



Thank you for your request under the Official Information Act 1982, received by the Ministry of Health (the Ministry) on 5 June 2019 for:

“Q 1. Under what circumstances is a Medical Officer of Health's report on a medical incident withheld from the person involved?”

Q 2. Under what circumstances is a Medical Officer of Health's report delayed from release to the person involved?

Q 3. Can the Ministry of Health or the Minister of Health force the (District) Medical Officer of Health to release a report to the person involved?

Q 4. Under what circumstances would the Ministry of Health or the Minister of Health force the (District) Medical Officer of Health to release a report to the person involved?

Q 5. Under what circumstances would the Ministry of Health or the Minister of Health force the (District) Medical Officer of Health to release a report to the public?”

The answers to your questions are set out below.

Q 1. Under what circumstances is a Medical Officer of Health's report on a medical incident withheld from the person involved?

Individuals generally have a right to access personal information about them under Information Privacy Principle 6 in the Privacy Act 1993 and rule 6 of the Health Information Privacy Code 1994. There are some exceptions to this set out in Parts 4 and 5 of the Privacy Act. Here is a link to the Act:

<http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html>

Some of the reasons the Medical Officer of Health may withhold personal information from the person it is about include that to provide it would:

- Endanger the person's safety
- Prevent detection and investigation of criminal offences
- Involve an unwarranted breach of someone else's privacy.

If the Medical Officer of Health considers there are reasons to withhold the personal information or part of it under the Privacy Act, then the reasons and grounds for the reasons must be provided to the requestor (section 44 Privacy Act). The exception to this obligation is (at section 32 Privacy Act) where providing the grounds would itself prejudice the interests set out in sections 27 to 29 of the Act.

The person concerned may complain to the Privacy Commissioner under Part 8 of the Privacy Act if dissatisfied with the Medical Officer of Health's / District Health Board (DHB)'s response to their personal information request.

Q 2. Under what circumstances is a Medical Officer of Health's report delayed from release to the person involved?

There are a number of reasons why a report can legitimately be delayed depending on the particular circumstances of the case. Some examples follow.

- The personal information may not be immediately readily retrievable. For example, it may involve a search through a significant volume of information and an extension to the time limits set out in the Privacy Act may be necessary (section 41 Privacy Act).
- There may be delay in consulting with other organisations when determining what information should be released, and if any should be withheld. For example, this may happen when determining whether the Attorney-General has a legal privilege applying to the information the DHB holds, such as in legal proceedings. Please note that the DHB that employs the Medical Officer of Health will be the agency that holds the information for the purposes of the Privacy Act.
- There may be delay due to transferring the request to another agency who holds the relevant information (the 20-day timeframe starts when the request has been transferred) or in the process of informing the requestor their request for information was not made in accordance with the Privacy Act's requirements.
- If the individual requesting information about themselves requires it urgently, then this should be made clear on the face of the request, together with the reasons why it is urgent (section 37 Privacy Act).

Q 3. Can the Ministry of Health or the Minister of Health force the (District) Medical Officer of Health to release a report to the person involved?

Not unless the Privacy Act or another enactment gives the Ministry or the Minister specific power or a duty to do so (section 7 Privacy Act).

The Information Privacy Principles and obligations in the Privacy Act apply largely to the person or agency holding the personal information - in this case the Medical Officer of Health in the employing DHB. The DHB has a duty to give reasonable assistance to a person who requests information about themselves (section 38 Privacy Act).

Q 4. Under what circumstances would the Ministry of Health or the Minister of Health force the (District) Medical Officer of Health to release a report to the person involved?

Not unless the Privacy Act or another enactment authorised or required this, and in the case of an authorisation it was appropriate to require release of the report.

The Director-General of Health has powers to direct a Medical Officer of Health on the exercise of the officer's powers, functions and duties, under the Health Act 1956 (section 7A(6)). However, this power of direction has in practice been rarely if ever used.

While the Minister of Health has powers to direct DHBs under the Crown Entities Act 2004 and the New Zealand Public Health and Disability Act 2000, no direction may require the supply to any person of any information relating to an individual that would enable their identification (section 32(3) New Zealand Public Health and Disability Act).

Q 5. Under what circumstances would the Ministry of Health or the Minister of Health force the (District) Medical Officer of Health to release a report to the public?

Not unless the Privacy Act or another enactment authorised or required this, and in the case of an authorisation it was appropriate to release the report to the public.

For example, under the Health Act the Minister of Health can, by notice in writing, require any DHB to provide specified information concerning the condition, treatment or services provided to any individuals to obtain statistics for health purposes (section 22D). However, the information cannot identify any individual unless the person concerned consents and has reached 16 years of age (or a representative of the person consents) or the identifying information is essential for the purposes for which the information is sought.

I trust this information fulfils your request. Please note this response (with your personal details removed) may be published on the Ministry's website

Yours sincerely



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