



FIND & CONNECT FACT SHEET

APPLYING FOR RECORDS: YOUR RIGHTS AND THE LAW

A web resource for people who experienced out of home 'care'

This is a guide to how Australian laws might apply to an application to see personal records created in the past. It aims to be a helpful first step to finding out more.

WHAT LAWS GIVE ME A RIGHT TO SEE THE RECORDS FROM MY TIME IN INSTITUTIONAL 'CARE'?

There are two types of Australian laws that give you a right to see your personal records, including records created in the past: freedom of information (sometimes called right to information) laws and privacy laws.

These laws are different in each state and territory. The laws that relate to your application depend on where you were in 'care' as a child. If, for example, you live in Victoria now, but you were in care as a child in Tasmania, then it is the laws of Tasmania that relate to your application to see your records. In some cases, Commonwealth law might apply.

WHAT ARE 'RIGHT TO INFORMATION' OR 'FREEDOM OF INFORMATION' LAWS?

These laws, often called 'FOI' laws, entitle individuals to information created by government agencies. All states and territory governments comply with individual FOI legislative Acts.

These laws may entitle you to see records such as your State Ward or Client file, or other records created by the government-run Home where you were placed. FOI laws give you the right to request a change to your personal information if you think it is wrong. They also give you the right to annotate or add any further information to your records.

FOI laws entitle you to see government records, including medical, police, adoption or child protection records (there are also provisions in some Health legislation that cover records created by non-government organisations).

The FOI laws have provisions to protect the privacy of other people, whose information might be on your personal records. Information about other people (known as 'third parties') may be seen as 'exempt' under FOI laws, meaning that it does not have to be disclosed to you. Even close family members and friends can be seen as 'third parties' in FOI laws.



FOI laws give you the right to appeal against a decision not to disclose information about 'third parties' that is on your personal records. (See What are my rights to appeal?)

(If you want to know more about applying for the records of a family member, see our fact sheet: Searching for records of a parent or grandparent's time in 'care').

FOI laws apply only to information held and created by government agencies. They do not give you a right to see personal records held by non-government organisations, such as a children's Home run by a church or charitable organisation. Private organisations that hold personal records may be regulated by privacy laws. It is worth noting that governments sometimes regulated private Homes, and may have created records about them.

WHAT ARE 'PRIVACY LAWS'?

Privacy laws outline an individual's right to see their personal information, and the right to change that information if it is wrong or misleading. Privacy laws also regulate how organisations handle personal information and personal records. As well as providing access to personal information in records, their purpose is to protect personal information, such as an individual's name, address, and bank details, from misuse (like selling it without permission).



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Most states and territories have their own privacy legislation, which regulates personal information created and held by government agencies. This legislation may also apply to private agencies with a 'service agreement' with the government, such as a privately-run children's Home contracted by the state to house children. Where no such agreements exist, your rights to see your personal records from your time in 'care' in a privately-run children's Home may be supported by the Privacy Act 1988 (Commonwealth).

Most organisations which now hold records from privately run children's homes will provide copies of these records on request. These organisations will normally apply exemptions similar to those outlined under the section relating to FOI requests and in particular will not provide information regarding third parties. Like FOI laws, privacy laws have processes that allow you to appeal decisions about the disclosure of third party information.

DO THESE LAWS GUARANTEE THAT I WILL SEE MY RECORDS?

No. While recent FOI and privacy laws have clear rules for how governments and other organisations keep personal records, and store them into the future, they cannot change how those records were kept and stored in the past. There is a chance you might be told that your records no longer exist, or cannot be found.

The decision to release your personal records and which parts of them to release is made by the individual or team processing your application and reviewing your records. Each organisation, and in fact each FOI or records officer, may interpret legislation differently and this will affect what records you receive and how you receive them.

WHAT IF I'VE BEEN REFUSED TO SEE MY RECORDS IN THE PAST?

If you have previously been unsuccessful in the past, it may be worth applying again, given changes to FOI and privacy laws that have occurred. Attitudes have also changed over time, and Senate inquiries and the National Apology have raised awareness about the importance of records to people who were in 'care'.

Further, if you have applied for your records in the past and you have been told that no or minimal records exist, it may be worthwhile making a further request as many government departments and past providers have allocated funding for the indexing and cataloguing of older records and as this process is ongoing further records are coming to light.

WHAT ARE MY RIGHTS TO APPEAL?

The FOI and Privacy laws in Australia give you the right to ask for a decision made under the laws to be reviewed. For example, you have the right to appeal a decision about the 'non-disclosure of third party information', that means not letting you see records (or parts of records) because they include information about another person. It is sometimes possible to argue that this 'non-disclosure' is 'unreasonable', because it is about a close family member, or it means you can't make sense of your own personal records. Reviews and appeals are usually made to an independent body, like an FOI or Privacy Commissioner, or the Ombudsman.

The FOI and Privacy laws in Australia give you the right to ask for a decision made under the laws to be reviewed. For example, you have the right to appeal a decision about the withholding of information about a third party, such as a member of your family, particularly if you think that denying you access to that information is 'unreasonable'. You can often first appeal to the department who provided the records. It is important to note that there is often a short time period in which you can make this first appeal against a decision. It often dates from the time the decision was made to release the records to you, rather than the date you received them. If your appeal to the department is unsuccessful, you can also appeal to an independent body. Most states and territories have an FOI or Privacy Commissioner, or an Ombudsman who can review the decision.

THE FOI AND PRIVACY LAWS IN EACH STATE AND TERRITORY

COMMONWEALTH

The [Freedom of Information Act 1982](https://www.findandconnect.gov.au/ref/australia/biogs/FE00133b.htm) [https://www.findandconnect.gov.au/ref/australia/biogs/FE00133b.htm] regulates documents created by the Federal Government (not state or territory government agencies).

[Privacy Act 1988](https://www.findandconnect.gov.au/ref/australia/biogs/FE00127b.htm) [https://www.findandconnect.gov.au/ref/australia/biogs/FE00127b.htm] regulates personal information held by private and government organisations. This Act may be relevant where an application is for records held by a non-government agency and is not regulated by state or territory privacy legislation.

AUSTRALIAN CAPITAL TERRITORY

[Information Privacy Act 2014](https://www.findandconnect.gov.au/ref/act/biogs/AE00210b.htm) [https://www.findandconnect.gov.au/ref/act/biogs/AE00210b.htm] regulates the storage and handling of personal information about individuals by ACT Government agencies.



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The [Human Rights Act 2004](https://www.findandconnect.gov.au/ref/act/biogs/AEO0209b.htm) [https://www.findandconnect.gov.au/ref/act/biogs/AEO0209b.htm] gives ACT individuals 'the right not to have unlawful or arbitrary interferences with your privacy'.

NEW SOUTH WALES

The [Government Information \(Public Access\) Act 2009](https://www.findandconnect.gov.au/ref/nsw/biogs/NEO1548b.htm) [https://www.findandconnect.gov.au/ref/nsw/biogs/NEO1548b.htm] is an FOI law that regulates documents created by the NSW State Government.

The [Privacy and Personal Information Protection Act 1998](https://www.findandconnect.gov.au/ref/nsw/biogs/NEO1550b.htm) [https://www.findandconnect.gov.au/ref/nsw/biogs/NEO1550b.htm] regulates personal information held by NSW state government agencies.

Personal information held by NSW private sector is regulated by the Privacy Act 1988 (Commonwealth).

NORTHERN TERRITORY

The [Information Act 2002 Northern Territory](https://www.findandconnect.gov.au/ref/nt/biogs/YEO0349b.htm) [https://www.findandconnect.gov.au/ref/nt/biogs/YEO0349b.htm] is a single act that combines information privacy, freedom of information, and public records laws. It regulates NT government Agencies.

Commonwealth or private sector organisations operating in NT are regulated by the Privacy Act 1988 (Commonwealth).

QUEENSLAND

The [Right to Information Act 2009](https://www.findandconnect.gov.au/ref/qld/biogs/QEO0738b.htm) [https://www.findandconnect.gov.au/ref/qld/biogs/QEO0738b.htm] regulates documents created by the Queensland State Government.

[Information Privacy Act 2009](https://www.findandconnect.gov.au/guide/qld/QEO0739) [https://www.findandconnect.gov.au/guide/qld/QEO0739] regulates personal information collected and stored by Queensland government agencies.

Personal information held by private Queensland organisations may be regulated by the Privacy Act 1988 (Commonwealth).

SOUTH AUSTRALIA

The [Freedom of Information Act 1991](https://www.findandconnect.gov.au/ref/sa/biogs/SEO1319b.htm) [https://www.findandconnect.gov.au/ref/sa/biogs/SEO1319b.htm] regulates documents created by the SA State Government.

South Australian privacy laws operate under Cabinet Direction. The Privacy Committee of South Australia, which is part of State Records, is charged with applying the Information Privacy Principles set out in the Privacy Act 1988 (Commonwealth).

TASMANIA

The [Right to Information Act 2009](https://www.findandconnect.gov.au/ref/tas/biogs/TEO0958b.htm) [https://www.findandconnect.gov.au/ref/tas/biogs/TEO0958b.htm] regulates documents created by the Tasmanian State Government.

The [Personal Information Protection Act 2004](https://www.findandconnect.gov.au/ref/tas/biogs/TEO0957b.htm) [https://www.findandconnect.gov.au/ref/tas/biogs/TEO0957b.htm] 'allows a person to access personal information', held by: 'public authority; any body, organisation or person who has entered into a personal information contract relating to personal information'; and, a 'prescribed body'.

VICTORIA

The [Victorian Freedom of Information Act 1982](https://www.findandconnect.gov.au/ref/vic/biogs/E000500b.htm) [https://www.findandconnect.gov.au/ref/vic/biogs/E000500b.htm] regulates documents created by the Victorian State Government.

The [Information Privacy Act 2000](https://www.findandconnect.gov.au/ref/vic/biogs/E000605b.htm) [https://www.findandconnect.gov.au/ref/vic/biogs/E000605b.htm] regulates personal information held by Victorian state government agencies.

Personal information held by parts of the Victorian private sector may be regulated by the Privacy Act 1988 (Commonwealth).

WESTERN AUSTRALIA

The [Freedom of Information Act 1992](https://www.findandconnect.gov.au/ref/wa/biogs/WEO1065b.htm) [https://www.findandconnect.gov.au/ref/wa/biogs/WEO1065b.htm] regulates documents created by the WA State Government.

WA does not have a current legislative privacy regime. The Information Privacy Bill 2007 (which drew on the Commonwealth Privacy Act 1988 and Victorian Privacy Act 2000) was presented to the WA Parliament in 2007 but did not become law.