

Records Access and The Law

Your right to access records is subject to legislation. Different laws relating to privacy and freedom of information apply in each state and territory, and depend on whether the records are in the custody of a government department, or held by a past or current care provider organisation.

Legislation in each state requires the government to keep the personal records of children who were in 'care' permanently. Usually the internal policy of an organisation states that the 'care' provider must also keep its client files permanently. Inquiries like 'Forgotten Australians' and 'Bringing Them Home' have also stipulated that these records must never be destroyed.

The organisation that created the records is accountable for its actions as a former guardian, and in many cases will have kept the original records. Some original records (such as personal letters, school reports, photographs) can be requested from the community service organisation, which may keep a copy for their files.

The government or a community service organisation might be the custodian, but you have a right to request access to records if they contain information about you.

You may also be given the opportunity to add information to the files an organisation or government department has about you, as a way of completing the picture, and making sure that your voice is included.

In the case of other people's records, for example a sister or brother or a parent, you can access those parts of the file that contain information about you. You might find that your access to some information in the records (yours and other people's files) is restricted, because of the interpretation of privacy or freedom of information legislation. Usually, it is information about 'third parties' – meaning people other than yourself – which you may not be permitted to see.

Protecting third party information is sometimes at odds with the need people have to find out information about family members, and their past. In the case of government records, there are formal avenues to appeal any information that is exempted from the file and these appeal rights are outlined when records are provided.

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