

# Guidance Note

## Tenant information

### Purpose of this guidance note

This guidance note provides advice on the collection, use, storage and sharing of tenant information by Community Housing Providers (CHPs). Information management policies should be developed or updated to reflect the advice in this guidance note.

### Introduction

Good tenant information management is necessary to comply with the Performance Standards. The Tenancy Management Performance Standard requires applicant organisations and registered providers to have documented systems and processes to ensure that it complies with all relevant legislative requirements (4.a) and that the confidentiality of all tenancy information is maintained (4.c).

These policies and procedures should provide clear guidance to staff on what information is to be collected and why, how it may be used, document storage and retention, tenant access to their personal information, and circumstances in which the information may be disclosed.

### Relevant legislation

Tenant information is personal information and so falls under the [Privacy Act 2020](#) and the [Privacy Principles](#). The Principles provide a comprehensive code for the collection, use, storage and sharing of personal information. The Privacy Commissioner has provided guidance on the application of the Privacy Principles to tenant information in [Guidance for landlords and tenants](#). Tenancy services also provide information about [collecting tenant information responsibly](#).

Other Acts are also relevant to tenant information which generally take precedence

over the Privacy Principles.<sup>1</sup> The Family Violence Act 2018 and the Oranga Tamariki Act 1989 are particularly relevant, as they impose a duty on registered CHPs to consider disclosing information in certain circumstances.

### Family Violence Act 2018

The Family Violence Act lists those agencies and social services practitioners (including registered CHPs) to whom the information sharing provisions apply.

A registered CHP must consider sharing information if:

- it receives a request for information from another agency or social services practitioner to whom the Act applies; or
- it believes that sharing the information with another agency or person to whom the Act applies may protect a victim from family violence.

The information can only be shared, whether in response to a request or spontaneously, for three purposes:

- to help ensure that a victim is protected from family violence; or
- to make, or contribute to, a family violence risk or needs assessment; or
- 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.

It is not mandatory to share the information, but a registered CHP has a legal duty to consider sharing in these circumstances.

The following link provides more detailed guidance on sharing information under the Family Violence Act 2018: [Family Violence Information Sharing Guidance](#). Read the guidance carefully, as the information above

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<sup>1</sup> See section 7 of the Privacy Act 2020.

is a very brief outline.

### Oranga Tamariki Act 1989

There are two information sharing provisions in the Oranga Tamariki Act 1989: sections 66 and 66C.

Under section 66, information sharing is mandatory. Section 66 requires agencies (as defined by the Privacy Act 2020) to provide Oranga Tamariki or the Police, on request, with any information they hold that may relate to the safety or wellbeing of a person under 18 years, if the information is required for certain purposes, unless legal professional privilege applies.

Under section 66C, information sharing is discretionary. The Oranga Tamariki Act 1989 lists agencies and people (including registered CHPs) to whom the discretionary information sharing provision in that Act applies. This list overlaps with that in the Family Violence Act 2018, but is not identical.

A person or agency on this list may share information with another person or agency on the list (either spontaneously or on request) if they reasonably believe that disclosing the information will assist the other person or agency to:

- prevent or reduce the risk of a person under 18 years being subject to harm, ill-treatment, abuse, neglect, or deprivation; or
- carry out various other listed functions related to the care and protection of persons under the age of 18 years.

Anyone sharing information under section 66C must consult with the child or young person concerned, unless it is not safe or appropriate to do so.

The following link provides more detailed guidance on sharing information under the Oranga Tamariki Act 1989: [Oranga Tamariki Act Information Sharing Guidance](#). As above, please read the guidance carefully, as the information above is a brief outline.

The principles of the Privacy Act 2020 that do not relate to sharing still apply when information is shared under other legislation. That is, information that is shared must be relevant, you should do your best to ensure the information is accurate, and you should record what you shared and why.

### Other laws

Other laws may also apply to tenant information in particular circumstances; for example, court orders for disclosure of information. In these situations, a registered CHP should seek legal advice if it is not sure what to do.

### **Information not necessary to the CHP's business as a Class 1: Social Landlord**

Some CHPs collect personal tenant information that is not required for the CHP's business as a landlord (e.g. next of kin, support provider details, holders of enduring power of attorney). This information is collected so the CHP can use it on the tenant's behalf, if necessary. This is a positive, proactive service Class 1: Social Landlords offer to assist tenants, but it should be the tenant's choice to accept it or not. The service should only be offered (and the information collected) after the tenancy has commenced. This is to ensure that a person who does not want the service does not feel obliged to provide the information to obtain the tenancy. Before the information is collected the CHP must explain to the tenant the purpose for collecting the personal information, the fact that the supply of the personal information is voluntary, and that there will be no consequences for the tenant if they refuse to provide all or any part of the requested information.

### **Further information**

For any questions or concerns related to information management policies and compliance with the Performance Standards, please contact us at [CHRA@hud.govt.nz](mailto:CHRA@hud.govt.nz).