

# PRACTICE GUIDE

## Separate representative access to Child Safety information

This resource outlines the process when a separate representative requests access to Child Safety information for the children whose interests they represent.

### Role of a separate representative

The court may appoint a separate representative, who must act in the child's best interests and can do anything that can be done by a party to the proceedings.

### Separate representatives' access to information

Separate representatives perform a function under the *Child Protection Act 1999* (the Act) and are entitled to information about the children and families they represent. However, it is important to have controls in place to ensure that confidential information is protected, privacy is maintained, and Child Safety has redacted if necessary and documented what information a separate representative has obtained.

To facilitate this, separate representatives will not be provided with information via Child Safety Services Centres. Only DCPL will provide separate representatives with access to Child Safety information.

This means Child Safety staff will not:

- allow separate representatives to
  - read any electronic files and paper files
  - have any access to client management records on a computer
- download and print bulk files for the separate representative, or
- email anything from the file to a separate representative.

### Confidentiality provisions of the Act

The confidentiality provisions of the Act limit what information may be disclosed. These provisions ensure the confidentiality of notifiers and the protection of other information obtained in working with children and their families.

### Role of Director of Child Protection Litigation

In a proceeding before the court, the DCPL serves all parties, including any appointed separate representative, with all documents filed in the proceeding. The DCPL has a duty of disclosure, which means that there is a legal requirement to disclose, to each party to the proceeding, including the separate representative, all documents that may be relevant in the case before the court. This duty continues until the proceeding is decided and ensures procedural fairness for all parties, including the separate representative, whilst maintaining confidentiality and privacy.

The Act provides that DCPL may refuse to disclose a document or information to a party in circumstances where:



- it is subject to legal privilege or is communication between DCPL and Child Safety
- disclosure would endanger a person’s safety or psychological health
- it is a record of therapeutic counselling
- disclosure would prejudice an investigation, or
- there is another good reason for non-disclosure having regard to the best interests of the child.

## Disclosure process

Within 20 days of the first mention of a proceeding for a child protection order, the DCPL must file with the court and serve on the parties a Disclosure Form, which specifies the types of documents that are usually in the possession of Child Safety. Where a party, including a separate representative, requests disclosure of documents, this request can be made by completing a Request for Disclosure Form and providing this to the DCPL. DCPL will then deal with this request, working collaboratively with Child Safety, in accordance with the established procedure in the DCPL’s guidelines.

## OCFOS/DCPL process

The process for the provision of information is:

OCFOS will include any information it considers could be relevant to the child protection proceedings in the referral and brief of evidence to the DCPL. DCPL will then determine what is in fact relevant to their case. OCFOS is only involved in the initial referral and brief of evidence to DCPL and has no ongoing role in the court proceedings after this process is completed.

DCPL will then make available to all parties, including the separate representative, all of the material they consider is relevant to the proceeding.

This process ensures that DCPL controls compliance with section 186 and section 191 of the Act and eliminates the uncertainty associated with separate representatives accessing information directly from Child Safety in varied ways with no controls in place.

**Remember:**

**Separate representatives should not view or be given downloads of information from any hard copy or electronic departmental file. All access is via the DCPL.**

If a separate representative wants to introduce evidence beyond that which DCPL considers relevant, the separate representative can subpoena information from Child Safety.

If the subpoena is successful in having further information disclosed, that information is then delivered to the registry and can be considered within the confines of the proceedings.

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## Version history

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