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Department of Social Services

Access to Records by Forgotten Australians and Former Child Migrants

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Access Principles for
Records Holders
&
Best Practice Guidelines in
providing access to records

June 2015

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Introduction

These Access to Records Principles and accompanying Best Practice Guidelines are a component of the response to National Apology to Forgotten Australians and Former Child Migrants, many of whom suffered abuse and neglect while in out-of-home care during the last century. The National Apology was issued by the Federal Government in 2009.

In particular these documents represent action on Recommendations 16 -18 of the Community Affairs References Committee report, 'Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children', August 2004 (Senate Inquiry)¹ That is:

Recommendation 16

That all government and non-government agencies agree on access guidelines for the records of all care leavers and that the guidelines incorporate the following:

- the right of every care leaver, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same;
- the right of every care leaver to undertake records searches, to be provided with records and the copying of records free of charge;
- the commitment to a maximum time period, agreed by the agencies, for the processing of applications for viewing records; and
- the commitment to the flexible and compassionate interpretation of privacy legislation to allow a care leaver to identify their family and background.

Recommendation 17

That all agencies, both government and non-government, which provide access to records for care leavers, ensure adequate support and counselling services are provided at the time of viewing records, and if required, subsequent to the viewing of records; and that funding for independent counselling services be provided for those care leavers who do not wish to access services provided by a former care agency.

Recommendation 18

That the Commonwealth request the Council of Australian Governments to review all Federal and State and Territory Freedom of Information regimes to ensure that they do not hinder access by care leavers to information about their childhoods and families

¹ Commonwealth of Australia, Community Affairs Reference Committee, [Forgotten Australians: A report on Australians who experienced institutional or out of home care as children](#). August 2004

PRINCIPLES FOR
ACCESS TO RECORDS BY
FORGOTTEN
AUSTRALIANS AND
FORMER CHILD
MIGRANTS

JUNE 2015

Preamble

These Principles create a framework for access to records for Forgotten Australians and Former Child Migrants.² The Principles are further elaborated into Best Practice Guidelines which accompany the Principles. The Principles aim to maximise the amount of information available to Forgotten Australians and Former Child Migrants and to create greater consistency in conditions under which the information is made available.

The Principles are applicable to organisations that are Records Holders and those that provide services supporting access to records. They create an enabling framework for access to records of Forgotten Australians and Former Child Migrants.

Subject to agreement from the relevant authorities of the States and Territories, these Principles and accompanying Best Practice Guidelines are intended to enable Records Holders to use the discretion available to them in the legislative environment, to implement the intent of the Australian Government's Forgotten Australians recommendations to enable access to this group of Australians who, through no fault of their own, experienced institutional or out-of-home care in the twentieth century.

The Principles and accompanying Best Practice Guidelines are aspirational. They do not always reflect current practice, but they act as clear statements of intent.

The Principles aim to establish a common understanding of what is permitted and intended for access to records by Forgotten Australians and Former Child Migrants. Establishing these Principles will enable more consistent policies and practices for access to personal records of Forgotten Australians and Former Child Migrants, across Australia.

It is acknowledged that it may not be practical or appropriate to implement the Principles in all cases. However, it is desirable, wherever possible, for publicly funded and non-profit organisations to aspire to providing as broad and complete access as possible to the records they hold or are responsible for.

The Principles are challenging for Records Holders, and will require endorsement or adoption by each State and Territory jurisdiction, and private Records Holders, where applicable, before they become community practice.

² Further definitions of the Forgotten Australian and Former Child Migrant communities are included in the Best Practice Guidelines. The phrase 'Care Leaver' is used in these Principles and Guidelines to refer to both Forgotten Australians and Former Child Migrants, in the understanding that this terminology is disputed.

Access Principles

These principles apply regardless of the location of the records. That is, the responsibility for ensuring the same access rules applies to records relating to Forgotten Australians and Former Child Migrants regardless of the physical location or custodianship of these records.

Principle 1: Maximum provision of access to records

Records Holders will enable maximum information to be available to Forgotten Australians and Former Child Migrants about themselves, their family, identity and connection; circumstances surrounding placement in care; and details of time in care.

Principle 2: All information about themselves, and core identifying information about close family

Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at minimum, include name, community of origin and date of birth where these are available.

Principle 3: Copies of records

Every person, upon proof of identity, has a right to receive a copy of all records found relating to themselves.

Principle 4: No Fees or charges for access to records containing personal information

No application or copying fees or any other charge are to be imposed.

Principle 5: Time limits to respond to requests for records

Every Record Holder will establish timeframes, consistent with their jurisdictional practice for release of information, within which applicants, once any access conditions are met, will receive all relevant records.

Principle 6: Ability to seek review or appeal a decision

Records Holders will establish a review or appeal mechanism which can have another party, not part of the initial assessment, review decisions on what information is made available or withheld, and address any other grievance raised by an applicant, free of charge.

Principle 7: Records will be provided in context and applicants alerted to possible causes of distress

Every applicant will be advised of the nature and context of the information provided and the possibility of distress that may result from accessing records about them.

Principle 8: Right to know about support and assistance services

Every applicant has a right to receive information, both orally and in writing, at the time of application about appropriate support and assistance services available to them and be encouraged to use supported access services.

Principle 9: Care Leavers may annotate records to tell their story and express their wishes to limit access to records

Forgotten Australians and Former Child Migrants may annotate or add to their records to correct, amend and tell their story in relation to the events documented in their records. In addition, they may alert Records Holders that they do not wish records about their time in care to be accessed by family members, while they are still alive. The mechanisms for recording the wishes shall be stored in such a way as to be obvious whenever the records are accessed, and persistently linked to the record/s. The Records Holders will respect such wishes, but may, in exceptional circumstances and subject to demonstrated need (assessed using formally agreed criteria), determine that access is permitted by family members.

Principle 10: Applicants entitled to use the Find and Connect Services and their other support services to assist

Forgotten Australians and Former Child Migrants are entitled to have their Find and Connect Service or other support service, e.g. service provider, counsellor or case manager, involved in the process of locating and releasing records.

Principle 11: Records Holders will work collaboratively to enhance access

Records Holders will work collaboratively to identify and address policy and procedural barriers that adversely impact upon a person's access to records as identified in Principle 1.

Principle 12: Government state or territory records holders are the repository of last resort

Where there is no ongoing legal organisation inheriting responsibilities, assets and/or staff of an organisation that undertook some form of out-of-home care, the state or territory department responsible for children's services will become the repository of last resort for records relating to children in care.

**BEST PRACTICE
GUIDELINES FOR
ACCESS TO RECORDS BY
FORGOTTEN
AUSTRALIANS AND
FORMER CHILD
MIGRANTS**

JUNE 2015

Introduction

These **Best Practice Guidelines for Access to Records of Forgotten Australians and Former Child Migrants** (subsequently **Guidelines**), are intended for use by those who are responsible for, all or any of the following:

- Managing records relating to Forgotten Australians and Former Child Migrants,
- Finding and locating records when requested,
- Processing records for access, and/or
- Presenting records to an individual through supported access or other means.

The **Guidelines** have been developed in conjunction with Records Holders and representatives of the Forgotten Australian and Former Child Migrant communities.

There is no assumption that all Records Holders will be able to comply with the provisions outlined. Some have well developed practices, and these **Guidelines** will represent little challenge to such Records Holders. Others struggle with resourcing, backlogs and inherited practices relating to records that may make compliance with these **Guidelines** a challenge. These **Guidelines** are a statement of 'best practice' at this time, and are voluntary and aspirational. Tailored versions of the **Guidelines**, reflecting what is achievable within a particular Record Holder's environment, may be made mandatory by the jurisdiction/organisation.

The **Guidelines** support a proactive approach to releasing records to enable maximum access to those who are the 'subject' of the records. This approach recommends a liberal approach to access, not relying solely on the provisions of the various legislative instruments that govern access (particularly to government records) in each jurisdiction. This approach echoes the findings of multiple enquiries across Australian jurisdictions, identifying Forgotten Australians and Former Child Migrants, who, through no fault of their own, became part of a system of institutionalisation. Records held by the various organisations may fill gaps in knowledge, verify memory, support identity and connection to family. As such, these groups require particular attention by Records Holders and a sympathetic approach to enabling access.

The **Guidelines** have been developed to promote consistency in providing access to records across the practices of all Records Holders and those who provide access to records. Respecting that each jurisdiction will have its own general rules for access to records, these **Guidelines** aim to promote a shared base line from which each Record Holder and service provider of access, can assess their own practice. From there, any changes needed to reflect best practices can be introduced to change individual practice as is practical and achievable.

These **Guidelines** are grounded in the reality that social practices, priorities and shared understandings change over time. The Forgotten Australian and Former Child Migrant communities have ‘fallen through the gap’ in relation to access to records, and are not eligible under the more liberal rules relating to access that apply through the current generation of child welfare legislation applicable in most jurisdictions. The practices of the past and the results of the past actions are unchangeable, but it is how we respond to social challenges such as treatment of children in the past, that we can address in a small way through access to records of the past.

**SECTION 1:
IDENTIFYING THE CARE
LEAVER COMMUNITY,
NEEDS AND
EXPECTATIONS**

1.1 Who are Forgotten Australians and Former Child Migrants?

Forgotten Australians are the estimated 500,000 children who experienced care in institutions or outside a home setting in Australia during the 20th century. They are survivors of the institutional care system, which was the standard form of out-of-home care in Australia for most of the 20th Century.³

The term Forgotten Australians was first used by the Community Affairs References Committee report, 'Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children' in 2004, relates mainly to those children who were in out-of-home care in the twentieth century. Out-of-home care varies in its form depending on the time period. It includes large institutional settings, such as orphanages, smaller residential homes run by a variety of organisations on behalf of the state, foster care or other out-of-home arrangements.

Former Child Migrants is an umbrella term to embrace those affected by child migration schemes to Australia, largely involving children from the United Kingdom, but also including some from Malta. These schemes involved agreements between governments where the Australian Government was the legislated guardian of the children but responsibility for the care of the children was delegated to State Governments and then often further delegated to receiving agencies. Some of these schemes continued into the 1970s.⁴

Collectively, both Forgotten Australians and Former Child Migrants are referred to as Care Leavers in these **Guidelines**.

In summary, the following definitions are applied:

Former Child Migrant: An unaccompanied child under the age of 16 who was brought out to Australia from the UK and/or Malta under various schemes and who had no family ties or contacts in Australia.

Forgotten Australian: Following the Senate report with that title, a term widely applied to and by Australian-born Care Leavers.

Care Leaver: Any person who was in institutional care or other form of out-of-home 'care', including foster 'care', as a child or youth, or both, at some time during the 20th century.

³ [Alliance for Forgotten Australians](#): **Forgotten Australians: Supporting survivors of childhood institutional care in Australia** Alliance for Forgotten Australians 2008. Fourth edition, July 2014

⁴ Commonwealth of Australia, Senate Standing Committee on Community Affairs, **Lost Innocents: Righting the Record – Report on child migration**, 2001

1.2 What makes access to records so important to Care Leavers?

The past three decades have seen a variety of reports into the care and treatment of children in out-of-home care. These have ranged across all States and Territories. Many of these reports have identified access to records as being of primary importance to Care Leavers.⁵

The experience of individual Care Leavers varies considerably, but there are a significant number of Care Leavers who suffered considerably in their time in care. At minimum those placed in care are likely to have lost contact with family and their place of origin. This loss has a major impact on a person's identity and sense of self. In addition, many suffered humiliation and sometimes much more serious abuse. Often people were denied access to educational opportunity and stigmatised. These experiences result in people who are likely to suffer long term traumatisation brought about by these events.

Care Leavers are often seeking answers to questions including:

- Who placed me in care and why?
- Who were my parents?
- Do I have any brothers and sisters?
- Did anyone visit me?
- Who arranged for my foster parents to care for me?
- Was the child welfare department involved?
- How were decisions made to keep me in care?
- Why didn't other members of my family (uncles, aunts, grandparents) look out for me?⁶

Information is also sought about the health of their parents as worries about possibly inherited health problems arise.⁷

Individuals may want to validate or verify their memories of a specific event.

Where redress is an option, people may seek records to support applications.

As public discussion and awareness of the suffering of children in care become more available, more people are seeking access to records about themselves.

⁵ See Royal Commission into Institutional Responses to Child Sexual Abuse: [Inquiries and Reports Relevant to the Royal Commission into Institutional Responses to Child Sexual Abuse](#), 2013

and more recently, Swain, S. 2014. *History of inquiries reviewing institutions providing care for children. Royal Commission into Institutional Responses to Child Sexual Abuse*. Sydney.

⁶ *Forgotten Australians*, Chapter 9, Identity and Records, section 9.6, p 254

⁷ *Forgotten Australians*, Chapter 9, Identity and Records, section 9.8, p255

The availability of support services to facilitate access to records, and networks of people creating communities of support can empower individuals to seek their records. Such support services include the Find and Connect Services, or support organisations such as the Alliance for Forgotten Australians or CLAN.

See further:

[1.3 Care Leavers Expectations of Records](#)

[1.4 Impact of records on Care Leavers](#)

[Section 3 The mechanics of processing applications for access](#)

1.3 Care Leavers expectations of records

Many Care Leavers have high expectations of what the records will reveal. In many cases they will be disappointed.

The expectation that there is something that is 'my file' is often not the reality of how records were maintained by homes or governments. The reality of what can be produced is often constructed for the purposes of presenting the records that still exist.

Expectations can be raised that answers to particular questions will be available, only to find mundane, sometimes erroneous statements, possibly judgemental and potentially damaging content.

Case: Vlad Selakovic⁸

I needed to ask questions about myself. I needed answers! I needed answers like, who am I? What am I? Where am I going in life? What is happening to me? Why am I in the situation in life, right now, that I am? Those pages didn't contain those things. All they did was tell me: where I was, what had happened to me in certain periods of time, what I'd done.

For Record Holders, the reality is that Care Leavers will often expect more than is there. Sometimes records have been lost, or cannot be found, or have been destroyed by accident or according to an approved destruction authority current at the time. Care Leavers sometimes find these explanations unconvincing.

Case: Mimi⁹

Mimi has applied for access to her records a number of times. On each occasion the Department has replied that the records relating to her time in care were amongst those documented as being destroyed in the 1970s. Mimi does not accept that, and insists that the records are still in existence: 'They wouldn't have destroyed the file - that documents my life'.

⁸ Vlad Selakovic [Transcript of Presentation given at 'Archiving: moving forward as a community' workshop](#), 15 April 2010

⁹ [Please note: with the exception of Vlad Selakovic's case where published sources are cited, all case studies citing individuals are fictional and resemblance to circumstances experienced by a real individual is co-incidental and unintentional.](#)

Mimi, therefore, sees the refusal of the Department is a cover-up continuing the state based patterns of victimisation.

Both the Records Holder and Mimi must accept that they are at a stand-off in these circumstances. Mimi will continue to ask for her records. The Department must continue to seek records, and respond to each and every request courteously to accepted standards.

See further:

[Section 4: Providing Information to Care Leavers](#)

1.4 Impact of records on Care Leavers

These records can change lives. For many, the records are so tightly bound up with questions of identity and self, that gaining knowledge of the circumstances and events can provoke a range of complex emotions, including reopening of old wounds, and re-traumatisation. Life-long questions can be answered and ghosts laid to rest in the best possible outcomes. Not all outcomes of access to records can be assumed to be positive.

Records change lives

Joe was a twin. He and his twin brother were placed into care at the time of the death of his mother. Subsequently Joe's brother was reunited with his father and taken out of care to live with his father. For the whole of his life, Joe has been haunted by questions such as: Why him, not me? Why was I left in care?

Records relating to Joe's time in care revealed that his father never stopped asking for Joe to be released to his care along with his twin brother. Joe's father wrote regular letters over the whole of Joe's childhood; he sought recommendations from community figures including a member of parliament to support his application.

The decision-making revealed in the records showed the Department believed a single father could only cope with one child. Joe had been noted as 'acting up' in the file, thus his twin was considered easier for a single parent to cope with.

These revelations changed the way Joe thought about his father. The evidence that his father never stopped caring for him and trying to reunite the family, was life altering for Joe.

Records cause distress

A woman requested a copy of her ward file. According to the file, the woman was removed from her parents as a baby and placed in one foster home in the country where she remained until she was 18. She was still living in the same country town. There had been regular checks on how she was going from the child welfare department and all the reports said it was a successful placement and the child was happy and well cared for. When the client read the file, she was very distressed and said the file was totally inaccurate. She said that she had

experienced continued physical and emotional abuse from the foster mother the entire time.

Vlad Selakovic's experience¹⁰

... Then Leonie rang up and said, 'I've got your file'. *That* created certain issues in my life that I wasn't quite sure of, I was so indecisive and ... scared. And I mean scared. Because, there it is, there's my childhood. In pages. You know what it's like to read a book, your favourite book and you're so engrossed in this book that you can't put it down? This is the complete opposite. It was so shocking and so demoralizing and so dehumanizing to me and to each and every one of us that must go through this. And it really was dehumanizing. Because it's just nothing. It doesn't tell about *me*. It just tells you about the person, who was a number, and one of many, in a group. And they don't individualise you at all ... there are certain things in there, saying, about myself, how I'm hungry, or you know, cunning, conniving, spirited, all these sorts of things – I'm an 8 year old, 10 year old boy. I mean, someone please tell me how I got to that point? I don't know. Well, I do – we had to survive.

Records Holders must be exceptionally sensitive to the potential impact of the records on the person seeking access. Supported release, a process whereby a professional (usually a social worker) trained in trauma and client interaction, is available to assist a person during the reading of their file and using such services should be strongly encouraged.

It is important to appreciate that the Care Leaver's use of a file may not be the same as the expectation of Records Holders. Because the experience can be such a traumatic one, Care Leavers have noted different responses.

Case: different experiences

Vlad Selakovic tells of carrying his file around for months before feeling sufficiently strong to read it.

Belinda conducted a ceremony to burn her copies of the files as a symbolic gesture.

See further:

[1.3 Care Leaver expectations of records](#)

[Section 5: Providing access services to Care Leavers](#)

¹⁰ Vlad Selakovic, See footnote 8

1.5 Documenting the Care Leaver's story

The records that document time in care may represent a very different view of reality to that perceived and experienced by the Care Leaver themselves. Recordkeeping of the past was a bureaucratic process, designed to serve the needs of the organisation or institution, not the people documented in the records.

The Care Leaver should be encouraged to annotate or add to the record, by creating their own account of their time in care, to include with the organisational record. This enables Care Leavers to present their view of the events documented in the organisational file. The annotation/addition will be located with the organisational record/s and always be presented with the organisational record when future access is allowed.

Such annotation of /addition to personal records is allowed under the legislative Privacy and Freedom of Information/Right to Information regimes in many states and territories.

See further:

[2.5 Annotating records](#)

[4.9 What rights do Care Leavers have over the records?](#)

**SECTION 2:
WHAT INFORMATION
CAN I GIVE TO CARE
LEAVERS?**

2.1 Maximum access

The Principles for Access to Records by Forgotten Australians and Former Child Migrants establishes two basic principles which should guide all Records Holders in determining what records Care Leavers should have access to.

These are:

Principle 1: Maximum provision of access to records

Records Holders will enable maximum information to be available to Forgotten Australians and Former Child Migrants about themselves, their family, identity and connection; circumstances surrounding placement in care; and details of time in care.

Principle 2: All information about themselves, and core identifying information about close family

Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at minimum, include name, community of origin and date of birth where these are available.

For these communities, who through no fault of their own, were removed from family, a liberal interpretation of the current rules is proposed. This is allowed under protocols such as ‘administrative release’ or ‘informal release’ in various legislative environments. There are precedents for a more liberal access regime outside the legislative rules according to agreement. The *Forgotten Australians* Senate Report in particular recommended legislative revision to empower Care Leavers to get greater than normal access. In particular this form of liberalised access has been applied to members of the Stolen Generation in the past. In some jurisdictions these liberal rules are still available to members of the Stolen Generation, creating an iniquitous situation for Forgotten Australians and Former Child Migrants who suffered similar dislocation from family and community.

These principles are intended to guide Records Holders best practice for these communities, regardless of the specific legislative provisions in place in each state and territory jurisdiction. All legislative environments have an element of discretion. Much freer access to records of their time in care operates within this discretionary area.

Each jurisdiction should determine what mechanisms should be adopted within their jurisdiction to give effect to these principles.

2.2 Third party privacy

The intention of these Guidelines is to provide as much factual information about family to Forgotten Australians and Former Child Migrants as possible. Having been deprived of family connections through no fault of their own, and by practices of the past which are no longer applied to current children in care, the details in records may offer the only information available to them about identity and family of origin.

The findings of multiple inquiries into problems that Care Leavers have in accessing records identify the application of the third party privacy rule as the major frustration to Care Leavers. The irony is that the more an individual already knows, through piecing information from birth certificates, newspapers or other publicly available sources, enabling them to name family members, the greater the information they are deemed able to see without violation of the third party rules.

The major reason to exercise reasonable care in providing access to records is to protect the privacy of third parties. The Freedom of Information/Right to Information and Privacy legislation of various states and territories establish quite clearly that third party privacy should be respected. The mechanisms in place provide for consultation of a third party as to whether the information should be released. Consultation is difficult, costly and time consuming to apply.

These Guidelines propose a different view of what constitutes a third party. Here, it is proposed, that personal information may belong to more than one person simultaneously: for example, your mother's name and family identification is your mother's personal information, but it is equally your personal information. Using that logic, a great deal of information about family can quite legitimately be released to a Care Leaver.

For the purposes of these Guidelines, family is taken to mean close family: parents, grandparents, siblings and half siblings, aunts, uncles and first cousins. A person growing up within a family, will generally know the factual details of their close family. These details form part of the personal information of an individual.

Factual information about relatives should be left in records released to Care Leavers. This includes information concerning a deceased individual.

Not all information may be released by this interpretation. Information which may potentially cause distress may be withheld.

This section has identified 'sensitive' information which may potentially cause distress to the third party and recommends that this information should be managed with care. This term is not intended to replace or interfere with the legislative interpretation of the word 'sensitive' which has specific meaning in a number of jurisdictions. Distress means that the third party is reasonably likely to suffer hurt, damage or loss.

Information which may potentially cause distress to the third party may be:

- psychiatric evaluations of family members
- beliefs in relation to religion
- political affiliations
- personal habits
- information about other family members divulged by one person.

Determining what information may potentially cause distress is always subject to interpretation. Where individual cases raise issues that are not clear to the person making the assessment of what information to withhold, Records Holders should institute a mechanism of peer review and discussion to assist an individual make decisions, while always being guided by the principle that maximum information should be released. In assessing whether information may potentially cause distress, and therefore should be withheld, Records Holders should constantly remind themselves that one of the Care Leavers primary questions in seeking information is to understand why they were placed in care.

The phrasing of the request for access can determine whether the application is dealt with as a request for personal information, or whether seeking more general information (see further section 4.1), and therefore under which set of legislative rules the request is processed. Wherever possible, the most generous interpretation of the request should be assumed. Information about time in care is deeply personal even though it may not be deemed immediately obvious personal information. As much information as possible, consistent with the jurisdictional rules, should be released to the Care Leaver. Where a request has been phrased to limit the information provided to personal information, guidance and assistance should be provided to assist in either rephrasing the request to enable more information to be released, or to assist an applicant in making a subsequent request for information that may not be specifically categorised as personal information.

The following set of rules should guide practice¹¹:

Information on File Concerning:	Comment (Leave/Delete)
Parents and Grandparents	
Names and addresses	<p>LEAVE:</p> <p>In general a person would know who their grandparents are. Additionally, this information is necessary for family reunification and to establish or confirm identity and belonging.</p>
Information concerning the parents/grandparents name, that is – a) not on a birth certificate or in any other record other than the applicant’s file; or b) inconsistent with the Care Leaver’s knowledge	<p>LEAVE:</p> <p>It is possible the only information confirming the parents or grandparents name and date of birth.</p>
Letters written by the department, home, service or other organisations to the parents or grandparents or vice versa	<p>LEAVE.</p>
Personal particulars relating to parents or grandparents e.g. education, domestic circumstances, activities that they are engaged in	<p>LEAVE:</p> <p>Unless the information is assessed as reasonably likely to cause distress, that is - the parent or grandparent is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the</p>

¹¹ This table is slightly modified from that prepared by Mimi Morizzi, ‘[Guide to the Access and Issue of "Forgotten Australians" Client Records \(records pre 1989\)](#)’ Lentara UnitingCare, UnitingCare Victoria and Tasmania, 2013

Information on File Concerning:	Comment (Leave/Delete)
etc.	information being issued.
Information about a parent or grandparent's personal, social or sexual habits or actions and disclosures about such matters made by the individual etc.	<p>DELETE:</p> <p>If it is assessed as reasonably likely to cause distress, that is - a parent or grandparent is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued.</p>
Information concerning visits to the child or the child visiting the parent or grandparent	<p>LEAVE:</p> <p>The purpose of a visit is assumed to be maintaining contact with the child.</p>
All information concerning a deceased parent or grandparent	LEAVE.
Siblings, half siblings	
Names and dates of birth of siblings	<p>LEAVE:</p> <p>In general a person would know the names of all their siblings.</p> <p>This information is necessary for family reunification and to establish or confirm identity and belonging.</p>
Address and contact details	<p>LEAVE:</p> <p>In general, a person would know the address and contact details of their siblings.</p> <p>This information is necessary for family reunification and to establish or confirm identity and belonging.</p> <p>DELETE:</p> <p>If there has been previous contact with the sibling and the sibling has asked that this information</p>

Information on File Concerning:	Comment (Leave/Delete)
	remains private. If appropriate, check again to establish if the sibling still wants their details kept private.
Personal particulars relating to siblings e.g. education, domestic circumstances, activities that they are engaged in etc.	LEAVE: In general, a person would know personal particulars of their siblings.
Information about a sibling's personal, social or sexual habits or actions and disclosures about such matters made by the individual etc.	DELETE: If it is assessed as reasonably likely to cause distress, that is - a sibling is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued.
References to siblings and the applicant in the same context eg John and Betty (siblings) went to camp	LEAVE: Unless it is assessed that release of information is reasonably likely to cause distress, that is – that the sibling is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being released.
Information concerning visits to the child or the child visiting the sibling	LEAVE: This information may be relevant for family reunification and to establish or confirm identity and belonging.
All information concerning a deceased sibling	LEAVE.

Relatives, including aunts, uncles, first cousins

Names of relatives	<p>LEAVE:</p> <p>In general a person would know the names of all their relatives.</p>
Address and contact details	<p>LEAVE:</p> <p>In general, a person would know the address and contact details of their relatives.</p>
Letters written by the department, home, service or other organisations to the relatives or vice versa	<p>LEAVE:</p> <p>Unless it is assessed that release of information is reasonably likely to cause distress, that is – that the relative is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being released.</p>
Personal particulars relating to relatives eg education, domestic circumstances, activities that they are engaged in etc.	<p>DELETE:</p> <p>Most family members will not necessarily know these types of details about relatives and release of such information is reasonably likely to cause distress.</p>
Information about a relative's personal, social or sexual habits or actions and disclosures about such matters made by the individual etc.	<p>DELETE:</p> <p>Most family members will not necessarily know these types of details about relatives and release of such information is reasonably likely to cause distress.</p>
Information concerning visits to the child or the child visiting the relative	<p>LEAVE:</p> <p>Most people visiting the child would have done so for the primary purpose of maintaining contact with the child. This information is necessary for family reunification and to establish or confirm identity and belonging.</p>

External Carers (e.g. Holiday Hosts)	
Names of carers	<p>LEAVE:</p> <p>In general a person would know the names of all their carer.</p>
Address and contact details of carer	<p>DELETE:</p> <p>But offer to facilitate a process of contacting the carer on the client's behalf should the client seek contact with the carer.</p>
Letters written by the department, home, service or other organisations to the carer or vice versa	<p>LEAVE :</p> <p>Unless it is reasonably likely that any of the following apply:</p> <ul style="list-style-type: none"> a) That the release of information is reasonably likely to cause the carer distress, that is, that the carer is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued. b) The information does not directly relate to the Care Leaver. <p>DELETE:</p> <p>Address and contact details of carers.</p>
Internal Carers	
Names of carers and staff	<p>LEAVE:</p> <p>In general a person would know the names of all their carer (or staff).</p>
Address and contact details of carers and staff	<p>DELETE:</p> <p>But offer to facilitate a process of contacting the carer or staff on the client's behalf should the client seek contact with the carer or staff.</p>

<p>Letters written by the department, home, service or other organisations to the carer/staff or vice versa</p>	<p>LEAVE:</p> <p>Unless it is reasonably likely that any of the following apply:</p> <ul style="list-style-type: none"> a) That the release of information is reasonably likely to cause the carer distress, that is, that the carer is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued. b) The information does not directly relate to the Care Leaver. <p>DELETE:</p> <p>Address and contact details of carers/staff.</p>
<p>Other non-related children in the home</p>	
<p>Names of other children in the home/care situation</p>	<p>LEAVE:</p> <p>In general, a person would know the names of other children they grew up with. Additionally, names, places and dates assist a client to remember facts about their time in care.</p> <p>Note: delete family names of other children – some Care Leavers have expressed concern that their family name is disclosed due to the potential of information later appearing in electronic social media. Consider that not all Care Leavers have disclosed that they were in care. Deleting family names is not a foolproof method of protecting privacy as, in certain circumstances (e.g. an unusual name, a small community) it may be quite easy to re-identify an individual.</p>

<p>Contact details of other children in the home/care situation</p>	<p>DELETE:</p> <p>But offer to facilitate a process of contacting the other Care Leaver on the clients behalf should the client seek contact with the other Care Leaver.</p>
<p>References to other children and the applicant in the same context e.g. David (other child) and Mark (the applicant) played on the swings</p>	<p>LEAVE:</p> <p>Unless the information is reasonably likely to cause the other Care Leaver distress, that is – that the other Care Leaver is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued.</p>
<p>Any other personal particulars of other children with the exception of photos</p>	<p>DELETE:</p> <p>This information is not specific to the Care Leaver and is not required to prove identity or validate memory. Normal third party privacy rules should be applied to this information.</p>
<p>Photo(s) that include other children, staff, other people</p>	<p>LEAVE:</p> <p>If one of the children in the photo(s) is the person making the request. If the photo is subject to copyright indicate that the photo is copyright of the department/home/service or photographer and subject to the Copyright Act 1968.</p> <p>Photos of people are not to be provided if the client is not in the photo unless those photos have been previously published, or the photos are of group events e.g. special functions, celebrations etc., or where the photos are already in the public domain available for public use.</p>

2.3 Redaction

Redaction is the process of removing information from view, usually by blocking out the information on a copy and recopying that changed document.

Redaction is undertaken to protect information deemed not relevant to the query being processed in the application for access. Often it is undertaken to protect third party privacy.

Under practices used to administer Freedom of Information/Right to Information requests, Records Holders are often required to inform those receiving the records why the information was redacted (or blocked out from view). Usually this is done by referencing the specific section of the legislation that was used. This information is usually provided in a covering letter to the Care Leaver which is provided with the records themselves, either to them directly or through a support service.

Many report that these statements of reasons for redaction, which usually cite the section of the relevant legislation, are daunting and expressed in language that is difficult, and tell them nothing.

Best practice would be to annotate the record giving as much information on what is redacted without releasing the information:

- For example: if a sentence is redacted which says Bill (the applicant's brother) was sent to work for a dairy farmer for two years and is angry that his full wages have never been paid. This information relates to a person not a Care Leaver, but to a close relative. Using the proposed third party rules, release of this information would be appropriate. It is hardly sensitive information. But if it were redacted, the explanation could read: information relating to your brothers employment removed under s (xxx – the relevant legislative provision).

Some Records Holders have adopted practices of removing a second name, leaving a first name, in the belief that this will de-identify a person. This is an acceptable practice, as often the Care Leaver will remember individuals from their past, but Records Holders should understand that this is not really adequate protection of a third person's privacy if the matter is truly needing protection. In many instances it doesn't take much 'detective' work to determine a person's identity. In most cases this will not be a big problem, but Records Holders should be aware of the likelihood of identifying individuals from their name and the circumstances in the records.

Example of informing a Care Leaver about what is redacted¹²

Under the FOI Act some information was not released to you. This is for the following reasons:

Personal Privacy - Section 33(1)

This section of the Act prevents the unreasonable disclosure of information relating to the personal affairs of another person.

- The seven pages part released to you included:
- Two pages listed the surname of your alleged co-offender.
- Four pages listed the surname of other trainee's at the home.
- One page listed the name of another ward not related to you.

2.4 Providing copies

Copies of all personal information records (subject to redactions where applied) should be made available at no cost to the Care Leaver.

Where the records contain items that should belong to the individual Care Leaver, the original of these documents should be provided, and a copy retained by the Record Holders. This type of record includes:

- Original or extracts of birth certificates;
- Certificates of achievement;
- School reports;
- Correspondence addressed to the Care Leaver from relatives during their time in care;
- Photographs.

Copies of these original records should be made. The originals should be returned to the Care Leaver. The copies should be placed on the relevant Record Holder's record. The copy placed in the records should be annotated with the fact that the originals were returned to the Care Leaver and the date.

2.4.1 How to provide copies

Copies should be provided in paper format. On request, a Care Leaver may obtain the copies in electronic form, either on a compact disc or USB device.

Because these are highly personal records, if they are sent electronically, care should be taken to use encryption and to make sure that the Care Leaver knows how to access the files.

Copies should be placed in chronological order with the earliest at the top. Where records have come from different sources, such as from each of a Ward file, an

¹² Example from Department of Human Services, Victoria

admissions register or a punishment book, a separator should be inserted with the identification of the source clearly indicated.

A summary of the contents should be prepared to guide the Care Leaver on how to read the records. This should be packaged independently from the copies of the records themselves. Do not attempt to make a story of the copies – Care Leavers generally do not wish to have an interpretation provided, but the records themselves. Explanation of the people in the records and their roles may be of assistance.

Supported access is recommended to assist Care Leavers understand the context and the contents of the records released. However this is not a mandatory requirement. Where the Care Leaver requests, the files can be sent by mail. Records Holders should take care not to send these files when the Care Leaver may be particularly vulnerable to the time of year: for example Mother's Day, Father's Day, Christmas Day, and birthdays etc.

Packaging of records should also be considered.

Vlad's experience¹³

It's not very inviting is it? Your life, put in a post bag ... they could have got, direct mail or something... 'there's your childhood, wrapped up in a little envelope'!

'Vlad expressed that he felt hurt to receive his records in a standard issue Postpak, as well as by the physical presentation of the documents themselves – in a grey plastic folder, containing pages of copies of documents secured by a bull-dog clip'

2.4.2 Alerts to potentially distressing information

Where material of potentially distressing content is included, an alert to the support service or to the Care Leaver where the records are released directly, should be included:

Case Study: Alert to potentially distressing information in a record

A man requested his file. He believes his mother passed away but knows no real details of her and knows nothing about his father. He was placed in care at 6 weeks of age. When you receive the file, it contains information that his mother was working as a prostitute and his father was a visiting sailor. The file describes the baby as 'mentally retarded', 'an ugly baby', and unsuitable for adoption as he was 'deformed looking'.

¹³ Vlad Selakovic, see footnote 8 and O'Neill, C, Selakovic, V, Tropea, R 'Access to records for people who were in out-of-home care: moving beyond 'third dimension' archival practice' *Archives and Manuscripts* Vol 40, No 1, March 2012, p32

See further:

[Section 5: Providing access services](#)

[5.1 Providing access services to Care Leavers](#)

2.5 Annotating records

Records held by organisations were made for the purposes of the organisation. The interpretation of events held in an organisation's records may be quite different to those of a Care Leaver who experienced the out-of-home care. In these circumstances, the Care Leaver should be offered the opportunity to incorporate their own story into the records held by the Record Holder. The Care Leaver's account should become part of the records of the organisation and always be made available with the original organisational records.

Annotating or adding to the organisation's records with their own account may not appeal to individual Care Leavers, and annotation is simply one option available to tell individual stories to counter-balance the organisation's view.

Where a Care Leaver chooses to include an annotation or addition into the organisation's records, the words and expression of the annotation or addition provided by the Care Leaver should be incorporated as provided, with no organisational editing, or changes, made by the Records Holder. The Records Holder may offer assistance to a Care Leaver in preparing such an annotation or addition, if this is requested by the Care Leaver.

The wishes of the Care Leaver should be respected at all times.

Where a dispute or disagreement arises, the review process, detailed in Section 4.5 should be made available and the Care Leaver informed of the availability of the review process.

Further rights are available to indicate the Care Leaver's wishes in relation to limitations on availability of the records (see section 4.9).

The Privacy/Freedom of Information or Right to Information legislation of most states and territories outlines a process of annotation for personal information. Guidelines for Records Holders may be available from the respective responsible agency administering such legislation, however the process outlined in these Guidelines is not restricted to the rules of specific legislation, but rather operates in the discretionary area, and should be interpreted to provide greatest comfort and assistance to the individual Care Leaver.

See further:

[4.5 Mechanisms for review, complaint and compliments](#)

[4.9 What rights do Care Leavers have over the records?](#)

2.6 Providing supporting material

A range of fact sheets should be made available to Care Leavers. These should include:

- Summary of the organisation and the records (see [4.7 Explaining the context to Care Leavers](#))
- List of abbreviations commonly used in the records (see [4.6.2 Understand the records](#))
- Rights available to them for review of decisions (see [4.5 Mechanisms for review, complaint and compliments](#))
- Explanatory records of any redaction (see [2.3 Redaction](#))
- Rights to annotate or add to records and to express wishes about access restrictions for their records (see [4.9 What rights do Care Leavers have over the records](#))

Access to records is best provided through a supported access process but this cannot be made mandatory. Some Care Leavers find the imposition of limitations on their ability to look at records privately inappropriate. They may see the support service as desiring to interpret their lives, representing a further instance of institutional interference in their lives. Explanations outlining the reasons for supported access should be given and the use of the services strongly encouraged wherever it is available.

Regardless of the form of access (whether supported access, or provision of the records by post), access to records should be followed by contact with the Care Leaver to discuss the records further and explain things that are not clear. Again, this is best done in person with a trained access provider, but can be done by phone. This should be scheduled for a month after providing access to the records and should be undertaken regardless of the location of the Care Leaver, including interstate or overseas.

See further:

[Section 5 Providing access services to Care Leavers](#)

2.7 Informing Care Leavers that further records may be available in time

Projects to index records of the past may be underway or planned. Records known to be unsorted and undocumented may be known to exist. If projects to make such records available are planned, Records Holders should tell Care Leavers of these projects and advise that more records may be available after further records processing work.

Best practice involves contacting those Care Leavers who have already submitted applications for records about any new material found as a result of processing work.

See further:

[4.6.3 Dealing with legacies](#)

**SECTION 3:
THE MECHANICS OF
PROCESSING
APPLICATIONS FOR
ACCESS**

3.1 Preliminary

Care Leavers are a potentially vulnerable group of people. Everyone is different, and many have been traumatised through their childhood experiences which may have a long term impact on self- esteem, behaviour and interpersonal style of interaction.

Those who provide services to Care Leavers must be sensitive to these issues and be proactive about supporting Care Leavers.

In particular, the following general basic approaches should be incorporated into providing records services:

- Plain English to be used in written and oral communication;
- Simple instructions;
- Treat everyone as a unique individual, not lumped together with others;
- Treat everyone with respect;
- Treat everyone equally;
- Do no harm;
- Do not patronise, or reduce the Care Leaver to the level of a child;
- Inform, be honest and do not make excuses for the past.

Be aware that as a result of their childhood experiences, literacy may be an ongoing problem for some Care Leavers. Expectations that providing something in writing will inform a Care Leaver may be incorrect. The need to talk individuals through processes and the results of enquiries may be higher. Similarly computer literacy skills may not be present, particularly in older Care Leavers. So communication strategies should be in place for access to information about services in multiple formats beyond the World Wide Web. Most Care Leavers are English speakers, so as opposed to other communities, access to information in languages other than English is a low priority.

3.2 How long should processing of requests for records take?

Each jurisdiction places rules on timeframes for responses to requests for records made under Freedom of Information/Right to Information laws. Generally the rule is between 30 and 45 days. A period of extension is usually available although the aim should be to meet the targets unless there are exceptional circumstances.

A liberal view of access should be taken for Care Leavers. This involves acting to process requests according to agreed practices which are empowered by 'administrative release', 'informal release' or 'proactive release'. Trade-offs may be made in these circumstances. 'It may take longer than the formal FOI process, but you will get more', may be an appropriate response. Most records created prior to 1989 do not have the problems of vast quantities of files which are common for more recent Care Leavers. This of course, is both a blessing and a

course. However, with the smaller amount of material created and extant, meeting a fixed time period for processing should be possible.

Generally speaking responding to a request for access with records available within a 30-45 day period should be the goal of Records Holders.

At a minimum, within the 30-45 day period:

- requests should be clarified if this is needed,
- an acknowledgement of request letter should be sent, and
- at least some records (if extant) should be made available.

If records are not made available within the best practice timeframe of 30-45 days, the Care Leaver should be able to access the appeal process established under the relevant jurisdiction's Freedom of Information/Right to Information legislation.

Case: Vlad¹⁴

And honestly, if you were to look at it - somebody put this together, and said, 'uh, look, hang on, that's right, this bloke ordered his file'. I think it was 45 days, a period of 45 days, and once I'd applied for the file, I had to have it within 45 or 60 days. Well, after two months, and it didn't turn up, I thought, you know, it didn't worry me. Into that next week, I thought, 'it might turn up today, it might not'. The anticipation, the anxiety that I went through, knowing it was due to be there at that particular time ... The next week, when it hadn't turned up, I'd completely forgotten about it, just pushed it aside and, like, knowing that I was never going to get it. I didn't want it.

3.3 What does processing a request mean?

Processing a request means locating the records. This can be a complex job, requiring extensive searching of multiple finding aids such as indexes. The records then need to be retrieved from storage. The records need to be checked to ensure that they relate to the enquirer.

A further process of checking for any redaction (or blocking out of information) needed to protect third person privacy needs to take place.

See further:

[2.1 Maximising access](#)

[2.2 Third party privacy](#)

[2.3 Redaction](#)

¹⁴ Vlad Selakovic, see footnote 8

3.4 Can we prioritise requests for access from Care Leavers?

Generally all requests for access to records should be treated equally. But there may be circumstances in which prioritisation of requests for records become necessary. When such prioritisation is determined to be necessary, requests for records for Care Leavers should use the following assessment criteria¹⁵:

Medical

- serious or terminal illness e.g. if the Care Leaver has cancer;
- serious illness requiring medical history of Care Leaver or family medical history;
- genetic condition;
- transmissible health condition;
- pregnancy;
- serious psychological/psychiatric illness requiring history of Care Leaver to develop an urgent therapeutic response.

Compassionate

- Care Leaver is 65 years or older;
- Care Leaver is homeless;
- Care Leaver is recently released from prison.

Service provision

- birth certificate or other document is required to enable applicant to access services e.g. to apply for a passport or to gain citizenship in another country.

Legal

- claim for compensation (where there is a time limit on lodging an application) requiring information contained in records about Care Leaver;
- court matter where records will be provided as evidence;
- management of an estate where records may:
 - assist in determining how assets will be distributed, or
 - enable an applicant to make a claim on an estate or trust.

If there are multiple parts to a Care Leaver's file, priority could be given to releasing the earliest parts within the nominated time frame. Care Leavers report that one of their major concerns is understanding the circumstance that led to them being placed in care, so the earliest files may assist in that process the most.

¹⁵ These criteria are based on those from the NSW Department of Human Services fact sheet '[Are you a former ward](#)'

See further:

[1.2 What makes access to records so important to Care Leavers?](#)

[4.1 Helping Care Leavers make requests](#)

3.5 Proof of identity

All Records Holders and support services involved in accessing records need to identify people who wish to access personal information. Respect for privacy is a guiding principle for access to personal information. These Guidelines recommend a liberal approach to releasing personal information, but care is still needed to ensure that the person seeking the information is entitled to the specific information available and/or provided.

Care Leavers often face greater problems in providing verification of identity than other people. The circumstances and on-going consequences of their childhood can cause ongoing problems to Care Leavers in proving their identity. A degree of flexibility is required. At the same time service providers must be satisfied that the person is who they say they are.

All Records Holders will have practices around verifying identity, but these are often different for different services. Generally it is accepted that enquiring into identity should be only undertaken to the extent necessary to establish the person's identity.¹⁶

The general principle is that 'agencies should only seek the minimum amount of personal information required to establish the person's identity'.¹⁷ The onus of proof should not be as high as for claiming benefits or addressing legal issues, that is, following the common 100 point system is not necessary.

The preferred form of identity verification is:

- Some form of photo identity with a signature (drivers licence, passport etc.); and
- Where a person's name has changed (for example, through marriage), some form of verification of that (for example, marriage certificate).

Where this is not available, alternatives should be considered:

- An entitlement for service card issued by the Australian Government or by the relevant state/territory: such as a Medicare card, Health Care Card, Seniors Card; and
- Where a person's name has changed (for example, through marriage) some form of verification of that change (for example, marriage certificate).

¹⁶ Office of the Australian Information Commissioner, [Guide to the Freedom of Information Act 1982](#), November 2011

Where no formal documentation has been issued, service providers should accept:

- A signed and dated declaration of identity: A statement verifying identity from a person holding a respected community position such as a Justice of the Peace, doctor, pharmacist, teacher, local councillor or lawyer. Such a person should be able to attest that they have known the person for more than 2 years under the identity being verified.

3.5.1 Verifying multiple times

Care Leavers report distress at being asked to continuously verify their identity, particularly when this involves needing to explain their life history to account for problems providing 'common' identity documents.

Requirements to identify a person are needed, but should be sympathetically handled. Care Leavers should only be required to verify their identity once.

Where a Care Leaver uses a support service to act on their behalf, the provider must verify a Care Leaver's identity. Records Holders, contacted by the support service should accept that the provider has conducted appropriate verification.

Once a Care Leaver has had their identity verified by a support service, the provider should issue a written statement to that effect and give it to the Care Leaver for further similar use.

3.5.2 Authorising a third party to act on an individual Care Leaver's behalf

Where a contracted and known support service, or any other third party, is submitting an application for access to records on behalf of a Care Leaver, the application must be accompanied by a dated and signed authorisation letter / signed form from the Care Leaver.

See further:

[3.6 Who can make a request](#)

3.6 Who can make a request?

Anyone can make a request for records under FOI/Right to Information legislation to government agencies. In general, personal information will not be released to third parties for an extended period of time (different times apply for different jurisdictions, but some are 100 years from birth before records relating to personal information of a third person can be released).

These Guidelines, however, apply to Forgotten Australians and Former Child Migrants.

There is growing acknowledgement that the experience of out-of-home care can have intergenerational impact. To address this, the applications of immediate descendants should be processed according to the practices outlined in this Guideline, not dealt with as simply genealogical enquiries.

For this reason, the Guidelines are proposed to enable liberalised access to two generations (that is children, grandchildren) of descendants of Care Leavers. The liberalised access would provide those eligible with the same rights of access provided in these Guidelines to the Care Leavers themselves. Two generations have been identified as covering those that may have personal memories of an individual during their own lifetime.

The following conditions should apply:

- The Care Leaver has applied no expressed wishes for limitation upon access (see section 4.9)
- Where the Care Leaver is alive, authorisation for children/grandchildren to access personal records must be supplied from the Care Leaver
- Such requests may be accorded a lower priority than applications from Care Leavers themselves.

Case study: Intergenerational impact¹⁸

...I'm sure I'm not the only first generation child enduring the continuing problems of ascertaining information on behalf of deceased parents. Please be mindful that there is a new generation of secondary effected people coming up and need assistance also.

See further:

[3.4 Can we prioritise requests from Care Leavers?](#)

[4.9 What rights do Care Leavers have over the records](#)

3.7 Costs for access to records by Care Leavers

Access to records of their time in care should be provided to Care Leavers (and descendants of Care Leavers as identified in [3.6 Who can make a request?](#)) without cost. This should apply regardless of the mechanism used to apply for the records – that is, whether the access is sought under Freedom of Information/Right to Information, or legislative provisions in child protection type legislation, or under these Guidelines.

Costs may apply to obtaining records from other agencies, for example, the offices that supply Births, Death or Marriage Certificates, or entries on the Electoral Roll. Such agencies are not covered by these Guidelines, although

¹⁸ Lost Innocents, p167

efforts are being made in States and Territories to advocate for free access by Care Leavers. Some support services may be able to pay fees applicable by Care Leavers. This differs from jurisdiction to jurisdiction.

**SECTION 4:
PROVIDING
INFORMATION TO
CARE LEAVERS**

4.1 Helping Care Leavers make requests

Records Holders should provide templates for requesting records of care. Such templates should:

- Explain that the request is to be processed under these Guidelines (thus making it clear what set of rules should be applied).
- Be in plain English.
- Explain options, for example a Care Leaver may receive a quicker interim response if they request information on why they went into care, or identification of family in the first instance, reserving their right to seek additional information held about them at a later time.
- Identify any criteria that may make the request eligible for priority treatment.
- Enable a Care Leaver to select whether they would prefer a speedy interim response with potentially partial records within the nominated 30-45 days, or the possibility of more information but potentially take more than the nominated 30-45 days.
- Be available in multiple formats, and when placed on the internet, be easily accessible.

The phrasing of the request for access can determine whether the application is dealt with as a request for personal information, or whether seeking more general information and therefore under which set of legislative rules the request is processed. Wherever possible, the most generous interpretation of the request should be assumed. Information about time in care is deeply personal even though it may not be deemed immediately obvious personal information. Where a request has been phrased to limit the information provided to personal information, guidance and assistance should be provided to assist in either rephrasing the request to enable more information to be released, or to assist an applicant in making a subsequent request for information that may not be specifically categorised as personal information.

See further:

[2.1 Maximum access](#)

[1.2 What makes access to records so important for Care Leavers?](#)

[3.4 Can we prioritise requests for access from Care Leavers?](#)

4.2 Statement of services

All Records Holders and support services assisting in providing access to records should have a clear statement of their services available in a range of forms.

This could include web pages, brochures or other promotional materials. Attention should be given to how easy it is to find information on the internet. If Records Holders are part of large organisations, it is possible that the section relevant to records access may be very difficult to find.

A good example of the information and plain English style for information about services is found in fact sheet, [‘Are you a former ward’](#)

4.3 Promoting services for access to records

Maintaining connections with service providers, and support groups representing the Forgotten Australians and Former Child Migrants is highly desirable. These groups assist Care Leavers access their records and are particularly important for Care Leavers who may have poor literacy skills, or problems contacting people in institutions that represent the site of childhood trauma.

Records Holders are encouraged to continue to contribute to the [Find and Connect](#) web resource. This website, funded as part of the Find and Connect Service by the Department of Social Services, provides a centralised service documenting organisations that provided out-of-home care in the twentieth century, details of records maintained by organisations and some guidance on what other sources of information may assist in locating further information about family.

Every applicant should be informed of the availability of support services, and encouraged to use the supported access process.

See further:

[Section 5 Providing access services to Care Leavers](#)

[Section 5.3 Referral to other services or other potential places to find records](#)

4.4 Explain the process

4.4.1 Acknowledging receipt

All requests for access should be acknowledged as soon as practical after their receipt. The material that accompanies an acknowledgement should provide:

- Information about the process.
- Time frames for response.
- What records will be kept about the process.
- What services to support access are available to Care Leavers.
- Background information about the organisation creating the records, and the type of records which potentially contain information of relevance.

See further:

[3.2 How long should processing of requests for records take?](#)

[4.4.2 Records kept](#)

[Section 5 Providing access services to Care Leavers](#)

[4.6 Know and explain the background of records creation and records that remain](#)

4.4.2 Records kept

The process of administering access to information in itself creates records. These records may commonly include the various application forms, records of monitoring of progress and often scanned copies of records retrieved relating to the application. If a Care Leaver has used a support service to assist in making applications, there will be records created at both the support service and at the Records Holder organisations.

Many support services and Records Holders keep copies of records provided to Care Leavers for a period of time. Experience shows that a number of Care Leavers make repeated requests for records, and this is a way of making repeat requests easier to process.

These records should be available for a Care Leaver to view should they require it, and Care Leavers should be informed of this.

4.5 Mechanisms for review, complaint and compliments

All Records Holders and support services should have documented procedures in place, and available on request, for Care Leavers to:

- Seek a review of decisions on withholding records from access. In government organisations this mechanism is provided through the FOI/Right to Information and Privacy legislation.
- A mechanism to submit a written or oral complaint about the service received.
- A mechanism to obtain any compliments on services provided by Records Holders or those providing access services.

4.6 Know and explain the background of the records creation and records that remain.

4.6.1 Organisational history

The history of organisations responsible for records of Care Leavers can be complex. Names change over time, and responsibility for management may change within an organisation. The administrative history of an organisation may help to explain where the records may be found and how to look for them. The [Find and Connect](http://www.findandconnect.gov.au) web resource (www.findandconnect.gov.au) provides basic information on many organisations that created records relating to Care Leavers.

An example of a guide that provides both organisational history and details of the records held is [*Missing Pieces: Information to assist former residents of children's institutions to access records*](#). Department of Families, State of Queensland, 2001

4.6.2 Understand the records

Records of the past can be complex. They are often an interconnected set of records. To be able to find a particular file it may be necessary to investigate indexes, registers and supplementary finding aids that direct searchers to files. Files can change their numbering over time as different people and systems are introduced. This change of numbering can make the older index and register entries invalid.

Often there is no such thing as 'my file'. The records available relating to an individual may be extracts brought together from a range of different types of records – admission registers, punishment books, discharge registers. Only in some organisations were files maintained on individuals.

It may require considerable knowledge of the organisational context of the records to be able to work out where records may have ended up, if the originating organisation is no longer in existence. Sometimes Records Holders have done the archival investigative and descriptive work to know these things. Sometimes this work is still to be done, but known about, and sometimes in the absence of knowledge of the records, there is little to no organisational knowledge of where record relating to Care Leavers may be found.

Records of the Victorian Department of Human Services¹⁹

Locating adoption or former ward records requires use of very old manual registers and cross checking of indexes to verify and locate a file. An initial search may reveal a single or multiple records however in some instances consultation with the client or evidence within the file may reveal additional records in existence that were unable to be discovered in the first search. This may result in an additional request and more search time to try and locate other possible records.

¹⁹ Victorian Ombudsman, [Investigation into the storage and management of ward records by Department of Human Services](#), March, p 25

4.6.3 Dealing with legacies

Many Records Holders are struggling with the legacy of past inadequate practices relating to records. Some of the problems that are encountered are:

- Incomplete records created.
- Inappropriate or judgemental comments in records.
- Records created covering many people, not just one person.
- Fragmented records.
- Previous destruction of records.
- Records abandoned in a big mess.
- Records unlisted and boxed in large quantities making it impossible to find individual files.
- Unknown location of records.

In addition, recordkeeping of the past was a bureaucratic process, designed to serve the needs of the organisation or institution, not the people documented in the records. Records creators would not have had any appreciation of the fact that the people that they were writing about would be able to look at these records. Records of the past tended to record the exceptions not the normal behaviour, so it is possible that a Care Leaver may be dismayed to find only negative comments not balanced with any positive comments in any records that survive.

Victorian Department of Human Services²⁰:

[has a] legacy of 150 years of records, across 100 different institutions, during a time which for the most part, there was virtually no guidance or standards in terms of how records should be maintained. This is particularly relevant in terms of the written content of records and the variation in the amount and type of information recorded across the various institutions. Most people interviewed by my investigators who have viewed examples of these records told of wording (for example, in relation to a child's perceived mental capacity) that would be considered insensitive by today's standards.

See further:

[2.6 Informing Care Leavers that further records may be available in time](#)

²⁰ Victorian Ombudsman 2012, p26

4.7 Explaining the context to Care Leavers

To help Care Leavers understand records better, all Records Holders should produce a summary sheet about what records exist currently and the circumstances in which they were created and kept.

A short summary statement (one page if possible) of the organisational history, the records which may hold information and the state of knowledge about the records should be made available to those seeking records. This statement should be written in plain English. It should be given to Care Leavers to help them understand the records and what they may receive.

In all circumstances it is best to be as honest as possible about the problems that Records Holders are encountering providing access to records. Do not pretend that there are no problems finding records if the reality is different. The intent of such statements should be explanatory, not for making excuses for the practices of the past.

Reference to the Find and Connect resource '[What to Expect when Accessing Records about You](#)' is recommended.

See further:

[2.5 Providing supporting material](#)

[4.4 Explain the process](#)

4.8 When to give the summary of records context to Care Leavers

Records Holders should consider the best time to provide the context of records to those seeking records.

At the time the records are available for access, a Care Leaver may well be focussed on the content of the records themselves, not explanatory material.

It may be preferable to provide the summary material about the records held and what to expect as a part of the acknowledgement of receipt of the application for access. Inform Care Leavers that the records they may obtain may not be what they hope to find, if this is a likely outcome.

See further:

[2.5 Providing supporting material](#)

[4.4 Explain the process](#)

4.9 What rights do Care Leavers have over the records?

Care Leavers often assume that the records about them, belong to them. Unfortunately this is not the case.

However, individual Care Leavers can annotate or add to their records, or otherwise alert a Record Holder, of their wish to express their wishes about limiting access to their records, particularly by family members. Such expressions of Care Leaver wishes should be respected by Records Holders as far as possible during the lifetime of the Care Leaver. Records Holders should ensure that such alerts to Care Leaver's wishes are always apparent to all staff retrieving records for access.

Case: Martin

The circumstances of Martin's placement into care involved external judgement arising from his sexual experimentation in his early youth. Martin has accessed his records, and experienced severe distress at the way his experimentation has been documented, and the character attributed to him. He is horrified at the thought that his family members particularly his children, may be able to access this version of his character and this episode in his life. This is causing him significant on-going stress. For these reasons, he expressed his wish that the Record Holder does not allow access by his family to these records during his lifetime.

Access to records where no express wishes have been indicated by the Care Leaver will be normally governed by public access rights under Archival legislation.

Records Holders will put in place procedures that respect any such Care Leaver expressions relating to access. The wishes of the Care Leaver in relation to access will continue to apply regardless of the location of the records. However, this is not a guarantee that access will be restricted, depending on the circumstances of the future enquiry. For example, it may be that a child requests access to determine medical history, which affects their own life, and it is likely that the seriousness of the concern may, at the discretion of the Record Holder, over-ride the wishes of the Care Leaver. Records Holders should develop formal assessment criteria that assist them to make decisions to over-ride express wishes of the Care Leaver. Any such decisions should be very carefully considered and justified in writing by the Record Holder.

Similarly, Care Leavers are able to place an alternative version of events onto their records. (see section 2.5)

These rights should be clearly explained to Care Leavers when they receive their records.

See further:

[2.5 Annotating records](#)

[2.6 Providing supporting material](#)

[3.6 Who can make a request](#)

**SECTION 5:
PROVIDING SUPPORT
SERVICES TO CARE
LEAVERS ACCESSING
RECORDS**

5.1 Providing access services to Care Leavers

Many Care Leavers carry an ongoing legacy from their childhood experiences. In the same way that accessing records may be a positive experience, equally, it may be an experience that causes events from childhood to be relived, thus becoming a re-traumatising experience.

Where records of this potentially harmful kind are held, Records Holders often work with support services specialising in assisting with access to records wherever possible. Such support services act as intermediaries between the Records Holders and the Care Leaver. This type of access is known as 'supported access', where the Care Leaver is assisted in the process of making the application, and not expected to deal directly with Records Holders. In addition, and most importantly, support services can explain the records received as a result of the application. This is particularly important if the support service is notified or aware of any potentially damaging material on the records released. Support services can also explain the context of records creation, the 'norms' of recordkeeping at the time, and why certain information is redacted.

Some support services are currently contracted under the Find and Connect Service for each State and Territory, and by some State Government Departments.

Care Leavers are not required to use third party support services and may approach the Records Holders directly. Where no support service is assisting the Care Leaver, then Records Holders themselves must be aware of the potential for further damage and efforts made to minimise such damage.

Some Care Leavers may choose not to use support services. Alternatives may include having another Care Leaver who has experience with records to support them. Some Care Leavers may choose to be supported by family members. Some caution should be exercised in using family members as support as there are known instances where the family member selected as support themselves appear in the records and the circumstances of their involvement at the time of the events in the records may not be known to the Care Leaver. This has been known to cause significant distress to both parties at the time of accessing the records.

Basic things to avoid are:

- Patronising the Care Leaver, and making a person feel humiliated for skill level or knowledge.
- Arranging visits, appointments or receipt of records at or around significant dates, such as a Care Leaver's birthday, anniversary of time entering or leaving care, Mother's Day, Father's Day, Christmas or other traditionally family oriented celebrations.
- An intimidating environment if the Care Leaver is expected to visit a Record Holder or support service in person.
- Intimidating forms.
- Bureaucratic language or unnecessarily complex language.

See further:

[4.6 Know and explain the background of the records creation and records that remain](#)

[4.1 Helping Care Leavers make requests](#)

[2.4 Providing copies](#)

5.2 Training to provide access to records

5.2.1 Knowing the organisation and the records

Staff working with records build up considerable knowledge of how to navigate complex systems and the relationship of different records. They use this knowledge in locating and retrieving records for requests for access.

Many Records Holders do not have processes in place to formalise this accumulated knowledge and it is passed on from one staff member to another by word of mouth.

Creating a more formal method of continuously documenting the state of knowledge about the organisation's responsibilities at various times in the past, and knowledge of where and how to locate relevant records is desirable. Regular briefing sessions for relevant staff using highly knowledgeable staff may also be a technique to ensure that this deep organisational knowledge is available for all who work to locate and retrieve records for Care Leavers.

Case study: Knowledge of records²¹

"You're kind of gathering information from here, there, everywhere, and sometimes it can just be you know, even on gut instinct, in terms of workers that have worked there for a long time, and kind of realised where some of these records come, and might just remember, 'Oh I actually remember getting one of these records out using this method.' So a lot of it sort of depends on how good the operator is with their system, which is a real pity...."

See further:

[4.6 Know and explain the background of the records creation and records that remain](#)

5.2.2 Skills and knowledge for those providing access

Experience has shown that those with training in counselling or in the practices of social work are best placed to assist Care Leavers with support services facilitating access to records.

Care Leavers are not required to use third party support services and may approach the Records Holders directly. Where no support service is assisting the Care Leaver, then Records Holders themselves must be aware of the potential for further damage and efforts made to minimise such damage.

Providing access to Care Leavers should never be given to junior staff, but always to someone specialising in access services, someone with deep expertise, or a long serving staff member who knows the area well. Empathy and listening skills are key competencies.

²¹ Victorian Ombudsman 2012, p25

A period of training and/or mentoring is recommended before staff are assigned to providing access to records for Care Leavers.

At a minimum training should include:

- Thorough knowledge of the Records Holder's organisational context.
- Knowledge of the records themselves, including how to read files.
- Knowledge of the processes followed to provide access to records for Care Leavers.
- Understanding of the legislative environment and relevant rights to information and privacy.
- Thorough knowledge of the Reports and Recommendations from past Inquiries into Care Leavers, particularly relating to the State or Territory the Records Holder or support service operates in. A listing of major reports is available from the Resources prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse: [Inquiries and Reports Relevant to the Royal Commission into Institutional Responses to Child Sexual Abuse](#), 2013, and more recently, Swain, S. 2014. [History of inquiries reviewing institutions providing care for children](#). Royal Commission into Institutional Responses to Child Sexual Abuse. Sydney.
- Briefing from community groups which provide support services to Forgotten Australians and Former Child Migrants. Such briefings should be attended/conducted regularly for all staff to alert them to issues, or concerns in the community.
- Training in supporting victims of trauma. This may be through professional training, or through attendance of periodic short courses. One example of such training is available from [Adults Surviving Child Abuse](#). This site also has online resources available.

As individuals who are experienced in dealing with the impact records can have on Care Leavers, staff familiar with records have a significant contribution to make to current practices in documenting current case work. Current case workers may need periodic reminding that the records can be made available to the people receiving services. As such continuing attention to appropriate record-keeping, and care to make appropriate case notes is an ongoing issue for all organisations.

5.3 Referral to other services or other potential places to find records

In many cases a person may have experienced many forms of care during their childhood. It is quite likely that they will need to approach a number of organisations to obtain as complete a record about their childhood as they can.

Facilitated services, such as Find and Connect Services or other support services, can coordinate requests across many organisations. However, other individuals can undertake this exercise using other assistance (for example, using support groups such as CLAN) or independently. Wherever possible assistance for Care Leavers in identifying further places to search for records should be provided.

See further:

[2.5 Providing supporting material](#)

[4.2 Statement of services](#)

[4.3 Promoting services for access to records](#)