

## Title: Subpoenas - Redaction tips

### Procedure:

Once the relevant documents have been compiled, the following applies:

#### 1. All records:

a) The identity of reporters must be redacted.

This includes, but is not limited to, redacting the following:

- i) information from which the identity of the reporter could be deduced<sup>1</sup>
  - ii) the reporter's name, organisation, role/position/contact details etc.
  - iii) whether the reporter was mandatory or non-mandatory (as this may lead to their identity being deduced)<sup>2</sup>
  - iv) details which may identify the reporter or a person who provided information that forms the basis of a report e.g. A teacher informing a principal, who then makes the report – both the teacher and the principal are protected<sup>3</sup>.
- b) If it is anticipated that the production of the report would automatically lead to the identification of the reporter, the report should not be produced;
- c) The protection afforded by s. 29 *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) applies regardless of whether the Department of Communities and Justice (DCJ) assesses the report as meeting, or not meeting, the risk of significant harm threshold<sup>4</sup>;
- d) Section 29 does not require that the risk of significant harm reports are made to the Helpline in order for the reporter's identity to be protected. Section 29 only requires that the risk of significant harm report is made to either:
- i) the Secretary, or

<sup>1</sup> Section 29(1)(f) *Children and Young Persons (Care and Protection) Act 1998*

<sup>2</sup> Section 29(1)(f) *Children and Young Persons (Care and Protection) Act 1998*

<sup>3</sup> Child Wellbeing and Child Protection – NSW Interagency Guidelines, Section 29(3A) *Children and Young Persons (Care and Protection) Act 1998*

<sup>4</sup> Child Wellbeing and Child Protection – NSW Interagency Guidelines.

- ii) a person who has the power or responsibility to protect the child or young person or the class of children or young persons

The latter part of the definition is very broad and would include a CSC caseworker or other DCJ officer with responsibility for child protection work.

- e) Other people named in documents (who are not protected by s.29) and their contact details may also be redacted if the Secretary believes on reasonable grounds that the release of that information may pose an unacceptable threat to the information provider. For example, where there is an AVO in effect protecting that person, or where DCJ has information indicating that this person is likely to be placed at risk should their identity be disclosed.

**2. Chapter 16A information (written information that is owned by another agency that is on the FACS file):**

If the documents fall within the schedule of documents sought under the subpoena, then the information from that agency/professional must be produced.

The agency should be informed in writing that the information is being produced by DCJ to give them the opportunity to appear on the return date of the subpoena should they wish to object to the production of the documents.

**3. Reports of medical professionals/counsellors/ psychologists, which include disclosures of sexual assault:**

If there are concerns that sexual assault communications privilege may apply, consult your Child Law legal officer for advice.

**4. Child's address and contact details:**

If the child's address and contact details are those of the child's authorised carer, this information must be redacted as it is protected under s.149E of the Care Act.

**5. Parents address and contact details:**

If this information is confidential for any reason or if its disclosure to the other parties would pose a safety risk to the parent or another person then this information should be redacted.

**6. Names of authorised carers (includes relative and kinship carers)**

- a) Names and contact details of authorised carers must be redacted (s.149E);
- b) Any personal or sensitive information about the authorised carer that is likely to identify

them such as their employment details or activities must be redacted (s.149E);

- c) a) and b) apply unless consent has been obtained from the authorised carer or there is an order from NCAT releasing these details.

**All documents sought under the subpoena must be read in their entirety. Documents should also not be read in isolation. This is because sometimes when information in different documents is read together it can identify a reporter. If documents when read together would identify a reporter, this information must be redacted.**

### **Additional Resources**

For further information, advice or assistance regarding redactions or privacy please contact your DCJ Child Law legal officer or the Open Government, Information and Privacy Legal team at [infoandprivacy@justice.nsw.gov.au](mailto:infoandprivacy@justice.nsw.gov.au)

### **Related Topics/Terms:**

Subpoena, redact, redaction, records, reporter identity

### **Author & Date:**

DCJ Legal – 15 November 2019