

INFORMATION SHARING GUIDANCE FOR HEALTH PROFESSIONALS

from 1 July 2019

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Information Sharing Guidance for Health Professionals

from 1 July 2019

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This is a practical guide for health professionals to support decision making regarding the sharing of information. This Guide does not replace the relevant Acts and, if in doubt, please seek legal advice.

From 1 July 2019 new information sharing provisions in the Oranga Tamariki Act 1989 and the Family Violence Act 2018 will enhance sharing of information between agencies.

These changes will impact on health professionals' practice. The provisions allow health sector

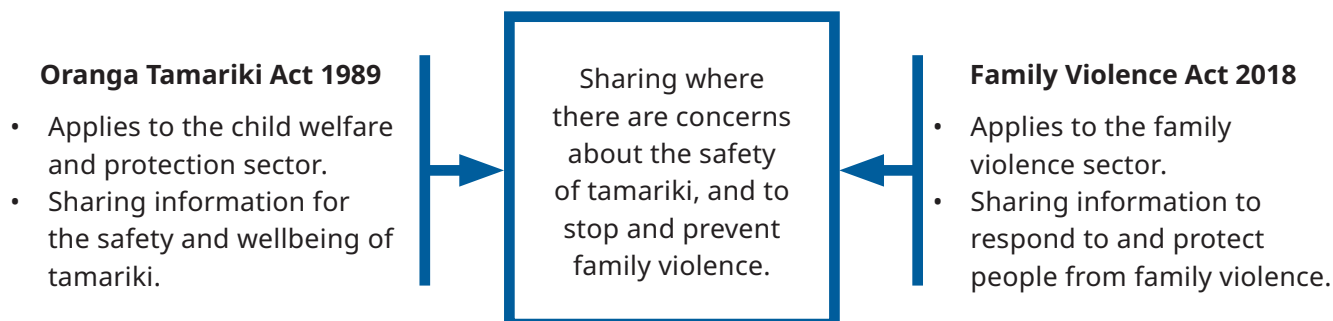
representatives to share information and request information from other designated agencies. These new provisions need to be understood by individual health practitioners and organisations that provide health services.

Additionally registered health practitioners have duties under both the Family Violence Act and the Oranga Tamariki Act.

See Appendix A on page 12 for details of how health professionals and service providers are classified under the respective legislation.

There are four important things to know about how the information sharing provisions in the Oranga Tamariki Act 1989 and Family Violence Act 2018 work together:

1. Safety comes first. The sharing of personal information should be considered if there are concerns about someone's safety or if they or others are at risk of harm.
2. Professionals can proactively share information, and while in most cases it's not compulsory, there will be some circumstances when you must share the information.
3. You are protected when you share in good faith and in accordance with the legal requirements.
4. The Oranga Tamariki Act and the Family Violence Act permit greater sharing than the Privacy Act and the Health Information Privacy Code in some circumstances, but other parts of the Privacy Act and the Health Information Privacy Code still apply.



The following guidance should assist you when:

- you would like to **proactively share information** with another agency
- you **receive a request for information** from another agency
- you would **like to request information** from another agency.

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Section 1:

Permitted purposes for sharing information

Oranga Tamariki Act 1989

Under the Oranga Tamariki Act you can share information if such sharing will assist with the following **permitted purposes for sharing** under the Act:

- **preventing or reducing the risk** of a child or young person being subject to harm, ill-treatment, abuse, neglect, or deprivation; or
- **making or contributing to an assessment** of risk or need in relation to a child or young person, or any class of children or young persons; or
- **making, contributing to, or monitoring any support plan** for a child or young person, where the plan relates to the activities and functions of Oranga Tamariki; or
- **preparing, implementing, or reviewing any prevention plan** or strategy issued by the department; or
- **arranging, providing, or reviewing services** facilitated by Oranga Tamariki for a child or young person and their family or whānau; or
- carrying out any **function in relation to family group conferences**, children or young persons **in care**, or other functions relating to care or protection under Part 2 of the Oranga Tamariki Act.

You must also consider the **principle that safety** should take precedence over duties of confidentiality owed to the individual or their family.

Family Violence Act 2018

Under the Family Violence Act, you can share information if such sharing will assist with the following **permitted purposes for sharing** under the Act.

You should only share personal information in order to:

- make, or contribute to, a family violence **risk or need assessment**; and/or
- make, or contribute to the making or **carrying out of, a decision or plan** that is related to, or that arises from or responds to, family violence; and/or
- help ensure that a **victim is protected from family violence**.

Principles

The following eight principles may provide guidance for information sharing under the Family Violence Act:

- People's **safety** comes first.
- You should obtain **consent** to share information when it's safe to do so. The Act allows for sharing of information without consent when sharing is within the provisions of the Act.
- You must **consider** sharing information if you think it will protect a victim or if you receive a request.
- You can share information for **specific purposes** – see provisions on page 18.
- You must only share **relevant information**, ie, information that is relevant to the request.
- You should check that the information is **accurate**.
- You should **record** the reasons for your decisions.
- You have legal protection from liability when you share information in **good faith**.

The Oranga Tamariki Act and the Family Violence Act information sharing provisions provide grounds to share personal information beyond that permitted in the Privacy Act. Other requirements in the Privacy Act (such as storage and retention of information) still apply.

Section 2:

What do I need to consider before I proactively share information with another agency?

a. Under what circumstances can I proactively share information under the Oranga Tamariki Act?

If you intend to share information under the Oranga Tamariki Act:

- check that both you and the recipient are either a 'child welfare and protection agency' or 'independent person' as defined by the Act – both parties need to be as listed in Appendix A on page 12 (Part 1)

and

- make sure you are sharing information for one of the **permitted purposes for sharing information under the Oranga Tamariki Act** as outlined in Section 1.

b. Under what circumstances can I proactively share information under the Family Violence Act?

If you intend to share information under the Family Violence Act:

- Check that both you and the recipient are either a 'family violence agency' or a 'social services practitioner' as defined by the Act – both parties need to fall within Part 2 of Appendix A on page 14.

and

- Make sure you are sharing information for one of the **permitted purposes for sharing information under the Family Violence Act** as outlined in Section 1.

c. Where can I go to ask for advice if I want to share information?

Ask

- your manager
- experienced colleagues
- persons who coordinate family violence intervention in your agency (eg, Child Protection team)
- privacy officer/advisor in your employing agency
- Office of the Privacy Commissioner
- Oranga Tamariki information sharing helpline 0508 463674.

d. Do I need to seek the person's consent if I am sharing information about them?

It is usually best practice to seek the person's consent before sharing their information, unless it's unsafe or impractical to do so. If you have the individual's consent, you can share the information without relying on the Oranga Tamariki Act and Family Violence Act provisions.

Where it is safe and appropriate to do so, you should discuss the need to share the information with the person whose information you are sharing. If it is not possible to discuss sharing of the information before the information is shared, consider if it is appropriate to let them know afterwards.

The Family Violence Act and Oranga Tamariki Act allow for sharing of information without consent when sharing is within the provisions of the respective Acts (see Appendix B for excerpts from the legislation).

You must consider the principle that safety should usually take precedence over duties of confidentiality owed to the individual or their family.

Section 3:

What do I need to consider when I receive a request for information from another agency?

a. Under what circumstances **must** I release information requested?

Assess if the request is made under s 66 of the Oranga Tamariki Act (see Appendix B for excerpts from the legislation).

Confirm that it is requested by a representative from either Police or Oranga Tamariki—Ministry for Children **and** the request is about a person who is under 18 years.

Obligation If yes to the above, the information must be released. Section 66 of the Oranga Tamariki Act requires information to be provided.

b. Under what circumstances **should** I consider releasing information requested under the Oranga Tamariki Act?

Assess

1. if the request is made under s 66C of the Oranga Tamariki Act (See Appendix B for excerpts from the legislation)

NB: Check the request, if it is under s 66 (rather than s 66C), it must be dealt with in accordance with the process outlined in Section 3: a.

and

2. if the request is about someone under 18

and

3. if the request is from someone who is employed by a 'child welfare and protection agency' or is from an 'independent person' (see Part 1 of Appendix A for definitions).

Confirm that you are a 'child welfare protection agency' representative, or an 'independent person' as defined in the Oranga Tamariki Act (see Part 1 of Appendix A for definitions)

Obligation If all requirements listed above are met, you need to assess whether it is **appropriate** to provide the information requested to the requestor.

To do this, you must consider why the request is being made, if it is permissible under the Act and is the request for a permitted purpose under the Oranga Tamariki Act, as described in Section 1.

You must consider the principle that the wellbeing and best interests of a child or young person should usually take precedence over duties of confidentiality owed to the individual or their family.

If the requirements of the Oranga Tamariki Act are met, you can share the information requested.

c. Under what circumstances **should** I consider releasing information requested under the **Family Violence Act**?

Assess

1. if the request is made under s 20 of the Family Violence Act (see Appendix B for excerpts from the legislation)

and

2. if the request is seeking information about a victim or perpetrator of family violence.

Confirm that you and the requestor are both working for 'family violence agencies' and/or are 'social services practitioners' (as defined in Part 2 of Appendix A).

Obligation

If all requirements listed above are met, you **must consider** providing the requested information.

You must consider the principle that actions that assist a victim to be protected from family violence should usually take precedence over both any duty to keep the information confidential and any applicable limit under information privacy principle in section 6 of the Privacy Act 1993.

If there is a good reason not to disclose that outweighs this, you do not need to release the information.

Before disclosing, ensure you have reasonable grounds for belief that the information is being requested for a **permitted purpose** for which information can be requested under the Family Violence Act 2018 (see Section 1 provisions for information sharing).

Use your professional judgment and, if you are still unsure, seek support or advice.

You must consider the principle that safety should usually take precedence over duties of confidentiality owed to the individual or their family.

d. Where can I go to ask for **advice** regarding a request for information?

Help is available to support you to respond to requests for information. You can access support by contacting:

- the requestor if you require more information
- your manager
- experienced colleagues
- persons who coordinate family violence intervention in your agency (e.g. Child Protection team)
- Privacy officer/advisor in your employing agency
- Office of the Privacy Commissioner
- Oranga Tamariki information sharing helpline 0508 463674.

e. Do I need to seek the person's **consent** if I am providing information about them?

It is usually best practice to seek the person's consent before sharing their information, unless it's unsafe or impractical to do so. If you have the individual's consent you can share the information without relying on the Oranga Tamariki Act and Family Violence Act provisions.

Where it is safe and appropriate to do so, you should discuss the need to share the information with the person whose information you are sharing. If it is not possible to discuss the sharing of the information before the information is shared, consider if it is appropriate to let them know that it has occurred.

The Family Violence Act and Oranga Tamariki Act allow for sharing of information without consent when sharing is within the provisions of the respective Acts (see Appendix B for excerpts from the legislation).

You must consider the principle that safety should usually take precedence over duties of confidentiality owed to the individual or their family.

f. Are there **flowcharts** that **support decision-making** regarding information sharing?

Yes.

There is a flowchart that identifies the steps to follow when a request is made under the **Oranga Tamariki Act**. See Appendix C page 21. There is also a flowchart that identifies the steps to follow when a request is made under the **Family Violence Act**. See Appendix C on page 22.

Section 4:

What do I need to consider when I am requesting for information from another agency?

a. What are the permitted purposes for which I can request information under the Oranga Tamariki Act and/or the Family Violence Act?

The permitted purposes for which information can be requested under the Oranga Tamariki Act and the Family Violence Act are summarised in Section 1.

b. As a health professional can I ask information. If yes, from whom?

Yes, as a health professional, you can seek information from other agencies if the criteria are met.

Step 1: Use Table 1 to identify which Act applies.

Table 1: Identify which Act applies

Individual under 18 years	+	Risk from family*	=	<p>If a tamariki is at risk of being seriously harmed (physically, emotionally or sexually) or neglected call Oranga Tamariki or Police immediately.</p> <p>Consider requesting information under the Family Violence Act or the Oranga Tamariki Act.</p> <p>See notes on page 8 regarding selection of the appropriate provision to use.</p>
		Risk not from family*	=	<p>Consider requesting information under the Oranga Tamariki Act, s 66C. This enables information to be shared about any risk to young people and children's wellbeing, including risks that don't come from their home environment.</p>
Individual 18 years or over	+	Risk from family*	=	<p>Consider requesting information under the Family Violence Act s 20.</p>
		Risk not from family*	=	<p>Consider requesting information under the Privacy Act, if there is a risk to the individual's health or safety.</p>

*Family relationships include:

- spouses or partners
- family members
- people who ordinarily share a household (co-location is not alone sufficient)
- people who have a close personal relationship, including caregiving relationships.

If a tamariki under 18 years is at risk and the risk arises due to the abusive behaviours of their family, should I request or share information under the Oranga Tamariki Act or the Family Violence Act?

- Both pieces of legislation can be used to request information to protect tamariki who are at risk in their homes. Which piece of legislation you should use depends on who you are wanting to share information with and what the information is needed for.
- Check under step 2 whether sharing under both Acts is possible. Both requestor and recipient need to be eligible to seek and receive information under the relevant Act before sharing is permitted.
- Consider why you are wanting the information by checking step 3. Choose the appropriate Act for your needs – the Acts allow information to be used for different purposes – although there is substantial cross over.

Step 2: Check that you can request the information and the recipient of the request is able to provide it to you.

If you intend to request under the Oranga Tamariki Act:

- check that both you and the recipient are either employed by a ‘child welfare and protection agency’ or are an ‘independent person’ – both parties need to be listed in Appendix A (Part 1).

If you intend to request under the Family Violence Act:

- check that both you and the recipient are either employed by a ‘family violence agency’ or a ‘social services practitioner’ – both parties need to be listed in Appendix A (Part 2).

Step 3: Make sure that you are asking for the information for a permitted purpose under the relevant Act.

- If your request is under the **Oranga Tamariki Act**, make sure you are requesting information for one of the Oranga Tamariki Act permitted purposes outlined in Section 1.
- If your request is under the **Family Violence Act**, make sure you are requesting information for one of the Family Violence Act permitted purposes outlined in Section 1.

Step 4: Make sure your request includes relevant information to help the recipient of your request answer it appropriately.

These are not legislative requirements; however, we recommend that your request include:

- the **Act and section** you are making your request under (as identified at step 1)
- the **legal status** that you have that permits you to make the request under that Act eg, that you are requesting the information as a family violence agency or as an independent person
- **why you are making the request** eg, that you are concerned that family violence may be occurring
- a **description of the information** that you are seeking. The scope of your request should be broad enough to meet the purpose you identified at step 3 but should not be unduly wide. This will ensure that intrusion on the individual's privacy is proportionate and the request is not unduly burdensome for the recipient
- **contact details** and other details about where to send the response, to ensure that the response is provided to the appropriate person and is not inappropriately disclosed. Ask to have information sent encrypted or password protected.

If requesting information from Oranga Tamariki, they have a request form that can be downloaded from:

🔗 www.orangatamariki.govt.nz/assets/Uploads/Information-sharing/Information-Sharing-Request-Template-Agency-to-Agency.pdf

c. Can agency A 'on share' information?
For example, can a school share information provided by a DHB with a family violence agency?

Yes, once information is held, that information can be shared in accordance with the information sharing provisions outlined in this guide. As such, a professional can 'on share' information they have received under section 66C to another professional. However, this must be for the reasons or purposes covered by the provisions.

You **must consider** the principle that safety should usually take precedence over duties of confidentiality owed to the individual or their family.

Section 5:

Documentation of information sharing

Recordkeeping of information sharing is important for several reasons.

- It will help you explain what you've done and why, to the person whose information you've shared.
- It can help you explain your decision and can be used to demonstrate that you were acting in good faith when sharing information.

When receiving a request for information, we recommend you record:

- the date of request
- the identity of the requestor
- the details of the request itself, including Act, section and provisions specified to validate the request
- the name of the person whose information is being requested
- your reasons for sharing or deciding not to share
- how you attempted to get consent and whether consent was obtained
- if you agreed to the request, what information was shared, when and how it was shared
- if you 'on-share' the information, record when, with whom and why the information was shared.

When requesting information, we recommend you record:

- the date of request
- the name of the person whose information is being requested
- the name of the person to whom the request is being sent and or their agency
- details of the request itself, including Act, section and provisions specified to validate the request, including reason why information is being requested
- a description of the information requested
- the date when information is required.

A standardised form could support the recording of sharing of information, including requests for information and responses to requests received.

If requesting information from Oranga Tamariki, they have a request form that can be downloaded from:

www.orangatamariki.govt.nz/assets/Uploads/Information-sharing/Information-Sharing-Request-Template-Agency-to-Agency.pdf

These records and request forms must be protected in accordance with the Privacy Act 1993 as they will include identifiable information about individuals.

Section 6:

Further information

The Ministry of Health has a dedicated webpage for information regarding information sharing.

- 🔗 www.health.govt.nz/our-work/new-information-sharing-schemes

Oranga Tamariki Act 1989

- 🔗 www.legislation.govt.nz/act/public/1989/0024/latest/DLM147088.html

- Information Sharing to support Tamariki wellbeing and safety. Guidance for sharing information across child welfare and protection sector July 2019:

- 🔗 www.orangatamariki.govt.nz/assets/Uploads/Information-sharing/information-sharing-Guidance-OT-Act-1989.pdf

- Information sharing under the Oranga Tamariki Act to support tamariki wellbeing and safety:

- 🔗 www.orangatamariki.govt.nz/assets/Uploads/Information-sharing/Information-Sharing-Factsheet-OT-Act-1989.pdf

- How the Oranga Tamariki and Family Violence Guidance Documents Work Together:

- 🔗 www.orangatamariki.govt.nz/assets/Uploads/Information-sharing/Information-sharing-under-the-Oranga-Tamariki-act-1989-and-Family-Violence-Act-2018.pdf

Family Violence Act 2018

- 🔗 www.legislation.govt.nz/act/public/2018/0046/latest/DLM7159322.html

- Sharing information safely: Guidance on sharing personal information under the Family Violence Act 2018:

- 🔗 www.justice.govt.nz/assets/Documents/Publications/Family-Violence-Information-Sharing-Guidance.pdf

- Family violence information sharing for family violence agencies and social services practitioners:

- 🔗 www.justice.govt.nz/assets/Documents/Publications/Family-violence-information-sharing-factsheet-post-guidance-release.pdf

Privacy Act 1993

- 🔗 www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html

- Health Information Privacy Code:

- 🔗 www.privacy.org.nz/assets/Files/Codes-of-Practice-materials/HIPC-1994-2008-revised-edition.pdf

Appendix A:

Classification of service providers

Part 1: Oranga Tamariki Act 1989

Child Welfare and Protection Agencies

In the health sector, child welfare and protection agencies include the Ministry of Health and all district health boards, and includes all persons, bodies and organisations providing health services. For details see Health services on page 13.

The full definition of Child Welfare and Protection Agency is listed below

“child welfare and protection agency” means—

- (a) the department [i.e. Oranga Tamariki];
- (b) the Department of Corrections;
- (c) the Ministry of Health;
- (d) the Ministry of Social Development;
- (e) the Ministry of Education;
- (f) the Ministry of Justice;
- (g) the New Zealand Police;
- (h) Housing New Zealand Corporation;
- (i) every registered community housing provider (as defined in section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992);
- (j) every DHB;
- (k) every school board (as defined in section 15(1) of the Vulnerable Children Act 2014);
- (l) every early childhood service (as defined in section 309 of the Education Act 1989);
- (m) any person, body, or organisation that provides regulated services (as specified in Schedule 1 of the Vulnerable Children Act 2014) [see list of regulated services below]
- (n) any organisation or class of organisation designated as a child welfare and protection agency by regulations made under section 447(1)(ga)(i).

Independent persons

The definition of independent persons includes all registered health practitioners. This includes individuals who are registered, but do not hold a current practicing certificate.

This definition also includes children’s workers, a term defined in s 23 of the Children’s Act 2014. This means a person who works in, or provides, a regulated service, in which the work may or does

involve regular or overnight contact with a child or children (other than with children who are co-workers) and the work takes place without a parent or guardian of the child, or of each child, being present.

See list of regulated services below.

Regulated Services, as defined in Schedule 1 of the Children’s Act 2014

Welfare, support, and justice services

- (1) services provided (including the performance or exercise of functions and powers) under the Oranga Tamariki Act 1989 by the department responsible for the administration of that Act, or by any care and protection co-ordinator or youth justice co-ordinator;
- (2) services provided at, or in relation to the operation of, any residence within the meaning of section 2(1) or 364 of the Oranga Tamariki Act 1989 (excluding, for the avoidance of doubt, services provided by an individual with whom a child is placed under section 362 of that Act);
- (3) services provided by any person, organisation, or body approved under section 396 or 403 of the Oranga Tamariki Act 1989;
- (4) services provided (including the performance or exercise of functions and powers) under any order, direction, or recommendation of a court made under the Oranga Tamariki Act 1989, the Care of Children Act 2004, or the Adoption Act 1955 by—
 - (i) the department responsible for the administration of the Oranga Tamariki Act 1989; or
 - (ii) any other person, organisation, or body;
- (5) services provided by any person, body, or organisation pursuant to any decision, recommendation, or plan made by a family group conference under the Oranga Tamariki Act 1989;
- (6) services provided at prisons, secured facilities, and children’s health camps;
- (7) services provided as part of a condition of bail made under the Bail Act 2000;

- (8) services and facilities of the kind referred to in sections 4(1)(a) and 7(2)(b)(i) of the Oranga Tamariki Act 1989:
- (9) social or support services, including (but not limited to) victim support services, drug and alcohol rehabilitation services, and childcare services:
- (10) mentoring and counselling services:
- (11) youth services and youth work:
- (12) participating in a telephone communication service that is likely to be used wholly or mainly by children:
- (13) moderating an electronic interactive communication service that is likely to be used wholly or mainly by children (but a person does not moderate a public electronic interactive communication service unless he or she has access to the content of the matter or contact with users of the service):
- (14) services provided to escort, track, or transport children for the purposes of the Oranga Tamariki Act 1989:
- (15) out-of-school care and recreational services:

Health services

- (16) services provided at a public hospital:
- (17) services provided at a publicly funded medical practice or facility, including blood and cancer centres, treatment centres, outreach clinics, and mental health services:
- (18) services provided through medical practices belonging to primary health organisations (PHOs):
- (19) services provided by health practitioners:
- (20) Well Child Tamariki Ora (WCTO) services (eg, Plunket):
- (21) home-based disability support services:
- (22) residential disability support services:
- (23) ambulance services:
- (24) maternity services, including lead maternity carers and midwives:

Education services

- (25) services provided at a registered school (as defined in section 2(1) of the Education Act 1989):
- (26) services provided at an early childhood service (as defined in section 309 of the Education Act 1989):

- (27) services provided by a trades academy, a service academy, or an alternative education provider for or on behalf of a school:
- (28) services provided at any off-site location for or on behalf of a registered school or early childhood service, including teen parent units, school camps, and learning centres:
- (29) services provided to ensure enrolment and attendance at school in accordance with sections 20 and 25 of the Education Act 1989:
- (30) services provided at a playgroup (as defined in section 309 of the Education Act 1989):
- (31) services provided at any location on behalf of a limited child care centre (as defined in section 2(1) of the Health and Safety in Employment Act 1992):
- (31A) services provided at a hostel (as defined in section 2(1) of the Education Act 1989):

Transport services

- (32) work driving a vehicle that is being used only for the purpose of conveying children and any persons supervising or caring for the children (for instance, school bus services):

Policing services

- (33) specialist child and family policing services provided by Police employees (as defined in section 4 of the Policing Act 2008):

Local authority services

- (34) social and support services, including (but not limited to) mentoring and counselling services and community outreach, advocacy, and engagement services:
- (35) education services, including (but not limited to) learn-to-swim programmes and digital literacy programmes:
- (36) services provided at community facilities, including (but not limited to) sports and recreation centres, libraries, swimming pools, galleries, and community centres:
- (37) services provided in public environments, including (but not limited to) surf and beach patrols, skate park guardians, and road safety co-ordinators.

Part 2: Family Violence Act 2018

Family violence agencies

Here are some key family violence agencies that you are likely to engage with:

- Specified government agencies, including Ministry of Health, District Health Boards, ACC, Ministry of Education, Ministry of Justice, Department of Corrections, Ministry of Social Development, Oranga Tamariki—Ministry for Children, New Zealand Police, Immigration New Zealand, Housing New Zealand Corporation and registered community housing providers
- Non-governmental organisations funded by government to provide family violence-related services
- School boards
- Licensed early childhood services.

The full definition of **family violence agency** means any of:

- (a) a specified government agency (as defined in this section):
- (b) any non-governmental organisation that is funded wholly or in part by government, and that exercises powers, performs functions, or provides services, for one or both of the following purposes:
 - (i) to protect, or otherwise help, victims of family violence:
 - (ii) to help people to stop their inflicting of family violence:
- (c) any school board:
- (d) any licensed early childhood service.

Social services practitioners

Social services practitioners can include:

- teachers with current practising certificates
- registered health professionals (included but not limited to medical practitioners, midwives, nurses, psychologists)
- registered social workers.

For a full list of the family violence agencies and social services practitioners see the following definitions.

The full definition of **social services practitioner** means an individual who is providing education, health, or other social services as all or any:

- (a) a holder of a teacher's practising certificate, or a limited authority to teach, under the Education Act 1989:
- (b) a person who is, or is deemed to be, registered with an authority as a practitioner of a particular health profession under the Health Practitioners Competence Assurance Act 2003:
- (c) a registered social worker (as defined in section 4 of the Social Workers Registration Act 2003).

The full definition of **specified government agency** means any of:

- (a) Accident Compensation Corporation:
- (b) Department of Corrections:
- (c) Ministry of Education:
- (d) Ministry of Health:
- (e) any DHB (that is, an organisation established as a district health board by or under section 19 of the New Zealand Public Health and Disability Act 2000):
- (f) Housing New Zealand Corporation:
- (g) every registered community housing provider (as defined in section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992):
- (h) the part of the Ministry of Business, Innovation, and Employment referred to as Immigration New Zealand:
- (i) Ministry of Justice:
- (j) New Zealand Police:
- (k) Oranga Tamariki—Ministry for Children:
- (l) Ministry of Social Development:
- (m) any government agency established in substitution for, or set up to take over any relevant function of, the departments and agencies listed in paragraphs (a) to (l).

Who is not covered by the legislation?

The Family Violence Act does not apply to everyone. For example, it does not cover information sharing that involves:

- non-listed government departments or public sector agencies. Only the specified government agencies are covered. All other public sector agencies will be governed by their own legislation, by their own codes of practice, or by the Privacy Act
- NGOs that do not receive any government funding, irrespective of the services they deliver. These agencies will need to use the Privacy Act provisions, or other relevant legislation (for example, the Oranga Tamariki Act) for any information sharing that they undertake
- members of the public, such as family or whānau of victims or perpetrators. They can report information to authorities in the usual way. The public can also receive information from agencies when it is permitted under the Privacy Act (for example, for safety reasons or with the consent of the person). Family and whānau are often an integral part of preventing future violence or supporting victims of violence
- court information and court staff. Information that is under court control is subject to specific rules that allow it to be disclosed on a case-by-case basis. You need to approach the court directly to access this information.

Appendix B:

Excerpts from the legislation

Oranga Tamariki Act 1989

Section 65A

Purpose of information sharing and principle for information sharing decisions

www.legislation.govt.nz/act/public/2017/0031/latest/whole.html#DLM7064591

- (1) The purpose of sections 66 to 66Q is to facilitate the gathering and sharing of information to achieve the purposes in section 4(1)(a) to (j).
- (2) Persons carrying out functions under sections 66 to 66Q must have regard to the principle that (because the well-being and best interests of a child or young person are the first and paramount consideration) the well-being and best interests of any child or young person, in general, take precedence over any duty of confidentiality owed by any person in relation to—
 - (a) the child or young person; or
 - (b) any person who is a family member of that child or young person or in a domestic relationship with that child or young person (within the meaning of section 4 of the Domestic Violence Act 1995).

Oranga Tamariki Act 1989

Section 66

Agencies to supply information


www.legislation.govt.nz/act/public/2017/0031/latest/DLM7064591.html

- (1) Every agency (within the meaning of section 2(1) of the Privacy Act 1993, which includes a person) must, on request, supply to the chief executive, a care and protection co-ordinator, or a constable any information held by the agency that may relate to or affect the safety or well-being of a child or young person, if the information is—
 - (a) required to determine whether a child or young person is in need of care or protection or assistance under section 17(2) and (2A); or
 - (b) required for the purposes of any proceedings under this Part (including a family group conference).
- (2) Despite subsection (1), an agency may refuse to disclose any information that may be withheld on the grounds of legal professional privilege.
- (3) Information obtained under subsection (1)—
 - (a) must not be used for the purposes of investigating any offence; and
 - (b) is not admissible in any proceedings other than proceedings under this Part.

Oranga Tamariki Act 1989

Section 66C

Use and disclosure of personal information relating to child or young person or classes of children or young persons

 www.legislation.govt.nz/act/public/2017/0031/latest/DLM7064591.html

A child welfare and protection agency or an independent person that holds information relating to a child or young person or any class of children or young persons (including information contained in a dataset) may, irrespective of the purpose for which that information was collected,—

(a) use that information for the purposes of—

- (i) preventing or reducing the risk of a child or young person being subject to harm, ill-treatment, abuse, neglect, or deprivation; or
- (ii) making or contributing to an assessment of risk or need in relation to a child or young person, or any class of children or young persons; or
- (iii) making, contributing to, or monitoring any support plan for a child or young person, where the plan relates to the activities and functions of the department; or
- (iv) preparing, implementing, or reviewing any prevention plan or strategy issued by the department; or
- (v) arranging, providing, or reviewing services facilitated by the department for a child or young person and their family or whānau; or
- (vi) carrying out any function in relation to family group conferences, children or young persons in care, or other functions relating to care or protection under this Part; or

(b) disclose (whether on request or on the agency's or independent person's own initiative) that information to another child welfare and protection agency or an independent person if the agency or independent person disclosing the information reasonably believes that disclosing the information will assist the agency or independent person receiving the information to carry out any of the purposes described in paragraph (a).

Family Violence Act 2018

Section 20

Authorisations for agencies and practitioners

 www.legislation.govt.nz/act/public/2018/0046/latest/LMS113032.html

Information requests

- (1) A family violence agency or social services practitioner may request personal information about a victim or perpetrator of family violence from any, or from another, family violence agency or social services practitioner, to use or disclose for all or any of the following purposes:
 - (a) to make, or contribute to, a family violence risk or need assessment;
 - (b) to make, or contribute to the making or carrying out of, a decision or plan that is related to, or that arises from or responds to, family violence;
 - (c) to help ensure that a victim is protected from family violence.

Information use and disclosure

- (2) The rest of this section applies to a holder agency or practitioner.
- (3) The holder agency or practitioner may use the personal information for all or any of the purposes in subsection (1)(a) to (c).
- (4) The holder agency or practitioner may disclose the personal information to a recipient agency or practitioner—
 - (a) if the holder agency or practitioner believes on reasonable grounds that the disclosure will or may help the recipient agency or practitioner to use the personal information for all or any of the purposes specified in subsection (1)(a) to (c); and
 - (b) after, or without, receiving from the recipient agency or practitioner a request to disclose personal information to the recipient agency or practitioner for use for all or any of those purposes.

Family Violence Act 2018

Section 21

Principle guiding decisions whether to disclose

- (1) This section applies to a holder agency or practitioner that, or who, is deciding whether or not to disclose information under section 20 (which authorises, but does not require, a decision that information be made available).
- (2) The holder agency or practitioner must have regard to the principle that helping to ensure that a victim is protected from family violence should usually take precedence over both—
 - (a) any applicable duty to keep the information confidential; and
 - (b) any applicable limit under information privacy principle 11 in section 6 of the Privacy Act 1993 on disclosure of the information.

Family Violence Act 2018

Section 24

Duty to consider information disclosure

A holder agency or practitioner must consider disclosing personal information about a victim or perpetrator of family violence under section 20 to a recipient agency or practitioner if the holder agency or practitioner—

- (a) believes on reasonable grounds that disclosure to the recipient agency or practitioner will or may help ensure that a victim is protected from family violence; or
- (b) receives from the recipient agency or practitioner a request to disclose personal information of that kind or description to the recipient agency or practitioner for use for all or any of the purposes specified in section 20(1)(a) to (c).

Family Violence Act 2018

Section 25

Protection of holder agency or practitioner disclosing information

- (1) This section applies to the disclosure by a holder agency or a practitioner, and in any manner, of information under section 20.
- (2) No civil, criminal, or disciplinary proceedings lie against the holder agency or practitioner in respect of that disclosure, or the manner of that disclosure, by the holder agency or practitioner of that information.
- (3) However, subsection (2) does not apply if that information was disclosed in bad faith.

Appendix C:

Decision-making charts about information sharing

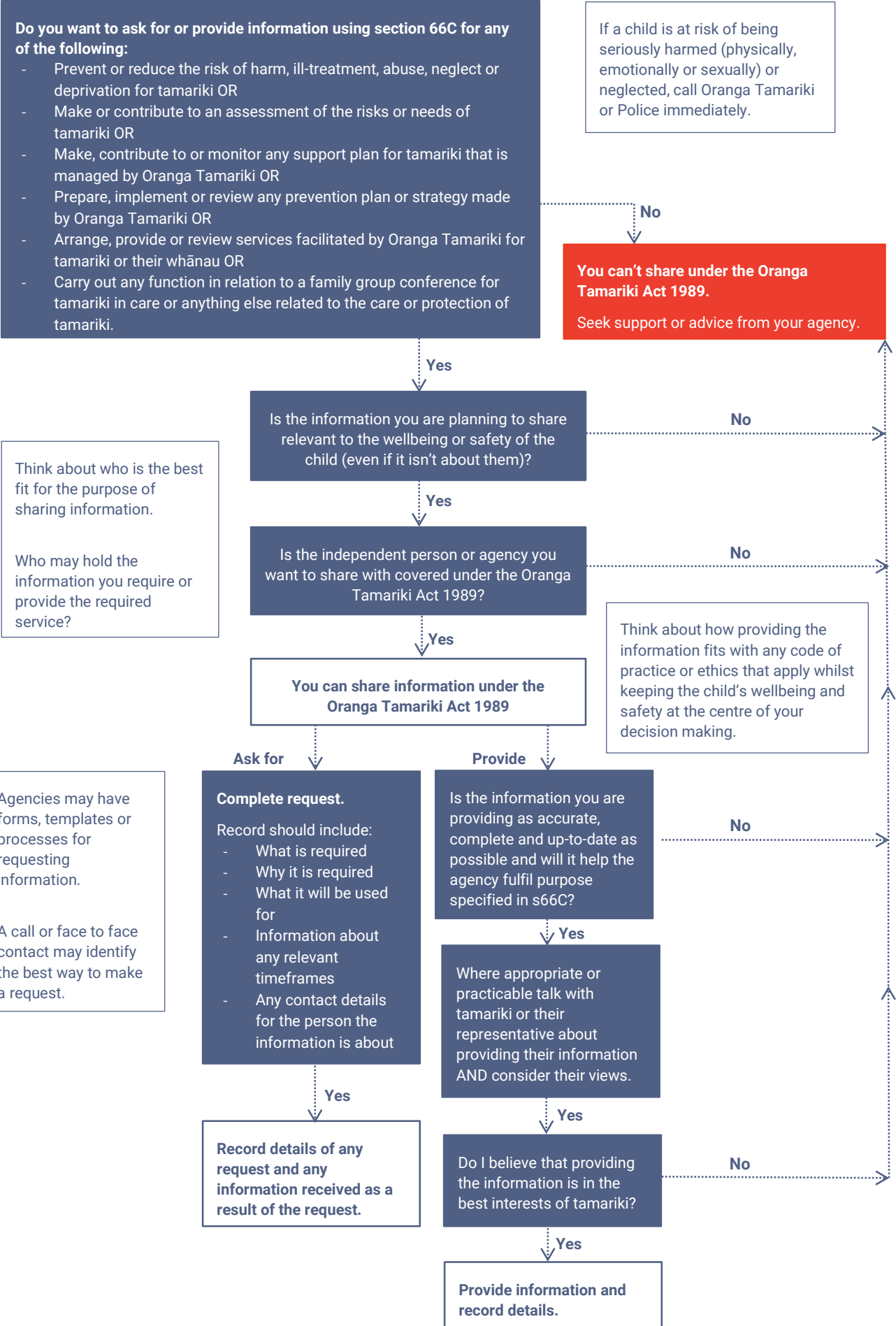
Oranga Tamariki Act 1989

www.orangatamariki.govt.nz/assets/Uploads/Information-sharing/Flowchart-Guidance-for-sharing-information-OT-Act-1989.pdf

Family Violence Act 2018

www.justice.govt.nz/assets/Documents/Publications/Decision-tree-poster-Guide-to-sharing-information-under-FVA.pdf

STEPS TO FOLLOW WHEN THINKING ABOUT SHARING INFORMATION UNDER SECTION 66C ORANGA TAMARIKI ACT 1989



Guide to sharing information

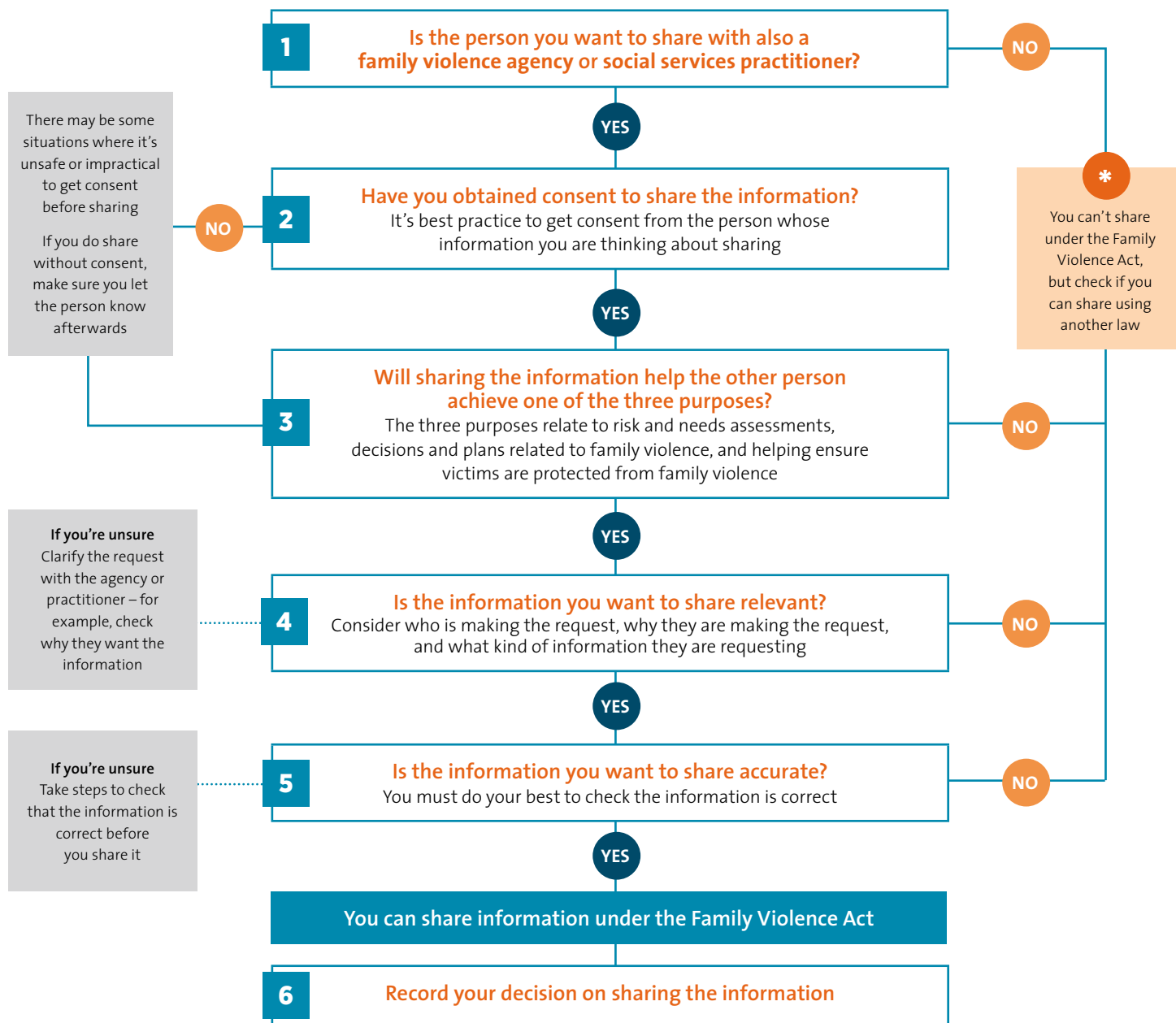
Under the Family Violence Act 2018

REMEMBER: You have a duty to consider sharing information if:

- you get a request from another agency or practitioner, OR

- sharing may help protect a victim from family violence.

See Principle 3 in the Guidance for more information



Family violence agencies include:

Specified government agencies

ACC | Corrections | Ministries of Education, Health, Justice, Social Development | Oranga Tamariki | Police | Immigration NZ | District Health Boards | Housing NZ | Registered community housing providers

Non-governmental organisations that are partly or wholly funded by government to provide family violence services

School boards and **licensed early childhood services**

Social services practitioners include:

Teachers with practising certificates or limited authority to teach

Registered health practitioners

Chiropractors | Dietitians | Medical radiation technologists | Doctors | Medical laboratory science professionals | Anaesthetists | Nurses | Occupational therapists | Optometrists | Physiotherapists | Podiatrists | Psychologists

Registered social workers

Guide to sharing information Under the Family Violence Act 2018

Better collaboration and coordination through information sharing can help protect people from family violence and make it easier for them to get help. If you meet the requirements in the Guidance and follow the steps set out in the decision tree, you can share under the Family Violence Act.

You have a legal duty to consider information sharing if you receive a request, or if you think sharing may help protect a victim from family violence. This duty doesn't stop you from sharing information in other situations, so long as the sharing is for one of the specified purposes.

1 You can share information with another agency or practitioner who is covered by the Family Violence Act

Being a family violence agency or social services practitioner means you're allowed to share information with other family violence agencies and social services practitioners, so long as you also meet the Family Violence Act's other requirements. This means you and others can more effectively assess and manage family violence risk. If you receive a request from someone and you're not sure who they are or whether they are covered, you should make reasonable enquiries to check.

More information on family violence agencies and social services practitioners covered by the Act can be found on page 3 of the Guidance.

2 You should try to get a person's consent before sharing their information

It is best practice to get consent from the person you are sharing information about, unless it is unsafe or impractical to do so. You should explain to the person what information you want to share, who you want to share it with and why. Remember that the information is someone's life and story, and that losing control of that information can cause harm.

There may be some cases where you will be required to make a judgement call on whether you should share information without someone's consent – for example, if you are concerned for someone's immediate safety.

If you are not able to get someone's consent before you share their information, you should take steps to let them know you shared their information afterward, if it is safe to do so (e.g. you are not putting yourself or others at risk).

More information on obtaining consent can be found in Principle 2 of the Guidance.

3 You must reasonably believe that sharing the information could help the other person achieve one of the purposes

To share under the Family Violence Act, you must believe that your sharing will help the other agency or practitioner achieve one of the following purposes:

- to help ensure that a victim is protected from family violence
- to make or contribute to a family violence risk or needs assessment
- to make, or contribute to the making or carrying out of, a decision or plan relating or responding to family violence.

If you don't think sharing will help the person achieve one of the purposes, then you cannot share the information under the Family Violence Act. You can check whether you can share the information under another law.

More information on the purposes for sharing information can be found in Principle 4 of the Guidance.

4 You must only share information that is relevant

When you are sharing information with another agency or practitioner, you should only share information that is relevant. Relevance will depend on the circumstances, including the role of the other person and what purpose they want to use it for. Think about who is making the request, why they are making the request, and what kind of information they are requesting.

You must make a judgement call on whether the information you hold is relevant to the person you want to share it with. For example, information about a child being absent from school may not be relevant to share with a doctor, while information about a person's health may not be relevant to share with some government agencies. If you share information that is irrelevant, you may be acting in bad faith and may not be able to rely on the legal protection under the Family Violence Act.

More information on the relevance of information can be found in Principle 5 of the Guidance.

5 You must check that the information you are sharing is accurate

Under the Privacy Act 1993, you must take reasonable steps to ensure information is accurate, up-to-date, relevant and not misleading. This requirement applies to information you share under the Family Violence Act. You should take steps to make sure the information you share is correct.

There may be situations where you have a hunch or suspicion that you want to share, but you are not sure you are right. You're allowed to share your suspicions, so long as you let the other person know it is merely a suspicion and not a fact.

More information on the accuracy of information can be found in Principle 6 of the Guidance.

6 You should record your decision to share the information

Keeping records of requests for information, including details of the request, your response to the request, and whether or not you obtained consent to share, is good practice. You should also make sure you record situations where you decided not to share.

If you are asked questions about the situation in the future, good record-keeping will mean you can answer confidently and provide evidence in support of your decision. It also means you will have the information you provided ready if you receive another request for the same information.

More information on recording your decision-making can be found in Principle 7 of the Guidance.

If you can't share information under the Family Violence Act, you might be able to under another law

The Family Violence Act only allows information to be shared between specific people, in specific circumstances. If you don't meet the requirements to share under the Family Violence Act, but you think it's important that you do share the information, you might be able to do so under another law.

You should check other laws and guidance to see if they might apply in your situation, including:

- Privacy Act 1993
- Oranga Tamariki Act 1989 and related information sharing guidelines
- Health Information Privacy Code 1994

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