

Privacy Waiver Policy

Purpose

1. The purpose of the Privacy Waiver Policy is to ensure all Health New Zealand | Te Whatu Ora (Health NZ) employees have clear direction when receiving privacy waivers from individuals who wish to have some of their details released to media.
2. It provides guidance about the key considerations for responding to media who provide privacy waivers.
3. The policy has been informed by the health sector principles as set out in the Pae Ora (Healthy Futures) Act 2022 and enables Health NZ to support the Crown's responsibilities under the Treaty of Waitangi / Te Tiriti o Waitangi. The health sector principles underpin the transformation of our health system to create a more equitable, accessible, cohesive and people-centred system that will improve the health and wellbeing of all New Zealanders.

Application

4. This policy applies to employees, being all persons employed by Health New Zealand, and contractors.

Alignment to Te Mauri o Rongo

5. This policy aligns with the four pou of Te Mauri o Rongo | The Health Charter to support the workforce culture Health NZ aspires to:
 - a. **Wairuatanga** – through promoting and demonstrating open communication to the public through media relating to Health NZ and its patients and employees, and all employees acting with integrity with respect to information made public.
 - b. **Rangatiratanga** – through Health NZ leadership by valuing and promoting communication.
 - c. **Whanaungatanga** – through employees across Health NZ having a collective responsibility for – and connected and engaged approach to – communication with the organisations and individuals we work with, and the patients, whānau and communities we serve.
 - d. **Te Korowai Āhuru** – through protection and appropriate stewardship of information made public relating to Health NZ employees, patients and their whānau, and a commitment to te Tiriti o Waitangi.

Definitions

6. The following definitions are used for the purposes of this policy:

Privacy Waiver	Written and signed permission from an individual who wishes for Health NZ to release to media, and comment on, information about that individual.
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OWNER	GROUP MANAGER – MEDIA	DOC ID	HNZ2003
PUBLISHED	FEBRUARY 2024	VERSION	1.0
REVIEW DUE	FEBRUARY 2025	PAGE NUMBER	Page 1 of 5
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Media	For the purposes of this policy 'media' is defined as radio, television, newspapers, magazines, websites, their social media channels, blogs, and all staff who work for those organisations or channels including journalists, producers, directors, management and presenters.
HIPC	Means the Health Information Privacy Code 2020. A Code of Practice issued by the Privacy Commissioner under the Privacy Act. It modifies the application of the 13 Privacy Act Information Privacy Principles (IPPs), which become 13 Health Information Privacy Rules for dealing with health information.

Key Principles

7. Health NZ aims to be as transparent as possible with the media and the New Zealand public. The media team at Health NZ liaise directly with media to answer their questions recognising the importance of clear, open, and accurate communication with the public about the services we provide while maintaining the privacy and confidentiality of patients.
8. From time-to-time media will ask Health NZ to comment on, or for information about, care or treatment provided to an identifiable individual. Sometimes media will provide Health NZ with a privacy waiver from a patient.
9. Where media request factual information held by Health NZ about an individual patient's care or treatment, Health NZ will be prohibited by law from disclosing this information to the media without the authorisation of the individual or their representative (Rules 6 and 11 HIPC, section 9(2)(a) Official Information Act 1981.)
10. To comply with the HIPC, Health NZ requires a privacy waiver from an individual before disclosing that individual's information, or commenting about that individual, to the media.
11. Even if an individual provides a privacy waiver to Health NZ, Health NZ does not have an obligation to provide comment on, disclose information or express an opinion about an individual patient's care to the media, after taking into account the factors referred to below.
12. Decisions on whether to comment on, or disclose information about, an individual patient's care to the media, will be made by Clinical leadership for the relevant Health NZ region.

Responding to media requests for comment on, or for information about, an individual patient's care or treatment – where a privacy waiver is provided

13. Health NZ prefers to receive privacy waivers from the individual whose information is sought. If an individual is unable to complete a privacy waiver themselves, Health NZ will consider privacy waivers from legally authorised representatives, but those waivers should be accompanied by a clear explanation as to why an individual cannot complete

OWNER	GROUP MANAGER – MEDIA	DOC ID	HNZ2003
PUBLISHED	FEBRUARY 2024	VERSION	1.0
REVIEW DUE	FEBRUARY 2025	PAGE NUMBER	Page 2 of 5
IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING			

- the privacy waiver personally, and evidence of the representative’s authority to act on the individual’s behalf.
14. Media requesting clinical records held by Health NZ relating to an individual patient will be advised that the individual concerned needs to make an information request for that information. Once a patient receives that information who they choose to share that information with is their decision.
 15. There are a number of factors Health NZ may need to consider in deciding whether to rely on a privacy waiver as a basis to comment on, or release information about, an individual patient’s care or treatment to the media.
 16. Health NZ is not in a position to assess a patient’s competence at the time of signing a privacy waiver. Any person providing a privacy waiver to Health NZ must be able to satisfy Health NZ that the signee fully understands the implications of the waiver and of Health NZ commenting on the specifics of their care and treatment in the media.
 17. Other factors to consider include:
 - a. Do professional, legal and/or ethical considerations weigh against commenting on the facts and circumstances of an individual patient’s care in the media?
 - b. Are there additional sensitivities or reasons not to comment in this particular case? For example, it may be inappropriate for Health NZ to comment if:
 - i. The case is currently before the Coroner or a Court,
 - ii. The patient is a child and cannot give consent themselves,
 - iii. The patient is mentally unwell or lacks competence,
 - iv. The patient has already complained to Health NZ or the Health and Disability Commissioner and their case is under investigation,
 - v. It would involve disclosure of personal information about another individual or put another individual’s safety at risk.
 - c. Are there compelling reasons why Health NZ should comment on, or provide information about, an individual patient’s care to the media?
 - d. How recently the requester signed the privacy waiver.
 18. Decisions to rely on a privacy waiver as a basis for Health NZ to comment on, or disclose information about, an individual patient’s care to the media will be made on a case-by-case basis, taking into account the factors referred to above.
 19. The clinical team involved in the individual patient’s care should be consulted as part of that decision-making process. It may also be appropriate in some cases to consult the Health NZ legal team regarding the decision, and the Head of Privacy or local Privacy Officers.
 20. If a decision is made by Health NZ to rely on a privacy waiver as a basis to comment on an individual patient’s care, a media statement will be prepared by the relevant regional

OWNER	GROUP MANAGER – MEDIA	DOC ID	HNZ2003
PUBLISHED	FEBRUARY 2024	VERSION	1.0
REVIEW DUE	FEBRUARY 2025	PAGE NUMBER	Page 3 of 5
IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING			

or national media team and approved by clinical leadership for the relevant region involved in the patient's care.

Roles and Responsibilities

21. The Chief Executive is responsible to the Board for reporting on the policy's implementation and compliance.
22. The Director of Communications and Engagement is responsible for ensuring the policy is implemented and complied with.
23. The Group Manager, Media is responsible for updating this policy in accordance with review timelines. After consultation with clinical and legal teams (if necessary), the Group Manager is responsible for making the final decision to accept a privacy waiver.
24. All staff are to act lawfully and ethically with respect to personal information.

Non-compliance with Policy

25. Failure by staff to comply with this policy may result in Health NZ taking disciplinary action in accordance with the Code of Conduct.

Monitor and Review

26. The Policy Owner is responsible for providing assurance of the effectiveness of this policy.
27. The policy will be reviewed after 12 months to ensure it is meeting expectations.

Related Policies and Procedures

- Privacy Waiver Process
- Social Media Policy
- Media Policy
- Brand Guidelines
- Official Information Act Policy
- Privacy Policy

Related Legislation

28. As a Crown entity Health NZ staff must comply with all relevant legislation which includes, but is not limited to:
 - Pae Ora (Healthy Futures) Act 2022.
 - Health Act 1956
 - Privacy Act 2020
 - Health Information Privacy Code 2020
 - Code of Health and Disability Services Consumers' Rights 1996

OWNER	GROUP MANAGER – MEDIA	DOC ID	HNZ2003
PUBLISHED	FEBRUARY 2024	VERSION	1.0
REVIEW DUE	FEBRUARY 2025	PAGE NUMBER	Page 4 of 5
IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING			

- Public Service Act 2020
- Official Information Act 1982
- Defamation Act 1992
- Coroner’s Act 2006 and subsequent guidelines from the Chief Coroner
- Crown Entities Act 2004 (section 55 and 57)
- Health and Disability Commissioner Act 1994

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REVIEW DUE	FEBRUARY 2025	PAGE NUMBER	Page 5 of 5
IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING			