction as to the appropriate response. It includes:

- the entity requesting information
- the purpose for which the information is being requested
- types of personal information that are requested
- who has delegation to approve the request
- whether the disclosure is permitted with or without consent of the young person or their guardian
- the relevant legislation, policies or guidelines.

This table is supported by a **decision tree**

<https://forms.office.com/Pages/ResponsePage.aspx?id=40UgA7VP8EGdhOgBwryCKvhtSxy8saFForMSjP9leG5UQTVWMzUzTFBPVkxLMIROQIBIRzILWEdQRS4u> which directs YJNSW employees on how to respond to requests for the personal information of young people.

This table provides a list of requests for information commonly received by YJNSW. It indicates who may approve providing the information and if the disclosure of personal information is lawful with/without the consent of the young person (or their guardian). In some instances, the entity requesting the information may claim to have the consent of the client, in which case, YJNSW must satisfy itself that it is appropriate consent and covers the information that is being requested, where consent is required, or obtain its own consent.

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
CSNSW					
Community Corrections	To assist in the transfer of YP leaving YJNSW community supervision or YJNSW custody to go to adult community supervision	<ul style="list-style-type: none"> ▪ Person & contact information ▪ Aliases ▪ Background reports ▪ Criminogenic assessment ▪ Case Plan ▪ Legal Orders ▪ Police Facts ▪ Criminal History ▪ Current Alerts in CIMS ▪ Non-associations orders and place restrictions ▪ Program participation and referrals ▪ Psychological assessment and/or counselling summary (YJ Psych to psych) 	YJ Centre Manager or YJ Area Manager	Lawful without consent, although it is preferable to seek the consent of the client	<p>S102 <i>Children (Detention Centres) Act (CDC Act)</i></p> <p>Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> <i>CYP(C&P) Act</i></p> <p>Community Supervision for Young People 18 Years and Over, Policy and Procedure</p> <p>Parole Policy</p>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
CSNSW (Custody) <ul style="list-style-type: none"> ▪ Prison Coordinator 	To assist in safe and secure transfer and management of young people to CSNSW custody	<ul style="list-style-type: none"> ▪ Detainee Transfer notification discharge summary ▪ Person Information ▪ Incident, Misbehaviours, Alerts, Escape ▪ Psychological reports ▪ Progress education reports ▪ Assessments & Case plan ▪ Centre report & program risk assessment ▪ Serious Young Offenders Review Panel report/s ▪ Legal orders ▪ Police facts, court history summary & future dates ▪ Sentencing transcripts and commentary 	Manager Court Logistics, Classification and Placement (Corrections Intelligence Group can directly access this information from CIMS once agreement in place)	Lawful without consent although it is preferable to seek the consent of the client	S102 <i>CDC Act</i> Chapter 16A <i>CYP(C&P) Act</i> Transfer to Adult Corrections Procedure
CSNSW <ul style="list-style-type: none"> ▪ Corrections Intelligence Group ▪ Relevant Prison Classification 	To facilitate the transfer of a young person to custody from YJ custody or community and mitigate risks to safety and security of CSNSW environments, the young person and / or community such as: <ul style="list-style-type: none"> ▪ displaying violent behaviour ▪ History of possessing contraband ▪ Displaying escape ideation ▪ Non-contact orders ▪ Affiliations with organised crime ▪ Extremist ideation 	<ul style="list-style-type: none"> ▪ Affiliations with organised crime ▪ Counter Terrorist issues ▪ Summary of intelligence holdings 	Senior Manager, YJ Security and Intelligence Unit Coordinator Intelligence Operations, Security and Intelligence Unit	Lawful without consent	S102 <i>CDC Act</i> Chapter 16A <i>CYP(C&P) Act</i> Transfer to Adult Corrections Procedure

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
<p>CSNSW (Custody)</p> <p>Only on 'need to know' basis.</p> <ul style="list-style-type: none"> ▪ CSNSW Prison Coordinator ▪ CSNSW Snr Executive ▪ Correctional Centre ▪ Community Corrections ▪ Inmate Management Committees ▪ Inmate Classification and Transfer Team ▪ State Parole 	<p>To assist in the safe and secure transfer and management of young person to CSNSW custody.</p> <p>To mitigate risks to safety and security of CSNSW environments, the YP, and/or community such as:</p> <ul style="list-style-type: none"> ▪ displaying violent behaviour ▪ History of possessing contraband ▪ Displaying escape ideation ▪ Non-contact orders ▪ Affiliations with organised crime ▪ Extremist ideation <p>To assist in the management of an inmate where YJNSW had prior supervisory responsibility before the person had some unsupervised time in community.</p>	<ul style="list-style-type: none"> ▪ Name, aliases, date of birth and Aboriginality ▪ Identifying features and photo ▪ Any YJ Centre in which a person is being or has been held, the dates that the person was held at the centre and the person's security classification while in custody ▪ Address and contact details for the person's current or last known place of residence in the community ▪ Contact details for the next of kin or carer ▪ YJ case manager and community office ▪ Information about a person's disability, and current and critical health risks ▪ whether the person is a registrable person under the Child Protection (Offender Registration) Act 2000 ▪ criminal history ▪ visitors to a person in YJ custody and persons banned from visiting the person ▪ Any criminal offences or misbehaviour committed or allegedly committed by a person in YJ custody, including any outstanding charges against the person 	<p>Senior Manager, YJ Security & Intelligence Coordinator</p> <p>Coordinator Intelligence Operations, Security and Intelligence Unit</p> <p>Manager Court Logistics, Classification and Placement</p> <p>(Corrections Intelligence Group can directly access this information from CIMS once agreement in place)</p>	<p>Lawful without consent</p>	<p>S102 <i>CDC Act</i></p> <p>Chapter 16A <i>CYP(C&P) Act</i></p> <p>Transfer to Adult Corrections Procedure</p>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
		<ul style="list-style-type: none"> ▪ restrictions on associations with other persons, place restrictions, and any gang affiliations or associations ▪ the current or last known court order to which the person is subject, including any conditions imposed on the order, and any future court dates 			
CSNSW (Custody) <ul style="list-style-type: none"> ▪ CSNSW Response Team 	To mitigate risks to safety and security of YJNSW environments during a significant disturbance at a YJ Centre	<ul style="list-style-type: none"> ▪ As above 	Senior Manager, YJ Security and Intelligence Unit Coordinator Security Operations, Security and Intelligence Unit Coordinator Intelligence Operations, Security and Intelligence Unit (Corrections Intelligence Group can directly access this information from CIMS once agreement in place)	Lawful without consent	S102 <i>CDC Act</i> Chapter 16A <i>CYP(C&P) Act</i>
NSWPF (PCIU and Area Command or District)					
NSWPF (PCIU) NSWPF Area command or district	To assist police in the conduct of lawful police functions, such as investigations, identification of victim/s or suspect/s, the laying of further	<ul style="list-style-type: none"> ▪ Name, DOB, aliases ▪ Location of detainee (detention centre or community office) ▪ Release date 	Senior Manager, YJ Security and Intelligence Unit	Lawful without consent	S102B <i>CDC Act</i> Chapter 16A <i>CYP(C&P) Act</i>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
	charges, serving a warrant or order, or to serve a Federal control order.	<ul style="list-style-type: none"> ▪ Conditions of release ▪ Release address ▪ Visitors & their contact details ▪ Next of Kin contact information ▪ Custodial record ▪ Custodial room-mates information ▪ Detainee's property information ▪ Details of conversations obtained via YJNSW Security and Intelligence Unit from Detainee Telephone System ▪ Listen to the audio ▪ Audio recordings ▪ Details from CCTV footage ▪ View CCTV footage 	Coordinator Intelligence Operations, Security and Intelligence Unit		<p>Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>,</p> <p>Division 3 of the <i>Crime Commission Act 2012 (NSW)</i> and</p> <p>Part 1AA of the <i>Crimes Act 1914 (Cth)</i>.</p> <p>S23(5)(d) and s25(a) <i>Privacy and Personal Information Protection Act 1998 (PIPP Act)</i></p>
Police Area Command or District	<p>To assist police in:</p> <ul style="list-style-type: none"> ▪ conducting investigative functions that relates directly to a lawful investigation which is carried out by NSW Police where the investigations may lead to Police taking or instituting formal action (including incidents occurring in while the young person was detailed) ▪ To serve a warrant or a federal control order ▪ The identification of an offender or victim of a crime 	<ul style="list-style-type: none"> ▪ Name, DOB, aliases ▪ Location of detainee (detention centre or community office) ▪ Release date ▪ Incident details (where incident occurred in a YJ Centre) ▪ Conditions of release ▪ Release address ▪ Next of Kin contact information ▪ Evidence of YP's attendance at community office ▪ View CCTV footage ▪ Confirmation of identification of young person based on a photo. 	YJ Area Manager YJ Centre Manager	Lawful without consent	<ul style="list-style-type: none"> ▪ S102B <i>CDC Act</i> ▪ Chapter 16A <i>CYP(C&P) Act</i> ▪ <i>Crimes Act</i> s315 ▪ S23(5)(d) and s25(a) <i>PIPP Act</i>
Police Child Wellbeing Unit	When a child is at risk of harm - to ensure that the young person is engaged in support services, that there are no duplicate support services and	<ul style="list-style-type: none"> ▪ Young person's legal status ▪ Young person and carer's address and contact details ▪ Release date 	YJ Area Manager, YJ Centre Manager	Lawful without consent.	Chapter 16A <i>CYP(C&P) Act</i> S102 <i>CDC</i>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
	to ensure the safety of the young person upon release from YJ Centre	<ul style="list-style-type: none"> YJ case worker details 			
GOVERNMENT DEPARTMENTS INCLUDING DCJ					
DCJ Child Protection Caseworkers Child Protection Helpline	To identify mutual clients to provide coordinated support for the young person's provision of housing, welfare, and protection to then liaise for more information about mutual client	<ul style="list-style-type: none"> Name, DOB, aliases Location of detainee (detention centre or community office) YJ Caseworker (Community or Custody) Release date Conditions of release Address Next of kin contact information Alerts Disabilities and health risks 	YJ Caseworker (Approved child protection caseworkers can directly access this information from CIMS once agreement in place)	Lawful without consent but preferable to seek client's consent	Chapter 16A <i>CYP(C&P) Act</i> "use" within the meaning of s17(b) of the <i>PPIP</i> – see DCJ Legal advice 14 Dec 2020 and part 5.4 of the Privacy and Personal Information Policy
Housing NSW	To identify mutual clients to provide coordinated support for the young person's provision of housing, welfare, and protection to then liaise for more information about mutual client with consent.	<ul style="list-style-type: none"> Name, DOB, aliases Location of detainee (detention centre or community office) YJ Caseworker (Community or Custody) Release date Conditions of release Address Next of Kin contact information Alerts Disabilities and Health risks 	YJ Caseworker	Lawful without consent but preferable to seek client's consent	Chapter 16A <i>CYP(C&P) Act</i> "use" within the meaning of s17(b) of the <i>PPIP</i> – see DCJ Legal advice 14 Dec 2020 and part 5.4 of the Privacy and Personal Information Policy
Office of Community, Safety and Cohesion	To facilitate the assessment of a relevant young person's eligibility and suitability for the Engagement and	<ul style="list-style-type: none"> Person & contact information Aliases Background reports Criminogenic assessment 	Manager, YJ Countering Violent Extremism Team	Lawful without consent but preferable to seek client's consent	S148AB(1)(c) <i>CDC Regulation</i>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
(Intervention Coordinators)	Support Program, or a successor of that program.	<ul style="list-style-type: none"> ▪ Violent Extremism Risk Assessment ▪ Case Plan ▪ Case notes relevant to violent extremism ▪ Non-associations orders and place restrictions ▪ Detainee Transfer notification discharge summary ▪ Incident, Misbehaviours, Alerts, Escape ▪ Psychological reports ▪ Progress education reports ▪ program risk assessment ▪ Serious Young Offenders Review Panel report/s ▪ Legal orders, Police facts, court history summary, future dates ▪ Judges sentencing remarks 			
Education NSW	Considering attendance of a young person	Information to be used to assess if attendance of a young person at a school / TAFE is likely to constitute a risk	YJ Director, Policy and Practice	Client consent is required This does not override requirements of the <i>Health Administration Act</i> or <i>CYP(CP)Act</i>	Section 26C of the <i>Education Act 1990</i> Guidelines issued under Part 5A of the <i>Education Act 1990</i> .
Education NSW	For the safety, wellbeing and/or welfare of the young person or young persons	Relevant information that would assist Education NSW in making a decision; assessment of a plan; providing a service; or managing a risk	YJ Caseworker	Client consent is not required but it is preferable to seek young person's consent or to	Chapter 16A <i>CYP(C&P) Act</i>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
				notify young person of disclosure of information	
COMMONWEALTH AGENCIES					
NDIA	To identify mutual clients and provide effective support to those clients	<ul style="list-style-type: none"> ▪ Name, DOB, aliases ▪ Location of detainee (detention centre or community office) ▪ YJ Caseworker (Community or Custody) ▪ Release date ▪ Conditions of release ▪ Address ▪ Next of Kin contact information ▪ Alerts ▪ Disabilities and health risks 	Executive Director would approve the information sharing agreement to enable CIMS access	Lawful without consent if an information sharing arrangement has been entered into, otherwise it requires the client's consent	S102B <i>Children (Detention Centres) Act (CDC Act)</i> S148AC <i>CDC Regulation</i>
Immigration	To provide information with respect to an application by the young person to the Department of Immigration (Cth)	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information (review)	YJ Centre Manager YJ Area Manager	Lawful without consent Migration Act also allows for service of a notice to produce	S102 <i>CDC Act</i> S148AB (1)(b)(i) <i>CDC Regulation</i> Section 140XF of the <i>Migration Act 1958 (Cth)</i>
Centrelink	Information regarding a young person who is in receipt of social security benefits	<ul style="list-style-type: none"> ▪ Name ▪ DOB ▪ Relevant health records 	YJ Caseworker	Client consent is required	Division 6, <i>Social Security (Administration) Act 1999 (Cth)</i>
LEGAL OFFICES / ENTITIES					
Aboriginal Legal Service lawyer	Case preparation	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports,	DCJ Legal	Consent is required	<i>Government Information Public Access Act 2009 (GIPA Act)</i>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
		psychological reports, visitor information		for GIPA requests No client consent is required for subpoena	Giving Evidence Policy Obtain confirmation of current instructions to act for the young person and / or their informed consent
Children's Court	Hearing Control orders Community Service Orders Parole Good behaviour bonds	The child's history, family background, disabilities, employment, education, friends and associates, the nature and extent of the child's participation in the life of the community and any other matters that the Children's Court may require to undertake assessment or make decisions.	DCJ Legal	No consent is required where there is an order of the Court.	<p>Control orders</p> <p>Section 25 of the <i>Children (Criminal Proceedings) Act 1987</i></p> <p>Clause 6 of the <i>Children (Criminal Proceedings) Regulation 2016</i>.</p> <p>Community Service Order and Good behaviour bond</p> <p>Section 9 of the <i>Children (Community Service Orders) Act 1987</i></p>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
					<p>Section 41 of the <i>Children (Criminal Proceedings) Act 1987</i></p> <p>Section 39 of the <i>Children (Criminal Proceedings) Act 1987</i></p> <p>Parole</p> <p>Clause 10 of the <i>Children (Criminal Proceedings) Regulation 2016</i></p>
Crown Solicitors Office	Case preparation	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information	DCJ Legal	No client consent is required for subpoena	<p>s25 <i>Crimes (High Risk Offenders) Act 2006 No 7</i></p> <p>Giving Evidence Policy</p> <p>S102(1)(c) CDC</p>
Office of the Director of Public Prosecutions	Case preparation	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information, YJC referral information	DCJ Legal	No client consent is required for subpoena	<p>S23 <i>PIPP Act</i></p> <p>Giving Evidence Policy</p> <p>S102(1)(c) CDC</p>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
Legal Aid	Case preparation	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information, YJC referral information	DCJ Legal	A formal request under GIPA is required (lawful excuse). Client authority/consent is required. No client consent is required for subpoena	GIPA 2009 Giving Evidence Policy S102(1)(c) CDC
Solicitors/private law firms	Representation	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information, YJC referral information	DCJ Legal	A formal request under GIPA is required (lawful excuse). Client authority/consent is required No client consent is required for subpoena	GIPA Act 2009 Giving Evidence Policy
Any other subpoena	Court process	Information set out in the subpoena	DCJ Legal	No client consent is required for subpoena	Giving Evidence Policy
FINES AND DEBTS					
State Debt Recovery Office (OSR) - Commissioner of Fines	Assistance in resolving outstanding fines	Criminal record Address Property Date of birth Driver's Licence number	YJ Centre Manager YJ Area Manager - Manager should consult the Information Access & Privacy Officer if required	Lawful without consent if an information sharing arrangement has been entered into, otherwise it requires the client's consent	S102B CDC Act S148A CDC Regulation S117 Fines Act 1996 (NSW)

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
Work and Development order sponsors and third parties	To facilitate the work and development order	Information regarding eligibility criteria and suitability	YJ Caseworker	Consent is required to disclose information to approved WDO sponsors or third-party service providers for WDO activity	<i>Fines Act 1996 (NSW)</i> <i>Fines Further Amendment Act 2008 (NSW)</i> <i>Young Offenders Act 1997</i>
SUPPORT & SERVICES					
Chaplains	Chaplain support to young person in a YJ Centre	Chaplain may request information about young people detained in Juvenile Justice Centres to which the Chaplain is appointed	YJ Centre Manager	Consent required	YJ authorised to disclose relevant information under Chapter 16A <i>CYP(C&P) Act</i> Memorandum of Understanding with the Civil Chaplaincy Advisory Committee relating to the provision of services to young people in detention
NGOs	To facilitate services to a young person who is a client of YJ	Information relevant to the provision of proposed services by the NGO	YJ Caseworker YJ Area Manager YJ Centre Manager	Permissibility of disclosure of client information is dependent on the status of the NGO with respect to YJNSW: <ul style="list-style-type: none"> Some NGOs are prescribed NGOs under Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> with whom YJNSW can disclose information for the safety, welfare and wellbeing of children and 	YJNSW authorised to disclose relevant information under Chapter 16A <i>CYP(C&P) Act</i>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
				<p>young persons lawfully without client consent.</p> <ul style="list-style-type: none"> Some NGOs are funded by YJNSW and the release of limited client information is permitted within the parameters of their YJNSW service contract although in practice it is preferable to obtain consent from client. Other, non-contracted NGOs disclosure of client information is not permitted without client consent. 	
HEALTH SERVICES					
Specialist	To assist in the provision of specialist services to the young person	Psychology and psychiatric reports, Mental health reports, Mental Health Reviews, Summary of Management with YJ, Background reports, any other information where it is reasonable for the specialist to require the information to provide welfare or a service to the young person. ...	YJ Manager, Operations Unit. Note: Physical Health reports are referred to Justice Health	No consent required for Chapter 16A requests (including mental health client information)	Chapter 16A <i>CYP(C&P) Act</i>
Justice Health	To assist in the provision of health services to the young person	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information	DCJ Legal - Youth Justice, Information Access & Privacy Officer	Consent is required	MOU (under development)
VICTIMS RIGHTS					

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
Victims of Crime	To support registered victims of crime	Registered Victims are entitled to specific information in relation to young offenders found guilty of a crime who have been sentenced by the courts and are currently in Youth Justice custody or on parole	YJ Victims Register Officer	Lawful without consent	<i>Victims' Rights and Support Act 2013 & Regulation</i> Youth Justice Victims Register Policy
Victims Compensation Tribunal	To assist in the compensation of victims of crime	Address of a convicted defendant for the purposes of restitution action in respect to awards of compensation to injured victims	YJ Victims Register Officer	Lawful without consent	Section 58 <i>Victims Support and Rehabilitation Act 1996</i>
Education NSW, Corrections NSW or Police NSW seeking information regarding registrable offenders	Information: <ul style="list-style-type: none"> For the protection of children. To help in the case management plan of a registrable young person. If the sharing of the information does not occur there is a risk of <i>substantial adverse impact</i> on the registrable person or another person or group of people. 	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information	YJ Manager, Operations Unit	CPOR Act prohibits disclosure of information concerning registrable persons except in certain circumstances, i.e. any of: <ul style="list-style-type: none"> The young person has consented The information is shared for the administration of the CPOR Act The information is being shared with a prescribed agency under Ch 16A CYP(C&A) Act The information is being shared with a scheduled agency under s19BA of the CPOR Act with the written authority of the Area Manager, Centre Manager or Director 	Schedule one of the <i>Child Protection (Offenders Registration) Act 2000 No 42</i> (CPOR Act) Chapter 16A CYP(C&P) Act Registrable Offenders Policy and Procedures Laws surrounding sharing information for registrable young offenders are complex. Further information about sharing information can be found in sections 19BA, 21D and 21E of the CPOR Act and by contacting registrableoffenders@justice.nsw.gov.au

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				Community of Director Custodial Operations.	
OVERSIGHT BODIES					
Ombudsman	Request from the Ombudsman to enter or inspect a premises	Client information related to the Ombudsman's inquiry	YJ Centre Manager	Consent is required	<i>Ombudsman Act 1974</i> Operations Manual guide in relation to Visits by Oversight Bodies.
Official Visitors Inspector of Custodial Services	Provide oversight to YJ Centres	Access to client case work files Enter a Centre Talk to young people in detention	YJ Centre Manager	Lawful without consent	S 8A <i>CDC Act</i> See File Management Policy Visits by Oversight Bodies Procedure
MISCELLANEOUS					
Office of the Children's Guardian	To assist in the employment of a young person	Information in relation to Working with Children Checks	Professional Conduct Unit - staff DCJ Legal - Youth Justice, Information Access & Privacy Officer	Lawful without consent	Section 31 - <i>Child Protection (Working with Children) Act 2012</i> No 51
Mental Health Review Tribunal	To facilitate the conduct of mental health inquiries, review of orders and appeals regarding the treatment and care of young people with mental illness	Assessment and background reports, admission discharge list, Incident reports, misbehaviour reports, psychological reports, visitor information	YJ Caseworker	Lawful without consent	S 157 <i>Mental Health Act 2007</i>
Family members	To acquire contact or status information about a current or ex client	Status/location of YP	YJ Centre Manager YJ Area Manager	Not lawful without client consent	<i>PIPP Act</i> Refer to Centre or Area Manager as Manager may need to weigh up considerations

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					relating to the young person's age, right to privacy and confidentiality, consent and partial consents to sharing of the information, risk and duty of care.
Young person (currently with YJ)	To access their own personal information held by YJNSW	Personal information relating to themselves	YJ Caseworker	Lawful Young person should be supported to access information. Ensure information pertaining to others is removed/redacted	<i>GIPA Act</i>
Young person formerly with YJ but still under the age of 18	To access their own personal information held by YJNSW	Personal information relating to themselves	YJ Caseworker	Lawful Young person should be supported to access information. Ensure information pertaining to others is removed/redacted	
Adult formerly a young person with YJNSW	To access their own personal information held by YJNSW	Personal information relating to themselves	DCJ Legal See Secretary direction regarding informal release of information. If <2 hours work required and basic information, can be released informally (with valid consent).	Person to make a request under GIPA	<i>GIPA Act</i>

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			If more than 2 hours work is required and/or the information is sensitive, members of public should be directed to complete a formal GIPA request via DCJ Legal.		
Media	Statistical data for reporting	Incidents or aggregate data with no individual identification	Manager, RIU	Lawful without consent	<i>GIPA Act</i>
	Client information for reporting	Client data or information	Executive Director	Consent is required	<i>GIPA Act</i> <i>S18 PIPP Act 1998</i>
Ministerial requests	To provide advice, respond to requests for information, inform the Minister	Aggregate data	Manager, RIU	Lawful without consent Permitted	
	Responding to an incident	YPs name when there is an assault or serious incident	Executive Director	Lawful without consent Permitted	
Members of Parliament / Parliamentary committees	Disclosure of information is permitted between public sector agencies under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or By a public sector agency to any public sector agency under the administration of the Premier if the disclosure is for the	All information held by DCJ, including personal and health information that: a) Was collected for another purpose; or b) Relates to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership or sexual activities	Director, Strategy and Engagement	No	Parliamentary powers <i>PIPP Act 1998</i>

ENTITY REQUESTING INFORMATION	PURPOSE FOR WHICH IT SEEKS INFORMATION	CLIENT INFORMATION REQUESTED	WHO CAN APPROVE REQUEST	LAWFUL WITHOUT CONSENT? IS CLIENT CONSENT REQUIRED?	RELEVANT LEGISLATION, POLICIES, GUIDELINES
	purposes of informing the Premier about any matter.				
Public	Any purpose	Any information held by the Department of Communities and Justice including Requests for client information (including the location of a client) from the public	<p>DCJ Legal - Youth Justice Information Access & Privacy Officer</p> <p>See Secretary direction regarding informal release of information. If <2 hours work required and basic information, can be released informally (with valid consent).</p> <p>If more than 2 hours work is required and/or the information is sensitive, members of public should be directed to complete a formal GIPA request via DCJ Legal.</p>	Consent is required.	<p><i>GIPA Act</i></p> <p><i>GIPA Act</i> does not authorise the disclosure where there is an overriding public interest against its disclosure</p>
Interstate Youth Justice or Corrective Services	Facilitating the management and supervision of a young person under the supervision of another state	<ul style="list-style-type: none"> ▪ Person & contact information ▪ Aliases ▪ Background reports ▪ Criminogenic assessment 	YJ Centre Manager YJ Area Manager	Lawful without consent for a YP who is in the custody of another State or Territory or the Commonwealth or New	S102 <i>CDC Act</i> S148AB (1)(a) <i>CDC Regulations</i>

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		<ul style="list-style-type: none"> ▪ Case Plan ▪ Legal Orders ▪ Police Facts ▪ Criminal History ▪ Current Alerts in CIMS ▪ Non-associations orders and place restrictions ▪ Program participation and referrals ▪ Psychological assessment and/or counselling summary (YJ Psych to psych) 		<p>Zealand, although with consent of the client is preferable.</p> <p>Consent of the client is required where the YP is in the custody of NSW and NSW is seeking information from another State, Territory, Commonwealth or NZ youth justice agency (is this correct)</p>	

The Decision Tree directs how to respond to a request for the personal information of a young person, including who can approve the request, if it should be referred and what information may be shared, noting that YJNSW should seek the young person's consent or notify the young person of the disclosure of their personal information wherever possible and practicable. See <https://forms.office.com/r/bRpLxPik0a>

19. Refusing to disclose information

YJNSW employees may **refuse** a request for the personal information of a young person where the request **does not**:

- meet the requirements of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* (see part 12 of this Policy)
- meet the requirements of *Children (Detention Centres) Act and Regulation* (see part 13 of this Policy)
- meet requirements under specific legislation that would allow for a “lawful excuse” disclosure (see part 14 of this Policy)
- is not the subject of an information sharing arrangement as set out in part 15 of this Policy
- is not the subject of a subpoena, summons or search warrant as set out in part 16 of this Policy
- is not required by the mandatory reporting requirements that limit confidentiality as set out in part 17 of this Policy
- there is not an imminent threat to life or health of the young person or another as set out in part 17.

Where YJNSW refuses to provide the personal information that has been requested, the Manager must:

- provide a response with reasons to the requester of the personal information within a reasonable time
- record the request and the reason for refusal in the young person’s case notes (see part 20 of this Policy).

20. Recording requests for information

YJNSW employees must record all requests for information, including oral requests, in the young person’s case notes. The report should include:

- when and who has made the request for personal information
- what information is requested
- how YJNSW responded to the request
- details of the personal information that was provided to the requesting agency
- reasons for any refusal to disclose or share personal information, where relevant.

21. Delegations

Where the personal information is being shared under the *Children (Detention Centre) Act or Regulation* the function under section 102A (Authority to disclose information) is a delegated authority and must be approved by a relevant **Manager** as specified in the table on page 19 of this Policy or as set out in the **decision tree form**

<https://forms.office.com/Pages/ResponsePage.aspx?id=40UgA7VP8EGdhOqBwryCKvhtSxy8saFForMSjP9leG5UQTVWMzUzTFBPVkkxLMIROQIBIRzILWEdQRS4u>

22. References

Legislation

Children (Detention Centres) Act (1987)(NSW) and Regulation
Privacy and Personal Information Protection Act 1998 (NSW)
Health Records and Information Privacy Act 2002 (NSW)
Government Information (Public Access) Act 2009 (NSW)
Children and Young Persons (Care and Protection) Act 1998 (NSW)
Fines Act 1996 (NSW)
Education Act 1990, and Guidelines issued under Part 5A of the Education Act 1990 (NSW)
Mental Health Act 2007 (NSW)
Child Protection (Working with Children) Act 2012 (NSW)
Child Protection (Offenders Registration) Act 2000 (NSW)
Victims of Crime – Victims’ Rights and Support Act 2013 and Regulation (NSW)
Victims Compensation Tribunal – s58 Victims Support and Rehabilitation Act 1996 (NSW)

Policies

DCJ Records Management Policy
Youth Justice Case Management Policy
Youth Justice File Management Policy
Youth Justice Child Safety and Mandatory Reporting Policy
Youth Justice Managing Non-Compliance and Breach Policy
Youth Justice Giving Evidence Policy
Youth Justice Community Supervision for Young People 18 Years and Over
Youth Justice Parole Policy
Youth Justice Registrable Offenders Policy and Procedure
Youth Justice Victims Register Policy

Procedures

Managing Non-Compliance and Breach Procedure
Child Safety and Mandatory Reporting Procedure
Records Management Procedure
DCJ Digital Imaging of Records Procedure
Physical Records Archive Procedure

DTS Corporate Records - Archival Certificate

Records Security Model Standard

EDRMS Metadata Standard

Case Note Manual

Forms

Client Consent – Exchange of Information form

Resources

See also Mandatory Reporter Guide - <https://www.facs.nsw.gov.au/families/Protecting-kids/mandatory-reporters/what-when-to-report/chapters/mandatory-reporter-guide>

What is a record and what to keep

Informal Requests for Information Factsheet

23. Document information

Title:	Privacy and Personal Information Policy
Business Centre:	Youth Justice
Author:	Natalie David
Approver:	Paul O'Reilly
Date of Effect:	4 August 2021
Next Review Date:	4 August 2024
File Reference:	D21/20047/YJ
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24. Document history

Version	Date	Reason for Amendment
1.1	15 July 2021	Revised draft to include Children (Detention Centre) legislation and regulation changes from March 2021.