

Confidentiality and Disclosure of Information Practice Guideline

Ministry of Children and Family Development

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A. Introduction:

In order to carry out their duties, delegated workers within the Ministry and Delegated Aboriginal Agencies (DAA) have the authority to collect, maintain, and disclose personal information about individuals. This authority must be exercised in accordance with the laws that govern access to and disclosure of information. Personal information comes from a variety of sources, including children, parents, extended family, community members, caregivers, other service providers and public bodies.

There is a fundamental tension between the two competing principles of confidentiality and disclosure. Disclosure of personal information is often essential for timely and appropriate decision-making; however, unauthorized disclosure of personal information may lead to serious harms and penalties and may violate an individual's privacy. The *Freedom of Information and Protection of Privacy Act* (FOIPPA), the *Child, Family and Community Service Act* (CFCSA), and the *Adoption Act* are statutes that set out authorities and obligations regarding access to and disclosure of personal information.

This practice guideline has been prepared to assist delegated staff in understanding what personal information they are entitled to collect, how to obtain the information, and circumstances under which this information may be disclosed.

B. Background:

FOIPPA is general legislation that governs protection of personal information and disclosure of records in the custody or control of public bodies in British Columbia. In addition, the CFCSA and the *Adoption Act* contain specific provisions that modify FOIPPA regarding records about children and families in order to permit disclosures and confidentiality essential to the proper management of information in the highly sensitive child protection and adoption settings. For example, where it is necessary to ensure the safety and well-being of children or where it is intended to support Indigenous children in belonging to their Indigenous communities, the CFCSA allows for disclosure by a director without anyone's consent.

Information about a youth's involvement with Youth Justice must be protected in accordance with their rights to privacy under the *Youth Criminal Justice Act*. Refer to Practice Advisory: [Assessment and Planning for Young People Involved with Youth Justice Services](#).

A worker's authority to collect and disclose information is linked to their delegation level, their role in service delivery, and the child's legal status. Delegated workers in DAAs have the same authorities and limits around information sharing, based on their job descriptions and delegation level, as Ministry delegated workers.

C. Director's Authority to Collect Information

Under FOIPPA, a public body (including a director) may not collect personal information from a person (third party) other than the person whom the information is about, unless they have authority under FOIPPA or other legislation, including the CFCSA.

Delegated workers may request information from relevant collaterals under section 96 (2.1) of the CFCSA.

Workers delegated under section 92 of the CFCSA have authority to compel public bodies to provide information under section 96 of the CFCSA where it is necessary to exercise powers or perform duties under the Act.

Workers delegated under section 77 of the *Adoption Act* have authority to collect information from public bodies and individuals under sections 70 and 70.1 of the *Adoption Act* where it is necessary for the health and safety of an adopted person.

CFCSA:

- The following categories of delegation have authority under section 92: Full child protection (C6); partial child protection (C5), guardianship (C4), resources and voluntary services (C3).

Adoption Act:

- Full delegation (AD1) category of delegation has authority under section 6 of the *Adoption Act*.
- The following categories of delegation include authority under section 70 of the *Adoption Act*: Full delegation (AD1); and partial delegation (AD2).

Public Bodies:

A public body is defined in FOIPPA. For the purpose of MCFD's and DAA's information requests, public bodies from which records can be requested under CFCSA s. 96 include, but are not limited to, the following:

- BC government ministries;
- Agencies, boards, commissions, offices or other bodies designated by regulation under FOIPPA;
- Local public bodies for example, municipal or regional districts, school boards, and hospitals;
- Schools;
- Physicians in public practice;
- Health authorities (excluding First Nations Health Authority – see below);
- Community Living British Columbia; and
- Municipal police.

For a complete listing of public bodies, see FOIPPA [Schedule 2](#)

Note: *Different program areas within MCFD may collect information consistent with Policy 1.3 Working with Service Providers and Collateral Contacts.*

It does not include records held by the following, for example:

- Officers of the Legislature (such as the Representative for Children and Youth);
- Courts;
- Physicians working in private clinics;
- Private sector organizations;
- RCMP or other federally legislated agencies;
- First Nations Health Authority, including its service providers.

Section 96 (1) of the CFCSA entitles a director to any information that is in the custody or control of a public body and is necessary to enable the director to exercise their powers or perform their duties or functions under the Act. The director – not the public body – decides what information is necessary. To avoid duplication of information previously requested, include the date range in the s. 96 request for information from public bodies.

A section 96 request for Information can be considered, on a case-by-case basis, in many circumstances including, but not limited to the following:

- The director has requested and has been unable to secure the consent of the individual whom the information is about or the consent of the person with legal care of a child whom the information is about, to release the information to the director; and
- The director believes, on reasonable and probable grounds, that the information, document or record is necessary in order to provide services or take action under the Act. Typically, this would be required when working under Part 3, 4 or 8. Examples of Part 3,4 or 8 provisions where the director might need to use s. 96 include, but are not limited to, the following:
 - assessing/investigating whether a child needs protection;
 - carrying out guardianship responsibilities;
 - gathering evidence for child protection hearings under the CFCSA
 - s. 98 restraining orders to protect a caregiver or sexually exploited child;
 - s. 28 protective intervention orders to protect a child when contact with an individual may cause the child to be in need of protection.

Whenever possible, before considering use of section 96 (1) to access information, seek the consent of the individual whom the information is about or the consent of the person with legal care of a child whom the information is about, to obtain information. Use the [Consent to Collect Information form](#) to document their consent and upload the form as an attachment in ICM. If it's not possible to get an individual's signed consent immediately, document their verbal consent given in person, by phone, or by virtual technology, and follow up as soon as possible by having them sign the Consent to Collect Information Form. Once the information has been requested and obtained, inform the person about the collection of information and how it will be or has been used, including, but not limited to:

- Assessing a child's safety and need for protection;
- Ensuring a child's or other's safety and well-being.

If the information is necessary and the individual does not give consent or when the individual cannot be located to provide consent, the use of s. 96 to access their information from a public body is permissible under the CFCSA. Document the attempts to contact the individual and engage with them to seek their consent.

Do not seek, however, a parent's, guardian's or other individual's consent to collect their information or inform them how their information will be used under the following circumstances:

- If doing so could, in the opinion of the director, cause physical or emotional harm to any person or endanger the child's safety; or
- If a criminal investigation into the matter is underway or contemplated; or
- On a case-by-case basis with the approval of a supervisor.

Section 96 (2) requires the public body concerned to disclose the requested information to the director.

Section 70 of the *Adoption Act* requires a public body to disclose information, upon request, to a director of adoption that is for the health and safety of an adopted person. Section 70 also requires a director under the CFCSA to disclose information obtained under that *Act*, upon request, to a director of adoption if the information is necessary to enable the director of adoption or an adoption agency to exercise the powers or perform the duties or functions given to them under Parts 2, 3, and 4 and sections 61 and 62 of the *Adoption Act*.

A director under the CFCSA or the *Adoption Act* determines that information is necessary to perform their job before requesting information from a public body (or a director under the CFCSA). The public body must then disclose the information to the director, unless the information is subject to a claim of solicitor- client privilege.

Although there is not a required format for requesting information under Section 96(2) from a public body, a director must make a written request for information, except in the case of emergency. It is helpful to include the following information in the request:

- name and/or other identifying information of the person whose personal information is being requested;
- authority for the request, including wording such as "pursuant to section 96 of the *Child, Family and Community Service Act*, or pursuant to section 70 of the *Adoption Act*, as a delegated representative of the director, I require the following information to enable me to exercise my powers or perform my duties and functions under the *Act*:";
- description of the information requested; and
- date by which the information is required.

Collecting Information from a Physician in Private Practice

A physician in a private practice is not considered a public body and, as a result, is not obliged to respond to requests for information made under the authority of Section 96(2) of the CFCSA.

- If records from a private physician are required, make a written request to the physician that:
 - States clearly that the record in question is necessary for a child protection investigation;
 - Gives adequate notice to the physician to allow them to request patient (or parental) consent to release the record; and

- In exceptional circumstances, provides the physician with additional information (under section 79(a) of the CFCSA) that will help them to determine whether the duty to report under Section 14 of the CFCSA and the [Protocol for Communication between Staff of MCFD and Physicians](#) applies to the patient in question.
- In accordance with the [Protocol for Communication between Staff of MCFD and Physicians](#), a physician may release the requested information under the following circumstances:
 - With the patient/parent's written consent;
 - If "maintenance of confidentiality would result in a significant risk of substantial harm to other or to the patient if the patient is incompetent"; and
 - If there is a court order issued under the authority of Section 65 of the CFCSA.

Collecting Information from Crown Counsel under Section 96 of the CFCSA

- When requesting information from Crown counsel:
 - Make the request in writing;
 - Confirm that you are delegated under the CFCSA;
 - Include the name of the child/youth and parent(s) involved; and
 - Specify the information required.

Make every effort to obtain a copy of the report or information from its source before submitting a request to Crown counsel. Information will not be provided by Crown Counsel if it is:

- Protected from disclosure by the *Criminal Code* or *Youth Criminal Justice Act*;
- Inter-office correspondence;
- Legal opinions; and/or
- Reports or records that can be obtained from the author(s).

Third Parties:

In terms of collecting and disclosing information, a third party is any person, group of persons, or organization other than the person the information is about or a public body.

Section 96(2.1) of the CFCSA and section 70.1 of the *Adoption Act* provide authority to a director to collect information from a third party where it is necessary to exercise their powers or perform their duties. Unlike public bodies, a third party is not required to provide the information, and may refuse disclosure.

Section 17(2)(b) of the CFCSA authorizes a director to make an application to court for an order compelling a person to disclose all information to a director that may assist in locating a child who is the subject of a child protection report.

Section 70(1)(b) of the *Adoption Act* entitles the director to any information that is necessary to enable a director or an adoptions agency to locate a person for the purposes of the *Adoption Act* or is necessary for the health or safety of an adopted person.

When Access to a Record is Denied (CFCSA section 65)

A director can apply for a court order to get the record if they reasonably believe a third party has the record but has refused or neglected to provide information that is needed to determine if a child needs protection.

If you are considering an application under section 65, contact contract legal counsel.

D. Director's Authority to Disclose Information:

FOIPPA sets out the access and privacy rights of individuals as they relate to the public sector. However, Part 5 of the CFCSA (sections 74 to 79) applies despite FOIPPA. This means that the CFCSA modifies FOIPPA.

Disclosure without consent is made under the applicable legislative authorities; however, where there is no authority to disclose without consent, workers should obtain consent.

If you are uncertain as to whether or not particular information can be disclosed in a specific situation, please consult with your supervisor. You may also contact MCFD's [Information Policy and Privacy](#) team.

Disclosing with Consent [FOIPPA, s. 33.1(1)(b)]:

Under certain circumstances, individuals may consent, or withhold consent, to the disclosure of their personal information.

To facilitate a non-delegated service provider's ability to participate in information sharing with the director, consent forms to collect and disclose information between the director and the service provider may be used.

When it is necessary to gather information from a non-public body regarding a child who is not in care, section 76 of the CFCSA applies.

In the case of a child under 12 years of age (or over 12 years of age if they are incapable of exercising their rights), whose personal information is in a record made under the CFCSA, subsections 76(1)(b) and 2(b) of the CFCSA state that the person who has legal care of the child, other than a director, has the right to consent to disclosure of the child's information.

If a child is in care, a guardian cannot consent to the disclosure of the child's information because the guardian no longer has legal care of the child.

- In accordance with Section 76 of the CFCSA, a child/youth 12 years of age or older is able to consent to the director collecting or disclosing their personal information, if the child/youth is capable of providing consent. To determine whether a child 12 or older has capacity to consent, consider their:
 - Developmental level and maturity;
 - Capacity to understand what they are consenting to; and
 - Ability to make an independent and voluntary decision to give consent.
- Consider consulting with professionals who have interacted with the child/youth, including caregivers and their primary physician. If doubt remains regarding their capacity to consent:
 - Obtain a more detailed assessment from a physician or psychologist;
 - Delay taking the consent and consult with your supervisor/team leader; and
 - Consider working with them as a child under 12 years of age and document reasons for doing so.
- As appropriate to the child/youth's age and stage of development, involve them in a discussion with their parent(s) or legal guardian regarding collecting and disclosing the child/youth's personal information, to explain:
 - What information will be collected and disclosed;
 - Reasons for collecting and disclosing information;
 - Third parties requesting information (unless this would be an unreasonable invasion of personal privacy of the person requesting under Section 22 of FOIPPA);
 - How information will be used and retained; and
 - How the child/youth can access their records.
- When obtaining a child/youth's consent, or the consent of a person who has legal care of the child/youth, to collect the child/youth's personal information, use form [CF0611 Consent to Collection of Information](#).
- When obtaining a child/youth or legal guardian's consent to disclose the child/youth's personal information, use form [CF0609 Consent to Disclosure of Information](#).
- When an individual has given consent to collect and/or disclose their personal information, collect or disclose their information on a 'need to know' basis.

Note that the above forms are not necessary to use when obtaining or disclosing personal information within MCFD or with a Delegated Aboriginal Agency.

- If a child, youth or parent refuses to sign the consent forms that are required for a referral for a voluntary service, clarify what personal information is needed for the referral. If they continue to refuse, explore the reasons with them and try to address them. If the concerns cannot be addressed, do not use the particular service or agency. Determine if there are alternate services or agencies available for which the child, youth or parent will consent.

Although formal consent is not required when obtaining personal information within MCFD or a Delegated Aboriginal Agency, it is good practice to advise the child/youth and/or parent regarding the personal information that will be collected and disclosed in order to provide voluntary services.

For records, other than those made under the CFCSA, a guardian of a child who is incapable of exercising their right to consent to disclosure of personal information (based on capacity not age), may consent to disclosure of the child's information if that power is within the scope of the guardian's duties (Freedom of Information and Protection of Privacy Regulation s. 3)

Disclosing Without Consent

Sub section 74(2)(e) and section 79 of the CFCSA; sections 61, 62 and 68 of the *Adoption Act*; and sections 25, 33.1 and 33.2 of FOIPPA establish that, under some circumstances, information may be disclosed without the consent of anyone.

Disclosure without Consent under the CFCSA

Select provisions of FOIPPA, listed in s. 74(2)(e) of the CFCSA, enable the director to disclose information, including without consent.

Under s. 79, a director may, without the consent of any person, disclose information obtained under this Act if the disclosure is:

- necessary to ensure the safety or well-being of a child, (a)
- necessary to ensure the safety of a person, other than a child, (a.1)
- intended to facilitate or support, with respect to an Indigenous child,
 - the child learning and practising the child's Indigenous traditions, customs or language, or
 - the child belonging to the child's Indigenous community, **(a.2)**
- made to a First Nation, the Nisga'a Nation, a Treaty First Nation or another Indigenous community in accordance with an agreement made under section 92.1, **(a.3)**
- required by section 64 or by order of a court in Canada to be made to a party to a proceeding, **(b)**
- authorized by the *Youth Criminal Justice Act* (Canada), **(c)**
- required by an enactment, **(d)**
- necessary for a family conference, mediation under section 22 or other alternative

- dispute resolution mechanism, **(e)**
- made when giving or when validly compelled to give evidence in a proceeding, **(f)**
 - necessary to conduct a review under section 93.2, **(g.1)**
 - made in order to release a report, or part of a report, finalized under section 93.2 (2) (b), in accordance with a regulation made under section 103 (2) (r.1) (ii), **(g.2)**
 - necessary to enable the Public Guardian and Trustee to perform duties and exercise powers as a child's property guardian under this Act, **(h)**
 - made to another director, **(h.1)**
 - made to a director of adoption to facilitate the adoption of a child if
 - the child is in the continuing custody of a director, or
 - a director is the child's personal guardian under section 51 of the *Infants Act*, **(h.2)**
 - made to a director's legal counsel, **(i)**
 - made in Canada to caregivers or prospective adoptive parents and the information relates to children in their care, **(j)** or
 - made in Canada and necessary for the administration of this Act. **(k)**

The following table summarizes the authority for disclosing without consent to key groups and individuals:

<i>Disclosure without consent to:</i>	<i>Authority under CFCSA:</i>
Delegated staff of MCFD or a Delegated Aboriginal Agency (DAA)	79(h.1)
Extended family / significant people	79(a) (a.2)
Indigenous community (e.g.) community social worker, Chief, Elder	79(a), (a.2), (a.3)
All community agencies (e.g.) cultural associations, schools, doctors, multidisciplinary tables such as Integrated Case Assessment Teams (ICAT)	79(a)
Representative for Children and Youth (RCY) ➤ See MCFD – RCY Communication and Information Sharing Protocol .	79(d)
Public Guardian and Trustee (PGT) ➤ See Protocol Agreement – Roles & Responsibilities of the Public Guardian and Trustee and MCFD	79(h)
Relief or respite care givers ➤ See Information Sharing with Relief or Respite Care Providers	79(j)

Note: Sections 79(a), (a.1) and (a.2) must be applied on a case-by-case basis. Workers use clinical judgment in determining when to apply these authorities.

Adoption Act (Sections 61, 62(3), and 68)

A director is authorized to disclose without consent if it is necessary for the safety, health or well-being of a child;

- it is necessary for the purpose of allowing a child to receive a benefit;
- in limited situations as outlined in section 62 of the *Adoption Act* - the adoption has broken down or it is not practical to obtain consent;
- to a limited list of people as outlined in section 68 of the *Adoption Act*, when there is a compelling circumstance affecting anyone's health or safety.

The following table provides examples of disclosing information without consent:

Disclosure necessary to:	Examples:
Section 79(a) Ensure the child's safety	Where the director is: assessing information in a report of child abuse or neglect conducting a child protection investigation taking charge of a child providing police, including RCMP, with information related to a criminal investigation assisting another person in protecting a child making or helping to make decisions about the care, custody and planning of a child

<p>Section 79(a)</p> <p>Ensure the child's well-being</p>	<p>Where the director is:</p> <p>providing a family justice counsellor with information under the CFCSA</p> <p>required for the completion of a court ordered assessment under the <i>Family Law Act</i>;</p> <p>communicating with teachers and administrators with respect to planning for the education of a child in care;</p> <p>planning or participating in planning for a child in care; or</p> <p>developing or implementing a support services agreement to protect a child</p>
<p>Section 79(a.1)</p> <p>Ensure the safety of another person</p>	<p>Circumstances where:</p> <p>information collected under the CFCSA suggests there is a likelihood a person may be harmed, and</p> <p>by releasing information, steps may be taken to advise the person or others of the extent and nature of the risk of harm.</p>
<p>Section 79(a.2)</p> <p>Support an Indigenous child in learning and practicing the child's Indigenous traditions, customs, or language, or belonging to the child's Indigenous community</p>	<p>Where the director is:</p> <p>collaborating with the child's Indigenous community for purposes of supporting the child to connect with their cultural community and obtain cultural permanency,</p> <p>collaborating with the child's Indigenous community for the purposes of assessing placement options, and</p> <p>involving the child's Indigenous community in planning for Indigenous children under the continuing custody of the director.</p>

Note: A situation may arise when a director/manager is concerned about the safety of a child whose family member(s) work with children (i.e. teacher, coach, day care provider). Although they may have concern for these children as well, contacting an individual's employer to advise of these concerns without their consent is a serious and intrusive step. This step should only be taken after careful consideration and in consultation with their Executive Director who is knowledgeable about the circumstances. Please refer to the [Child Abuse Prevention Handbook](#) for more information.

Disclosing after a Family Group Conference, Mediation or other Alternative Dispute Resolution (ADR) Mechanism

Information obtained during *family conference, mediation or ADR mechanism* is subject to different rules about confidentiality and disclosure. Section 24 of the CFCSA says this information must not be disclosed except:

- with the consent of everyone who participated;
- to the extent necessary or to make or to implement an agreement about the child;
- if the information is disclosed in an agreement made as a result of a family conference, mediation, or ADR and filed with the court;
- if the disclosure is necessary for the safety of a child or another person; or
- if the disclosure is required by the duty to report established in section 14 of the CFCSA.

Information and records (including notes) obtained during a family conference, mediation or ADR mechanism must be kept confidential.

Records will be stored on a separate backing sheet in the existing family or child service file, and clearly marked with an indication that these records are protected from disclosure under section 24 of the CFCSA.

Disclosing to Child/Youth's Indigenous Community

Information may be disclosed to a child/youth's Indigenous community when the community is party to a child-specific agreement under sections 5, 6, 7, 8 or 12.2 of the CFCSA. These agreements include those for support services (SSA), voluntary care (VCA), special needs (SNA), extended family care (EFP), and youth (YAG). If an Indigenous community is a party to one of these agreements, the agreements must include conditions on the use, disclosure and security of information provided to the community under the agreement.

The community may disclose information further on a limited basis, if an agreement expressly authorizes such disclosure pursuant to s. 75(a) of the CFCSA. For example, the Indigenous community representative may share information with other members of the community for the purpose of finding placement options and support services for an Indigenous child.

Information may also be disclosed to a child/youth's Indigenous community where the director has made an agreement with that community under s. 92.1 of the CFCSA:

- respecting the referral of child protection reports (CPRs) under section 16 of the CFCSA; or
- to have routine involvement in protecting, supporting, and planning for their children, which may include:
 - child protection responses – assessments and investigations (including safety planning),
 - developing plans with families,
 - developing plans for independence for youth,
 - planning for children under continuing custody orders, and/or
 - placement decisions.

An agreement under s. 92.1 must, unless exempted in the regulation, include conditions on the use, disclosure and security of information provided under the agreement.

If the designated representative of a child's First Nation, Nisga'a Lisims Government, Treaty First Nation, or Indigenous community becomes a party to the child protection proceedings, information must be disclosed to the designated representative in accordance with section 64 of the CFCSA.

All information disclosed to Indigenous community representatives is subject to s. 75 of the CFCSA which means they cannot subsequently disclose information they have obtained under the CFCSA unless an agreement expressly authorizes this disclosure.

Refer to Chapter 1 General Roles & Responsibilities policies for more information about involving an Indigenous child, youth and/or family's Indigenous community in planning and decision making.

Disclosing to Delegated Aboriginal Agencies (DAA)

Throughout the province, the designated director responsible for DAAs has delegated authority to employees of DAAs. In these situations, a director discloses information about a child and family to a delegated employee of a DAA in the same manner as would be provided to a delegated employee of the Ministry (s. 79(h.1)). The director would have to rely on a different authority, such as s. 79(a), to disclose information obtained under the CFCSA to non-delegated staff of a DAA. The director can disclose information to non-delegated staff of a DAA with the written consent of the person the information is about (see Disclosing with Consent).

E. Court Proceedings

Disclosing for Child Protection Proceedings (CFCSA section 64)

It should be noted that section 25 of the CFCS Regulation states that for the purposes of disclosure before a protection proceeding the following are deemed to be a party to a proceeding and thus entitled to full disclosure:

- each parent of the child;

- a director;

- in the case of an Indigenous child, a representative of
 - the First Nation if that the child is a First Nation child, or
 - the Nisga'a Lisims Government if the child is a Nisga'a child, or
 - the Treaty First Nation, if the child is a Treaty First Nation child, or
 - the Indigenous community that has been identified by the child, if 12 years of age or older, or by the parent apparently entitled to custody, if the child is under 12 years of age.

Section 64 of the CFCSA states that any party to a child protection proceeding may request and be entitled to receive from any other party, information about:

- the orders the party intends to request;
- the reasons for requesting those orders;
- the party's intended evidence.

Case law has expanded a director's obligations to disclose to that approaching disclosure by the Crown to an accused in a criminal matter.

Disclosure in response to a section 64 request is managed by contract legal counsel. When a director receives a written or oral request for disclosure in relation to a child protection proceeding, contract counsel should be informed. Pursuant to the law every reasonable effort must be made to disclose the information regardless of whether that information may be harmful to the director's case. Records reviewed in preparation for court should also be disclosed.

If you believe that the file contains information obtained in confidence, you should advise your legal counsel, who can then determine whether privilege may be asserted in regard to that information.

Contract legal counsel can also make requests for disclosure in relation to a child protection proceeding on the director's behalf.

Disclosing for Case Conferences (Rule 2)

A case conference under Court Rule 2 of the Provincial Court (CFCSA) Rules is a meeting of the parties, their lawyers, a judge, and any other person the judge allows. The goal of the case conference is to resolve issues which might otherwise require a hearing.

When a judge directs a case conference at the commencement of a CFCSA protection hearing, the judge is required to review the extent of disclosure made and requested under section 64. The judge may make any order for disclosure consistent with the CFCSA. The success of the case conference depends largely on full disclosure of relevant information by all parties involved. Judges may be expected to order compliance with this principle where parties have not already disclosed sufficiently.

In addition to fully disclosing all relevant records before a case conference, where practicable, the director also meets or consults with the parent beforehand to discuss issues the director intends to raise, including the reasons the director believes the child needs protection. All parties will be better able to participate meaningfully in the case conference if they know what to expect and are able to prepare themselves accordingly.

During the course of a case conference, a judge may also:

- review the adequacy of disclosure by the parties, including responses to requests for disclosure under section 64 of the CFCSA;
- order a party to allow another party to inspect and copy specific documents or records to the extent permitted by the CFCSA;
- give direction about and order the production by a party of anything required for a mini-hearing or any other hearing.

Responding to a Subpoena

Note: *If you receive a subpoena consult with contract legal counsel.*

In some circumstances, a director may be required to attend court in relation to a matter not falling under the CFCSA. A subpoena is a court-authorized demand for a person to attend court in order to give evidence under oath. A subpoena may require that person to bring records to court. However, this is not the same as an application for production of documents. If a worker refers to a record in the course of giving testimony, the lawyer for the other party is entitled to look at that record. If the lawyer wishes a copy of that or any part of the record, they must make a proper court application.

A director's files and records will primarily be used in court if it is necessary to refresh memory, or to permit the director to access information which is not within the scope of personal knowledge, but is known to the director.

If while testifying, a lawyer asks the director to provide an entire file or files, the director may address the presiding judge directly and ask whether the director is required to hand over copies of the entire file or files. The director may express concern to the judge about the child's and the family's privacy, as well as the confidentiality of certain documents within the files where consents to the disclosure have not been given.

Information that the director must seek to protect from disclosure includes:

- the name and identity of a person who made a report under section 14 of the CFCSA;
- any information conveyed to the director by professional third parties (e.g. medical or psychological reports); these professionals may have a privilege or a duty of confidence which they are obliged to protect or wish to argue;
- information respecting a person or a child in care who is not the subject of the particular proceeding where disclosure would be an unreasonable invasion of that person's personal privacy;
- information that is otherwise privileged, such as reports or documents prepared in contemplation of litigation, information subject to solicitor-client privilege, or information that could reasonably be expected to jeopardize an investigation under s.16 of the CFCSA or a criminal investigation that is underway or contemplated;
- any past criminal record created under the *Youth Criminal Justice Act* (Canada) unless specifically authorized by a Youth Court judge under s. 44.1(k) (ii) of the Act. If the presiding judge instructs the director to hand a file over to counsel for their review, the director must do so.

For more information, consult with your supervisor and legal counsel.

Responding to a Notice of Motion

A party may attempt to compel the director to produce a record for a court proceeding by sending a Supreme Court Notice of Motion or a Provincial Court Notice of Motion. A notice of motion does not require personal attendance by a director; it relates only to the production of a record. Since a notice of motion must be served on the Attorney General and often gives little time in which to respond, on receipt of a notice of motion a director should:

- contact Legal Services Branch (LSB) immediately and fax a copy of the notice of motion and accompanying affidavit to 250-356-8992, Attention to MCFD Counsel;
- review the standard terms that LSB requires be included in any order to produce CFCSA records and bring to LSB's attention any other conditions that should be included in a specific case;
- determine what records the director has relating to the application and decide whether or not to advise contract legal counsel that certain information should not be disclosed based upon a consideration of the following:
- the information is not relevant and, if disclosed, would constitute an unreasonable invasion of a third party's personal privacy;
- disclosing the information could reveal the identity of a person who made a report under section 14 of the CFCSA;
- disclosing the information could result in physical or emotional harm to a person;
- disclosing the information could jeopardize a child protection investigation, or jeopardize a criminal investigation that is either under way or contemplated;
- the information involves a person who may consent to disclosing the information;
- the information was obtained during the course of mediation, since the director may not disclose that information in accordance with section 24 of the CFCSA except:
 - with the consent of everyone who participated in the mediation;
 - to the extent necessary to make or implement an agreement about the child;
 - if the information is disclosed in an agreement filed under section 23; or
 - if the disclosure is necessary for a child's safety or the safety of a person other than a child, or is required under section 14.

F. Right of Access to Records

MCFD and DAA staff may provide some records directly to clients who are requesting copies of their own personal information. [Refer to Records that can be Obtained by Clients Directly from MCFD or DAA Offices](#) for required procedures before releasing copies of records to clients.

An individual has the right to be given access to a record containing information about themselves (FOIPPA, s. 4) or, for records under CFCSA, about a child who is under age 12 and in their legal care (or over age 12 if they are deemed incapable of exercising their rights under FOIPPA) (CFCSA, s. 76). These requests are dealt with jointly by the Disclosure & Document Management (DDM) unit within MCFD and Information Access Operations (IAO) acting as the Director's delegate) within the Corporate Information and Records Management Office at the Ministry of Citizens' Services. Workers should immediately forward any formal request for records to IAO for processing.

It is important for workers to know what types of information from their files may be disclosed. The following outlines specific rules that govern what information will or will not be disclosed by Information Access Operations (acting on behalf of the Director).

Right-of-Access Disclosures (FOIPPA, section 4)

Individuals who are entitled to access information about themselves include:

- children over 12 years of age, including children in care;
- adults who were formerly in the director's care;
- parents;
- members of extended families;
- caregivers;
- service providers;
- any other person whose information is contained in records made under the CFCSA and the *Adoption Act*.

A director must not disclose, to a person with a right of access, personal information that:

- could reveal the identity of a person who has made a report under section 14 of the CFCSA and who has not consented to the disclosure [CFCSA, s. 77 (1)].
- would be an unreasonable invasion of a third party's personal privacy (FOIPPA, s. 22);
- is contained in the Parents' Registry (*Adoption Act*, s. 73) unless for the purpose for which the information was provided;
- relates to the provision of abortion services, unless those services were provided to the applicant (FOIPPA, s. 22.1).

Some examples of where a director may refuse to disclose information to a person with a right of access include information that:

- is subject to solicitor-client privilege (FOIPPA, s. 14);
- could reasonably be expected to harm law enforcement (FOIPPA, s. 15);
- could reasonably be expected to harm the financial interests of a public body (FOIPPA, s.17);
- could reasonably be expected to result in mental or physical harm to that person or another person, or interfere with public safety (FOIPPA, s. 19)
- could reasonably be expected to jeopardize a child protection investigation or criminal investigation that is underway or contemplated [CFCSA, s. 77 (2)(a)];
- was supplied in confidence during a child protection investigation by a person not acting on behalf of or under the direction of a director [CFCSA, s. 77 (2) (b)].

Note: For a request for information under FOIPPA, it is not the role of workers to edit, sever or release information. However, if a worker has concerns about the content of a record going out under FOIPPA, the worker can speak to Information Access Operations (IAO) about their concerns. For detailed information regarding dealing with formal requests for access to information, please refer to the section entitled FOIPPA requests in the appendices.

If an inappropriate disclosure has occurred

An inappropriate disclosure is an accidental or inadvertent release of personal or sensitive information that would normally be securely maintained by MCFD in accordance with legislated confidentiality and privacy provisions. For more information, please refer to [Information Security & Privacy](#). This page contains information on what to do in the case of a potential privacy incident or breach.

Right to request correction of personal information

An individual also has the right to request that their own personal information be corrected according to s. 29 of FOIPPA. If a director receives such a request, they should follow MCFD's Policy for [Correcting or Annotating Personal Information](#).

Appendix 1: FOIPPA Requests

Analysts at Information Access Operations (IAO) use the *Freedom of Information and Protection of Privacy Act*, the *Child, Family, and Community Service Act*, and the *Adoption Act* as the primary legislation when reviewing files.

The following has been prepared to assist program area offices in dealing with formal requests for access to information (the FOI process). The three separate sections deal with the various areas of responsibility and procedures that will enable the Ministry to meet its legislated obligation to provide access to information in a way that also protects privacy.

An overview of the FOI process: Once an applicant has made a request for their personal information through the FOI process, Information Access Operations (IAO) will send a request for records to the Disclosure & Document Management (DDM) unit within MCFD. DDM will gather the relevant records for the request, and send them to IAO for review and appropriate release.

Some of the information provided below is intended for use by office managers rather than workers. Connect with your office manager and/or supervisor if you are unsure if the information applies directly to you.

1. When the Freedom of Information (FOI) request is received:

When an applicant attends in person to make a FOI request:

- Accept any hand-written requests - use of the government [Request for Access to Personal Information](#) form is preferred, but not required.
- Date stamp the request with the date received.
- Encourage the applicant to complete the “Information Requested” section on the Request for Access to Personal Information form, if using. Applicants should be as specific as possible in what information they are seeking, and, if they are seeking “everything” it will help a great deal to know what services they have received from the Ministry, whether as a child or a parent. Ensure that the applicant has provided contact information. A signature is not required for the request to be processed. Providing additional personal identifying information, such as the applicant’s date of birth, is also helpful in locating records.
- Provide the applicant with the contact information for IAO for any questions they may have: FOI.Requests@gov.bc.ca, or 250-387-1321
- Assist by sending the request and any supporting information to IAO.

Note: The legislated timeframe for response (30 business days) begins when the request is received by the Ministry, not when it is received at IAO. Therefore, fax the request to IAO immediately at 250-387-9843 or scan and email the request to FOI.Requests@gov.bc.ca or mail the original to:

Information Access Operations
PO Box 9569 Stn Prov Govt
Victoria, BC, V8W 9K1

If faxing the request, please ensure that you have received a confirmation of receipt, at which point you can return the original to the applicant or shred it.

Please:

- **Do not** photocopy ID.
- **Do not** file a copy of the request on any applicant's file.
- **Do not** keep a copy of the request in any type of log or binder.
- **Do not** tell an applicant that they cannot make a request because it is not their file. Any party to a file (even an informant) can request their information from any source held by the Ministry. IAO will determine the right of access and advise the applicant accordingly.
- **Do not** discuss with an applicant that there has been an access request and that their files have been sent to IAO. In many cases, the applicant for the information is **not** the individual named on the file. **It is a breach of the privacy of the applicant to advise others of the request.**
- **Do not** tell an applicant (or leave them with the impression) that they will be provided with an informant's name. Under FOIPPA and the CFCSA, IAO staff are no more able to provide that information than field staff are.

2. When your office receives a request for original files from DDM:

DDM sends a Call for Records to the responsible ministry offices and gathers records from offsite or historical collections as appropriate. Of the 30 legislated working days for responding to an FOI request, the ministry has only 10 days to gather all of the records.

DDM supplies the **original MCFD files** to IAO who is responsible for producing a true copy. DDM is responsible for ensuring that original files are returned to their source (whether a field office or off-site storage).

In order to assist in meeting the deadlines for release of files under the legislation, please keep the following points in mind:

- Determine where the requested original files are stored.
- Locate and gather any documentation not filed in the file (worker's case/black book notes; anything in alpha sorter; miscellaneous notes stored anywhere else in office) and ensure it is included when the files are forwarded to DDM.

- Ensure that the file is formatted correctly, and in numerical order by sections. DDM is not authorized to re-format files, file down loose papers, or alter the record in any way from how it is received. Please ensure that all loose papers are secured or placed in an envelope clearly identifying what is inside the envelope (i.e. black book notes; original photograph, etc.), and please write the client file number (e.g. CS or FS number) on the outside of the envelope before sending the file to DDM.
- Staple a copy of DDM's file request email to the front of each file indicating the volume of the requested file before preparing for mailing OR if all volumes of the same file are bound together, or located in one box, only one file request email printout is necessary.
- Prepare files for mailing to DDM using brown paper (minimum double thickness), boxes or blue bags (if you have House Mail). Note: Blue bags should not be used if your office mail is sent by Canada Post. Send files to:

Disclosure & Document Management
MCFD – XMO
PO BOX 9714 Stn Prov Govt
Victoria BC V8W 9S1

- Refer to the [mail-out protocol](#) when sending files.
- Send files to DDM immediately after the request is received in your office. If you are unable to send the file immediately due to a current investigation or immediate court date, please contact DDM to make alternate arrangements.
- Keep a copy of the file request email for your reference should you need to contact DDM for urgent return of original records or any other matter. You will need to reference DDM's file number (i.e. 2017-006) when inquiring about files.
- Advise DDM if there are any health and safety concerns related to the file (i.e., one of the key players is known to be violent or is restricted from attending any MCFD office etc.).
- If you have questions regarding sending files to DDM, phone 778-698-3400, email MCF.DocumentManagement@gov.bc.ca, or respond directly to the Information Management Analyst on the Call for Records.

Please:

- **Do not** delay sending of the original records to conduct a file review prior to sending to DDM. DDM will forward the records to IAO where staff are trained to assess eligibility for information access and will confer with field staff if concerns arise.

3. FOI package release

Applicants have the ability to choose to receive their records either in hard copy format or electronically on a CD. They will be made aware of this choice when they receive their Acknowledgment Letter from IAO upon receipt of their request. When an applicant's FOI package is ready for release, the applicant is advised by letter to contact the district office Team Leader or their delegate (such as an Office Manager) and set up an appointment to receive the package. The release package is normally mailed to the MCFD office closest to the applicant's home.

Your office will play a critical role in ensuring the FOI package is released to the correct individual. IAO advises applicants what identification will be required to pick up the records when they first make a request and reminds them in the letter advising when records are ready for pick up. This allows the applicant time to ensure they have proper ID. Applicants do not provide identification at the time of making the request, **ONLY** when the records are released to them at the time of pick up.

Please have the applicant provide enough identification to confirm their identity - two pieces are required, and one piece must be from the primary list:

<u>Primary ID</u>	<u>Secondary ID</u>
Provincial Identification	Birth Certificate
Passport	Provincial Health Care
Native Status Card	Citizenship papers
Original Citizenship papers	Credit Card
Immigration Documents	
Valid Driver's license	

- Check the identification provided against the name on the records for release and on the Acknowledgement of Receipt of Records form to ensure they are the same. If there are two names on the acknowledgement of receipt, **both** individuals must attend at the same time, provide proper ID, and sign the receipt to receive the release package.
- Record the descriptions of each piece of identification provided by the applicant on the Acknowledgement of Receipt of Records form and have the applicant sign the completed form. This form will be sent with the package.
- If the applicant has no identification, please consult with IAO.

- Forward the signed Acknowledgement of Receipt of Records form to:
Information Access Operations PO
Box 9569 Stn Prov Govt Victoria BC
V8W 9K1

or by fax to 250-387-9843 or email to IAOIntakeTeam@gov.bc.ca.

Please:

- **Do not** photocopy the applicant's identification.
- **Do not** remove/cut the plastic strapping of the release package. This ensures the applicant's privacy is protected.
- **Do not** release the package if at any stage you find a discrepancy or have any concern regarding the identity of the applicant. Consult with the FOI Analyst who sent the package or another staff member at IAO by calling 250-387-1321.
- **Do not** forward the package to another office for release. The Team Leader identified on the release documents is the person held accountable for the process, or they may delegate the Office Manager as an employee authorized to facilitate the release of records.
- **Do not** contact the applicant for pick up. Doing so could breach the confidentiality of the applicant. The applicant will have been notified by IAO to make contact with the office to make pick-up arrangements.

Do not keep or destroy an unclaimed package. If unclaimed after **60 days**, packages must be returned using TRACE (allows for tracking through BC Mail) to:

Information Access Operations
PO Box 9569 Stn Prov Govt
Victoria BC V8W 9K1

Note: IAO remains in contact with the applicant throughout the process, and the applicant is advised of the office to which their records have been sent for release.

Appendix 2: Considerations for Children in Care (CYIC) accessing records

Chapter 5 Children and Youth in Care Policies (Policy 5.10) provide workers with policy direction around promoting resiliency and skills of youth for successful community living. This policy directs workers to provide youth in care with information about how to request access to their file after leaving care. However, a child 12 or older who is capable can request access to information about themselves prior to leaving care.

While the decision to apply for access is the youth's, the worker has the opportunity to provide information to assist the youth in self-determining their desire, readiness and timing for access.

Youth are advised to consider:

- The right to apply for their information at any time within the next 90 years
- Information in their file is very personal and may be upsetting
- Receiving personal information through the formal FOI request process, without the support or explanation from a worker, may not be in their best interests
- The volume of information can be quite extensive, about 2000 - 8000 pages
- Whether they are ready to:
 - review the quantity of information
 - review the nature of the information alone or with a supportive person
 - move the information with them when and if they relocate.

Appendix 3: Release of Information to Police

Although FOIPPA allows disclosure to a law enforcement agency to assist in an investigation undertaken with a view to a law enforcement proceeding, the CFCSA is more restrictive. Section 79 of the CFCSA allows a director to disclose information without consent if it is necessary to ensure the safety or well-being of a child, or for the safety of an individual. Deciding on whether to disclose CFCSA information to a law enforcement agency will depend on the particular circumstances. If questions exist about disclosing information contact Legal Services Branch of the Ministry of the Attorney General at 250-356-8419.

Workers must refuse to disclose information about a police investigation to parent(s) or family members without consent from police.

Appendix 4: Electronic Sharing of Information

The sharing of personal information by email or fax can increase the risk of the information being received by an unintended audience. The *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act* require public and private bodies respectively to take reasonable measures to protect personal information from security breaches.

The Government of British Columbia's [Information Security Policy](#) provides guidance on the reasonable protection of personal and confidential information in a manner that is compliant with the security requirements of FOIPPA and the *Information Management Act*.

Staff must follow [MCFD's E-Communications Policy](#).

Appendix 5: References

Privacy, Compliance & Training Branch- Ministry of Citizens' Services:

<http://www2.gov.bc.ca/gov/content/governments/services-for-government/information-management-technology/privacy>

Office of the Information and Privacy Commissioner (OIPC) for BC home page:

<https://www.oipc.bc.ca/>

Information on submitting a personal freedom of information request:

<http://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/freedom-of-information/submit-a-personal-foi-request>

MCFD's Information, Policy & Privacy team's email:

MCF.PrivacyImpactAssessment@gov.bc.ca

Appendix 6: Terms and Definitions

For purposes of this document, the following terms are defined:

Control of a record:

“Control of a record” means that a person or organization, including the director has the authority to manage the record throughout its life cycle, including the authority to restrict, regulate or administer its use or disclosure. Indications of control include the right to access the record or regulate its contents.

Custody of a record:

“Custody of a record” means that a person or organization, including the director, has physical possession of the record. Normally, this means that the person or organization is responsible for providing access to and security of the record and for managing, maintaining and preserving the record.

Provincial Director

A person designated by the minister under section 91 of the CFCSA and/or section 76.1 of the *Adoption Act*.

Director

The word “director” in this document means a delegated worker. The term refers to a person delegated under section 92 of the CFCSA to carry out some or all of the powers, duties and functions of a designated director under the CFCSA, or under section 77 of the *Adoption Act* to carry out some or all of the powers, duties and functions of a designated director under the *Adoption Act*.

Part 5

“Part 5” is the section of the CFCSA entitled “Freedom of Information and Protection of Privacy” (sections 73 through 79, inclusive)

Privilege

Privilege means that certain information, due to the relationship setting in which it was communicated, may be protected from disclosure (e.g. solicitor-client privilege).

Public body

“Public body” as defined in the FOIPPA includes:

- A B.C. government ministry;
- An agency, board, commission, office, corporation or other body listed in Schedules 2 and 3 of FOIPPA;
- A local public body.

It does not include:

- Officers of the Legislature;
- Provincial Court, Supreme Court or the Court of Appeal;
- Physicians in private practice (the College of Physicians and Surgeons was added to the list of public bodies in Schedule 3 of FOIPPA list of public bodies but applies only to administrative information, not to a patient’s personal information);
- The RCMP, or other agencies governed by federal legislation.

Record

Section 73 of the CFCSA defines “record” as “a record as defined in the *Freedom of Information and Protection of Privacy Act* that is made under this Act and is in the custody or control of a director.” Section 58 of the *Adoption Act* defines “record” as having “the same meaning as in the *Freedom of Information and Protection of Privacy Act*.” Under the FOIPPA, “record” includes:

- Books, documents, maps, drawings, photographs, letters, vouchers, papers, and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means.

It does not include:

- A computer program or any other mechanism that produces records.

Part 5 of the CFCSA (sections 73 through 79) applies to the complete range of records that are made or gathered under that Act, including:

- Information about children and their families in files including photos and letters;
- Case notes and case file recordings;
- Agreements under Part 2 of the Act;
- Plans of care;
- Contracts with caregivers and service providers;
- Reports and records about investigation results;

- Court hearing records;
- Referrals to the Public Guardian and Trustee, ministries and agencies;
- Decisions and proceedings of the Child and Family Review Board;
- Decisions on access and disclosure;
- Agreements under section 93 of the Act.

Sever

“Sever” means to cut or make unreadable (by crossing or blacking out) parts of a record which should not be disclosed.

Third party

A “third party” is any person, group, or organization which is not:

- A public body, or
- The person making the information request.