

Health Privacy  
it's my business

**Information to private non-health service providers**  
for handling a request for access or correction  
under the *Health Records Act 2001* (Victoria)



## TABLE OF CONTENTS

PART 1	ACCESS TO HEALTH INFORMATION	3
1.	Right of Access	3
	Under the <i>Health Records Act 2001</i> (Victoria)	3
	Under the <i>Privacy Act 1988</i> (Commonwealth)	4
2.	Making a request for access	5
	How a request for access is made	5
	Requests made on behalf of someone else	5
	What form of access are you required to provide?	6
	‘New’ information	6
	‘Old’ information	7
	Old information and the Commonwealth <i>Privacy Act</i>	7
3.	Time limits for responding to requests	8
4.	Can you charge a fee?	8
5.	Forms of access and what fees may be charged	9
	Inspection	9
	Obtaining a copy	10
	Accurate summary	11
	Viewing with an explanation	12
6.	Refusing access to health information	13
	Mandatory refusal of access	13
	Second opinion on refusal of access based on serious threat to the individual’s life or health	14
	Discretionary refusal of access	15
7.	A suggested approach for handling an access request	17

## TABLE OF CONTENTS

PART 2	CORRECTING HEALTH INFORMATION	19
8.	Right to correct health information	19
	Under the <i>Health Records Act 2001</i> (Victoria)	19
	Under the <i>Privacy Act 1988</i> (Commonwealth)	19
9.	Making a request to correct information	20
	How a request to correct is made	20
	Requests made on behalf of someone else	20
10.	Responding to a request to correct	21
11.	Fees	21
PART 3	COMPLAINTS	22
12.	Dealing with a complaint	22
13.	Complaints procedure with the Health Services Commissioner	23
14.	Contact us, your professional association or your insurer for advice	23
	Appendix: What is a health service provider?	24

## 1. Right of access

### Under the *Health Records Act 2001 (Victoria)*(HRA)

The *HRA* 2001 came into operation on 1 July 2002. The Act gives individuals a right of access to their personal health information held by any organisation in the private sector in Victoria, in accordance with Health Privacy Principle 6 (HPP 6). HPP 6 obliges health service providers and other organisations who hold health information about a person to give them access to their health information on request, subject to certain exceptions and the payment of fees (if any).

Public sector organisations continue to be subject to the *Freedom of Information Act* 1982.

This document is for non-health service providers. Refer to the Appendix for a definition of a health service provider and a non-health service provider.

‘Personal health information’ means health information which either specifically identifies the individual or from which their identity can reasonably be ascertained.

An organisation ‘holds’ health information if it is in their possession or control. If you have received reports or other health information from another organisation, you are required to provide access in the same manner as for the records you create. If a health service provider has written ‘not to be disclosed to a third party’ or ‘confidential’ on their report, this has no legal effect in relation to requests for access by the individual under the *HRA*.

You should have a privacy policy in place that sets out how you manage health information and the steps an individual must take to obtain access to their health information. You may wish to include in the privacy policy the different forms of access and the applicable time frames and fees.

### **Under the *Privacy Act 1988* (Commonwealth)**

Individuals also have a right of access under the Commonwealth *Privacy Act 1988*. This Act applies from 21 December 2001 and gives individuals a right of access to personal health information held by all private sector health service providers, and other private sector organisations with an annual turnover of more than \$3 million. For more information, contact the Federal Privacy Commissioner on 1300 363 992 (TTY 1800 620 241) or visit the website at: [www.privacy.gov.au](http://www.privacy.gov.au). The Commonwealth *Privacy Act* excludes employee records.

Compliance with the access provisions in the *HRA* will generally ensure compliance with the Commonwealth *Privacy Act*.

## 2. Making a request for access

### How a request for access is made

An individual can make a request to you for access **orally** or in **writing** if they believe you hold health information about them. The time limit for compliance begins to run from when the oral or written request is received.

If an individual makes an oral request, you may ask them to put the request in writing. You must do this as soon as possible. If you do this, the time limit for compliance begins to run from when you receive the written request.

You must take reasonable steps to be satisfied about the person's right to have access to the information. You may ask for proof of the individual's identity when they make their request.

In the request, the individual needs to:

- state their name and, if not already known to you, their address,
- identify sufficiently the health information they are seeking access to,
- specify the form they want the access in. (See Section 5 of this document for an explanation of the different forms of access).

You can ask the individual whether they want access to all the information held or just particular information.

### Requests made on behalf of someone else

An individual can seek access on behalf of someone else if:

- (1) that other person has a right of access AND
  - (a) has authorised them in writing to seek access on their behalf (eg a solicitor, family member or friend), OR
  - (b) is their authorised representative (such as a parent, guardian, or a person holding an enduring power of attorney), OR
- (2) the individual is the legal representative of the deceased person who would have had a right of access when alive.

The request must be made in writing and they must provide evidence of their authority to act on the person's behalf if you ask for it.

## What form of access are you required to provide?

This depends on whether the individual wants access to information collected **after** the start of the Act on 1 July 2002 ('new' information) or to information collected **before** 1 July 2002 ('old' information).

### 'New' Information

If the information being sought was collected by you on or after 1 July 2002, then you must give the individual access in one or more of the following ways:

- inspecting the information,
- obtaining a copy and/or
- if you are agreeable, viewing the information, accompanied by an explanation by a health service provider.

You can ask the individual whether they would prefer to receive an accurate summary of the information, instead of a copy. The individual may prefer an accurate summary if the health records are extensive or complex.

It is the choice of the individual and you must provide access in the form requested by the individual. You may assist the individual by explaining to them the different ways a right of access can be exercised. The different forms of access are discussed in more detail in Section 5.

An individual can seek access in more than one way. If, for example, an individual inspects their health records and then asks for a copy, you are required to comply, subject to the payment of any fee.

### **‘Old’ information**

If the information being sought was collected by you **before** 1 July 2002, then you have a choice.

If you do not wish to allow the individual to inspect the information, or have a copy or an explanation of the information, you must provide the individual with an accurate summary of the information instead. Although you are not required by the *HRA* to provide access in full, you can agree to do so. Refer to Section 5 of this document for details of what must be contained in an accurate summary and the applicable fees.

### **Old information and the Commonwealth *Privacy Act***

If you are considering providing an accurate summary of ‘old’ information instead of a copy or inspection, you need to be aware that under the Commonwealth *Privacy Act*, an individual has a right of access to information collected after 21 December 2001. This is the date the relevant parts of the Commonwealth *Privacy Act* took effect. As a non-health service provider, you are subject to the Commonwealth *Privacy Act* if you have an annual turnover of more than \$3 million.

If information collected before 21 December 2001 is used by you **after** 21 December 2001, then the individual can obtain **full** access under the *Privacy Act*, even though they are only entitled to an accurate summary to information collected before 1 July 2002 under the *HRA*.

### 3. Time limits for responding to requests

You should respond to the request as soon as practicable, but no later than 45 days from the date you received the request.

In responding to the request, you are required to either:

- give the individual access within 45 days, or
- notify the individual in writing within 45 days what fee (if any) you will be charging and then give access within seven days of receiving payment of the fee or 45 days after receiving the request, whichever is the later, or
- notify the individual in writing within 45 days that you are refusing access to part or all of the health information and give your reasons why. Access can only be refused for the reasons listed in Part 5 of the Act or in HPP 6.1 (Refer to Section 6 of this document).

### 4. Can you charge a fee?

You are not required to charge a fee for giving someone access to their health information. If you wish to charge a fee, you cannot charge more than the maximum amount specified in the *Health Records Regulations* 2002. These are set out in Section 5 of this document. The maximum fee which can be charged will vary according to the type of access required; for example, the maximum fee which can be charged for obtaining an explanation is more than the maximum fee for obtaining a copy of the documents.

The *HRA* requires you to take reasonable steps to protect health information from loss and unauthorised disclosure. The person requesting access can collect the copied documents in person, or you may wish to consider sending the material by registered mail or by courier. Who is to meet this cost would need to be negotiated with the individual.

You cannot ask the individual to send a non refundable lodgement fee when they make a request for access.

You should advise the individual in advance of any fees to be charged.

## 5. Forms of access and what fees may be charged

Before giving access, you should review the information. You must not give access if the 'serious threat to life or health' or the 'information given in confidence' provisions apply. These are discussed in Section 6.

### Inspection

If the individual has requested access in the form of **inspection** of the information with no explanation of the contents, then you must give access by making an appointment for the individual to inspect the documents. They should be given the opportunity to take notes. It is recommended the inspection be supervised.

If the health information is stored in an electronic form, you may wish to print out the information for inspection. You can allow the individual to inspect an electronic copy, but must take steps to ensure that no other client information can be accessed.

The **maximum fee** you are permitted to charge for **inspection** is a total of the following (plus GST):

- \$5 per quarter hour (or part of a quarter hour) for supervision of inspection, and
- your organisation's reasonable costs incurred in assessing and collating the health information, not exceeding \$20, and
- if it is necessary to use equipment that is not in your organisation's possession in order to inspect the health information, your organisation's reasonable costs incurred in obtaining the equipment, and
- if the health information is contained in a document not stored at your usual place of business, \$10.

## Obtaining a copy

If the individual has requested access in the form of a **copy** of the information, then you must provide a copy or, if the individual agrees, an accurate summary of the health information. The individual may prefer an accurate summary if the health information is extensive or complex. If you are holding health information written by another person, you may wish to obtain assistance from the author if you are preparing an accurate summary.

The **maximum fee** you are permitted to charge for providing a **copy** is a total of the following (plus GST):

- (a) if a copy is in the form of black and white A4 pages, 20 cents per page, and
- (b) if a copy is in a form other than a black and white A4 page, your organisation's reasonable costs incurred in providing the copy, and
- (c) your organisation's reasonable costs incurred in assessing and collating the health information, not exceeding \$20, and
- (d) if the health information is contained in a document not stored at your usual place of business, \$10.

If, for example, you are making a copy of an x-ray, you can charge what it has cost you to make the copy. You should advise the individual of the cost in advance.

If the health information is stored in an electronic form, you may wish to give the individual either a print-out or an electronic copy of the information. If you are giving an electronic copy, it should be in a format that cannot be altered.

### Accurate summary

An accurate summary must contain the individual's history, any findings on examination, results of investigations, diagnoses, plans of management and action taken or services provided. It only needs to be a summary of existing information. It does not need to include personal comments or opinions by the health service provider or prognoses.

If you are holding health information written by another person, you may wish to obtain assistance from the author in preparing an accurate summary.

The maximum fee you are permitted to charge for preparation of an accurate summary if one does not exist, is a total of the following (plus GST):

- (a) an amount that is calculated by reference to the time taken to prepare the accurate summary, not exceeding –
  - (i) \$25 per quarter hour (or part of a quarter hour), or
  - (ii) \$80 –whichever is the lesser,  
and
- (b) if the health information is contained in a document not stored at the organisation's usual place of business, \$10.

## Viewing with an explanation

If the individual has requested access in the form of **viewing** the information, accompanied by **an explanation by a health service provider**, then you may give the individual access as follows:

- if you are agreeable, by providing the information for viewing and explaining its content immediately,
- if you are agreeable, by making an appointment later to provide the explanation, or
- if you are not willing to provide an explanation, you may allow a health service provider who is suitably qualified, to give the individual an explanation, and the following apply:
  - (a) you must give the individual a written notice stating the name and address of a suitably qualified health service provider in Victoria who will be available by arrangement with the individual, to explain the health information, or
  - (b) if the individual does not approve the health service provider you have nominated, the individual is able to nominate a health service provider who has consented to be nominated. You must allow that health service provider to give the individual an explanation, provided they are suitably qualified.

Therefore as a non-health service provider, you may allow an explanation to be given by a suitably qualified health service provider, but you are not legally obliged to do so under the *HRA*.

The **maximum fee** that can be charged for giving an explanation of health information is the amount of the person's usual fee for a consultation of a comparable duration. It is unclear whether a Medicare rebate is available for such a consultation.

## 6. Refusing access to health information

In some cases, you can refuse access to the individual's health information in full or in part. You must give written reasons for refusing access. An individual can challenge a decision to refuse access by making a complaint to the Health Services Commissioner.

### Mandatory refusal of access

The law requires that you must not give the individual access to the health information (or part of the health information) you hold about them if:

- you believe on reasonable grounds that giving access would pose a **serious threat to the individual's life or health** or the life or health of **any other person** (Section 26 *HRA*), or
- the health information has been **provided in confidence** by a person other than the individual or a health service provider (such as a relative, friend or employer) with a request that the information not be communicated to the individual (Section 27 *HRA*).

If you are holding health information written by another person and are uncertain whether the first exemption applies, you should check with the author of the information.

In both these situations, it is suggested that before providing access you delete or remove from any copy to be given or viewed, the information that is to be refused and the identity of any person you are seeking to protect. You must advise the individual of the reason for the refusal.

## Second opinion on refusal of access based on serious threat to the individual's life or health

If you refuse access on the grounds that giving the information would pose a serious threat to **the individual's** life or health, the individual is entitled to a second opinion. This is not available if the serious threat is to another person. When advising the individual that access has been refused on this ground, you must advise the individual that they can ask for a 'second opinion'. The objective of this process is to give the individual the opportunity to have the decision assessed and explained by an independent health service provider. First, you might offer to discuss the information with the individual, or arrange for a health service provider to discuss it with them.

If you do not make an offer to arrange for a health service provider to discuss the information, or the individual is unhappy with the health service provider you have arranged, you must tell the individual that they can ask for a 'second opinion'. They can nominate a health service provider of their own choice to review the decision to deny them access on this ground. The individual may only nominate a health service provider who has consented to being nominated.

In most cases, you are likely to accept their nomination, but if you do not, the individual will need to choose another one. However, you cannot object to the nominated health service provider if they provide the same kind of service as the health service provider who recorded the information and have the ability to interpret and understand the health information. Section 39 (2) of the *HRA* lists other situations where you cannot object.

You must give a copy of the health information to the nominated health service provider within 14 days. The nominated health service provider then looks at the information, discusses it with you, and makes a decision about whether or not it would pose a serious threat to the individual's life or health. If they do not believe it would pose such a threat, the nominated health service provider may allow the individual to inspect the health information or, if you agree, to have a copy of it. If you do not agree to a copy, the individual can only inspect the information. If the nominated health service provider agrees that access does pose a serious threat to the individual's life or health, they can explain this to the individual.

For further information on the process of providing a second opinion, see Information Sheet No. 6 'Refusal of Access on Ground of Threat to Life or Health of the Individual requesting Access' published by our Office. This is available from our website at [www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc).

In performing the above functions, a nominated health service provider is able to charge the individual a fee. The maximum fee set by law is the reasonable cost incurred by them in performing those functions, not exceeding—

(a) \$40 (plus GST) per quarter hour or part of a quarter hour spent performing those functions, or

(b) \$200 (plus GST),

whichever is the lesser.

### **Discretionary refusal of access**

Health Privacy Principle 6.1 lists other situations where you may choose not to give the individual access to health information.

These are as follows:

- providing access would:
  - > have an unreasonable impact on the privacy of other people,
  - > reveal the intentions of your organisation in relation to negotiations with the individual, (other than about the provision of a health service), in such a way as to expose the organisation unreasonably to disadvantage,
  - > be unlawful,
  - > be likely to prejudice an investigation of possible unlawful activity, or
  - > be likely to prejudice a law enforcement function by or on behalf of a law enforcement agency,
- the information relates to existing legal proceedings between you and the individual and the information would not be accessible by the process of discovery in those proceedings or is subject to legal professional privilege,
- denying access is required or authorised by or under law,

- a law enforcement agency performing a lawful security function asks you not to provide access to the information,
- the individual has already unsuccessfully made a request for the information at least once before and there are no reasonable grounds for making the request again, or
- the individual has already been provided with access to the health information and they are making an unreasonable, repeated request for access to the same information in the same way.

While the *HRA* gives an organisation discretion to deny access in the above circumstances, access is encouraged wherever possible.

## 7. A suggested approach for handling an access request

- Acknowledge the request in writing as soon as possible.
- Take reasonable steps to verify the identity of the person seeking access, if appropriate. Obtain evidence of authority if the person is seeking access on behalf of someone else.
- Where relevant, collate the health information from wherever it is located. Some of the information may be stored electronically, some in paper form on site and some off site.
- Assess the information to check for information that should be denied due to any of the exceptions to access under the *HRA* discussed in Section 6 of this document.
- Delete or remove any information to be denied from any copy or extract of the document being made available. Do not delete the information from the original records.
- Write to the individual within 45 days of receiving the request, advising of the fees to be charged (if any) and advising that access will be provided within seven days of payment of the fee or 45 days from the date of the request, whichever is the later.
- If no fee is being charged, provide access within 45 days of receiving the request.
- Once payment (if applicable) has been made, make arrangements for the collection or forwarding of the requested information to the individual or arrange a time for inspection.
- If access to information is being denied in full or in part, advise the individual in writing of the grounds for the refusal within 45 days of receiving the request.

An example of appropriate wording for a letter setting out the grounds of refusal is as follows:

*'The HRA requires us to refuse you access to certain health information because the information was given in confidence by a person other than you or a health service provider with a request that the information not be communicated to you' or 'The HRA requires us to refuse you access to certain health information because we believe that providing you with that information would pose a serious threat to your life or health or the life or health of another person.'*

- > If access is refused based on a serious threat to the life or health of the individual, and you wish to allow a health service provider to discuss the information with them, you should state this. You must also advise the individual they can nominate a health service provider to assess the grounds for refusal. See the following paragraph for the wording.
- > If access is refused based on a serious threat to the life or health of the individual, and you do not wish to arrange a health service provider to discuss the information with the individual you should state: *'You can nominate a health service provider to assess the grounds for refusal. You can only nominate a health service provider who has consented to being nominated. If you wish to nominate a health service provider, please advise us of their name, address and telephone number'.*
- > If access is being denied in full or in part, you should include the following: *'If you do not agree with the decision to refuse access, you can make a complaint to the Health Services Commissioner, telephone 8601 5200 or toll-free on 1800 136 066 outside the metropolitan area'.*

## 8. Right to correct health information

### Under the *Health Records Act 2001* (Victoria)

Health Privacy Principle 6.5 of the *HRA* gives individuals a right to have their health information corrected, if it is held by an organisation in the private sector, and if they can establish that it is inaccurate, incomplete, misleading or not up-to-date.

The *Freedom of Information Act* applies to correction of health information held by a public sector organisation.

### Under the *Privacy Act 1988* (Commonwealth)

As of 21 December 2001, under National Privacy Principle 6 of the Commonwealth *Privacy Act 1988*, an individual has the right to have their information corrected, if they can establish that it is not accurate, up-to-date or complete. This right applies to information held by all private sector health service providers, and other private sector organisations with an annual turnover of more than \$3 million. For more information, contact the Federal Privacy Commissioner on 1300 363 992 (TTY 1800 620 241) or visit the website at: [www.privacy.gov.au](http://www.privacy.gov.au). The Commonwealth *Privacy Act* excludes employee records, and there is no right to correct the health information of employees.

## 9. Making a request to correct information

### How a request to correct is made

An individual can make a request for correction **orally** or in **writing** to the organisation or person they believe holds health information about them. You need to establish procedures for dealing with such requests.

The individual needs to establish that the information is inaccurate, incomplete, misleading or not up-to-date, and what the correct information should be.

### Requests made on behalf of someone else

An individual can seek correction on behalf of someone else if they are:

- authorised by them in writing to do so (such as a solicitor, family member or friend),
- their authorised representative (such as a parent, guardian or a person holding an enduring power of attorney), or
- the legal representative of a deceased person.

The request must be made in writing and they must provide evidence of their authority to act on the person's behalf, if you ask for it.

## 10. Responding to a request to correct

You must notify the individual in writing of your decision as soon as practicable and no later than 30 days of you receiving the request to correct the information.

You can either:

- (a) accept the need to correct the information, and then either:
  - (i) take reasonable steps to make the information accurate, complete and up-to-date, and record with the correction the name of the person who made the correction and the date it was made, or
  - (ii) if there are reasons why the information cannot be corrected (eg the form the information is in does not allow it) or if leaving the incorrect information, even if corrected, could result in harm to the individual or inappropriate health care being provided, ensure that the incorrect information is placed on a record not generally available to future health service providers and to which access is restricted, OR
- (b) not accept the need to correct the information — but if the person making the request provides you with a written statement concerning the requested correction, you must put that statement with the information in dispute.

You must not delete the information in dispute, even if the individual asks you to do so, unless you no longer need the information for the purpose you collected it.

You must also take reasonable steps to notify any health service provider who you disclosed the information to before it was corrected and who may rely on the information, of the change to the information.

## 11. Fees

You cannot charge a fee to correct information.

## 12. Dealing with a complaint

If you receive a complaint about the way you have responded to a request for access or correction of health information, you should attempt to resolve it with the individual. An individual who has a dispute with an organisation in relation to access to their health records (or any other interference with their privacy) can complain to the Health Services Commissioner on 8601 5200 or toll-free 1800 136 066 if outside the metropolitan area. Complaints need to be lodged in writing.

The Office of the Health Services Commissioner is an independent statutory authority established to provide a complaint mechanism for users of health services to resolve any differences they have with health service providers, or for persons to resolve disputes with any organisation about their health privacy.

A complaint can only be made about a request for access or correction that was made after 1 July 2002, or any interference with privacy that occurred **after** 1 July 2002.

## **13. Complaints procedure with the Health Services Commissioner**

The Health Services Commissioner will conduct a preliminary assessment of the complaint. If it is not resolved by the parties during this assessment period of 90 days, a decision will be made whether to accept or decline the complaint. There are specific grounds under the *HRA* for declining a complaint. If a complaint is accepted, the Health Services Commissioner will try to conciliate the complaint.

If the Commissioner decides the complaint is to be declined or is non-conciliable, the complainant has the right to ask the Health Services Commissioner to refer the complaint to the Victorian Civil and Administrative Appeals Tribunal (VCAT) for a determination. The complainant must exercise this right within 60 days of receiving notice of the decision. The types of orders VCAT can make are that the complainant be provided with access, any loss suffered by the complainant be redressed, or compensation be paid.

## **14. Contact us, your professional association or your insurer for advice**

If you wish to discuss any issues relating to access to health information, you can contact the Health Services Commissioner on 8601 5200 or toll-free 1800 136 066 if you are outside the metropolitan area.

You can also contact your professional association or your insurer for advice or guidance.

## What is a health service provider?

A health service provider is an organisation that provides:

- (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it –
  - (i) to assess, maintain or improve the individual's health, or
  - (ii) to diagnose the individual's illness, injury or disability, or
  - (iii) to treat the individual's illness, injury or disability or suspected illness, injury or disability, or
- (b) a disability service, palliative care service or aged care service, or
- (c) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

This includes medical practitioners, dentists, nursing services, pathology services, hospitals, community health centres, physiotherapists, local councils providing health services such as immunisations and home care, psychologists and providers of drug and alcohol services.

An organisation may be a health service provider to the extent they provide a health service as part of their operations. For example, a school may be classed as a health service provider when it is providing a school nurse or counselling services.

Non-health service providers include, but are not limited to, insurers, gymnasiums, employers, solicitors, housing services, child care centres, kindergartens and schools.

As a non-health service provider, you must provide access to health information you have collected or which you hold. Health information means information or an opinion about:

- an individual's physical, mental or psychological health, including any disability,
- treatment or a health service an individual has received or will be receiving,
- donation of body parts, or
- genetic predictions relating to an individual's health or that of their descendants.

This document is not part of the *Health Records Act 2001*. It aims to help individuals and organisations understand the access provisions in the *Health Records Act 2001*. Examples have been included where they may be of assistance. The interpretation of the *Health Records Act* contained herein is not binding and should not be relied upon as a substitute for obtaining legal advice.

An organisation will need to refer to the *Health Records Act* and HPP 6 scheduled to the *Health Records Act* to ensure compliance with the legal obligations it imposes.

April 2004



Level 30, 570 Bourke St  
Melbourne VIC 3000 Australia

Telephone: 8601 5222 (administration)

Telephone: 8601 5200 (complaints)

Toll Free: 1800 136 066

Facsimile: 8601 5219

TTY: 1300 550 275

DX: 210182

Email: [hsc@dhs.vic.gov.au](mailto:hsc@dhs.vic.gov.au)

[www.health.vic.gov.au/hsc/](http://www.health.vic.gov.au/hsc/)