

It's Your Information!

How to view your childhood records: A guide for care leavers

Acknowledgements and Background

This guide has been prepared by the Executive Committee of the Care Leavers' Association (CLA). Our original guide was produced some years ago now. In revising it, we have received helpful comments and advice from a number of people. Stephen Morris, a former Executive Committee member who drafted our first guide, gave updated information on the legal side of things. David Wood, another former Executive Committee member with a long-standing interest in this issue, also provided detailed feedback. Julie Cookson, Access to Records Officer for Wirral Borough Council and a good friend of the CLA, provided her thoughts on the guide. Finally, various members of the Executive Committee – especially Sue Myhan - have provided helpful comments. This second edition was edited by Jim Goddard and the final draft has been approved by the whole Executive Committee at its meeting in December 2009.

Introduction

Accessing your child-care files can be daunting, exciting, exhilarating and nerve-wracking. It can be life-changing, or merely satisfy your curiosity. For many, it is a very positive and uplifting experience.

As care leavers, many of us in the CLA have accessed our files. We know that every experience of this is different. Unfortunately, some files have been lost or destroyed. Some of our members know how disappointing that can be. However, many thousands of files have been kept and yours may be among them.

If you want to know what you might experience during this process, go to the 'Access to Records' section of our website. On there, you will find, under the 'Our Stories' section, the experiences of various care leavers.

We have produced this guide for all care leavers in the UK. The Data Protection Act 1998 (DPA) has given UK care leavers extra rights to view their child care records. However, we have tried to keep all the legal detail to a minimum. If you want more legal information, you can visit either our website or that of the Office of the Information Commissioner (see the details at the end of this guide). An explanation of the terms used is given at the end of the guide.

Can this guide be distributed?

Yes, but only to other care leavers. Otherwise, it may not be reproduced without the permission of the CLA. Where permission has not been given, the CLA will make a reasonable charge of not less than £5 for each unauthorised copy.

What is the purpose of the Data Protection Act?

This Act is designed to protect your privacy by preventing those who have your files from giving your personal data to other people and organisations. The Act also allows you to inspect your personal data for accuracy and, when permitted, to request corrections.

Am I allowed to see my childhood case records?

In most cases, yes. If you were in local authority social services care then the Act says that you can view your records. This is because your files are, no matter how they are kept (for example, electronically or on paper, in a single file or with others) 'accessible public records'.

Do I have to give a reason?

No, you don't. You may be asked why you want to view your file, but you can't be denied access if you refuse to give a reason. Nor can you be denied access if you decline to be counselled or you refuse to be seen by a social worker before or during access.

Suppose the Data Protection Act doesn't give me access?

Nowadays, this is rare. For example, if you were in care with a charity, the Act only gives you a right of access if your records are stored on computer or are organised into a 'relevant filing system'. However, some legal opinion suggests that the Act does, in fact, apply to the files kept by the charities. You may get conflicting advice on this from The Office of the Information Commissioner. Barnardo's, to its credit, accepts that you have a legal right to access your case file.

In any case, the charities usually agree to give you access. Some of them have good systems for maintaining and accessing their files, in many cases better than those in local authorities. However, charities may seek to impose conditions, such as that a social worker is in attendance to supervise page-by-page access to your file. If you do not want this, then say so. If the organisation persists in imposing such conditions then you might want to seek further legal or other advice if you are strongly resistant to such a condition.

Do my childhood social work records still exist?

Not in all cases. The charities have usually kept their childhood records. For those in local authority care, if your social service records were created before 1991 the authority did not have to keep them beyond your 21st birthday. However, if your social services records were created after 1991 then they must now be retained for 75 years after your 18th birthday.

Wrongly, in our view, many local social services authorities destroyed thousands of childhood case files before the law was changed. However, missing case records have often been lost rather than destroyed. That may not help, though, if you are told they cannot be found.

However, local authorities must provide access to internal processes and procedures under the Freedom of Information Act 2000 and Freedom of Information Act (Scotland) 2002. If you are told that your records have been destroyed, you can make a Freedom of Information request to ask what policies and procedures the authority used for keeping or destroying case records in past years. This may tell you if your records have been destroyed in line with a clear policy.

How do I apply for access?

First, you need to find out the contact details of the relevant person in the organisation that holds your file. The job titles of these people differ. The most common is Access to Records Officer, but sometimes it may be the agency's Data Protection Officer and sometimes it may be a senior manager, such as an Area Officer.

The authority that is most likely to have your files is the authority where you were last in care. Try telephoning them or emailing them to find out what to do next and whether they are, in fact, the right authority. Whilst you are doing so, you might want to ask them if they charge for the service. Local authorities can charge £10 to allow access, but many choose not to do so. If you clear this up at the start, it can save you time later on. However, if you already know this information and you cannot get a telephone number or email contact, you should write to them because all requests should be in writing for the process to begin properly.

When you write, refer to the Data Protection Act 1998 and provide as much detail about dates and locations of your time in care as you can. If you are not sure whether they charge a fee, enclose a cheque for £10 anyway because this will, in cases where authorities charge, help your request to be dealt with more quickly. The Office of the Information Commissioner advises you to keep all correspondence relating to their request, as this may be of use should a complaint be made. We also suggest that all correspondence be dated.

Where can I find contact details?

The relevant address for most local authority social services departments can be obtained from the CLA website. We have a database in the 'Access to Records' section which we try to update regularly. We intend for contact details of the charities to be included. You can also ring the relevant local authority and ask for the contact details of their Data Protection Officer (under the law, they have to have one). This person may not be the one who deals with social services case files, but they should know who does deal with such files and so be able to refer you on.

Do I need to confirm my identity?

Yes, you do. Those who hold your file must be certain that it is releasing your personal data to you and not to someone pretending to be you. They should insist that you prove your identity before giving you access to your file. The agency may ask you to present yourself in person, along with photographic identification, before it releases your records to you. However, they can arrange to do things at a distance, through the post or through some other agency, if you live far away (such as in another country).

Am I allowed a copy of my records?

The Act recommends that, where possible, all important records should be retained by the agency and copies made. In the case of some parts of your records - such as school reports and certificates, letters from relatives, and photographs - the originals should be given to you and copies kept on file. The file information must be provided in the format that you choose (this may be useful if you have a disability; we know of one care leaver who is blind and whose local authority provided them with a combination of a brail and audio version of their file).

How long must I wait?

A local authority must supply you with your file within 40 days. If they can't, they must let you know. However, going through files can be a complex task. We do not encourage you to complain as soon as the 40-day deadline is exceeded, unless you think there are unjustified reasons for the delay. If the process is too rushed, you may get less information than you wanted. Talk to them about the reasons for the delay and decide what you think is a reasonable response.

When the Act does not apply, as with files held by some charities, then there is no legal deadline. If access is granted, the length of time may depend on the resources of the charity, the length of the queue and the size of your case file. However, most charities use the Act as their guide to how to provide access, so it is worth mentioning the 40-day limit to them.

Whose information can I see?

You can see your 'personal data'. This means biographical information that is mainly focused on you. You are not allowed to see information about someone else (That other person is known as a 'third party'). Even if your case records are not covered by the Act, common law may permit you access. Information that is focussed on siblings, parents, carers or others will, unless you have got permission from these other people, be taken out. However, information provided by social workers, foster carers, house-parents, guardians, psychiatrists, etc, comes from 'relevant persons'. These are people who are paid to report on your progress and they are not classed as 'third parties'. Anything written by 'relevant persons' must be disclosed to you and they do not have to be asked for permission. However, differing advice on this subject is given by the Office of the Information Commissioner and others.

Suppose my personal data contains third party data?

This often happens. For example, your personal data may contain information about your parents or siblings. If redaction (censorship) of the third party data is possible, usually by deleting names or other identifying details, then your personal data *must* be released to you with the third party details taken out.

If the removal of third party details is not practical then you *might* be denied access in order to protect third party privacy. However, this is not automatic and the following rules apply:

- (i) Your personal data, including the third party data, should be released to you when it is 'reasonable' to do so. In deciding what is 'reasonable', the Office of the Information Commissioner states that it would expect the data controller to use its judgement, paying particular attention to the fact that the Act is predisposed towards disclosure.
- (ii) It is unlawful to withhold your personal data if a third party gives their consent for their data to be given to you. Those who have the file can, but do not have to, seek the third party's consent. However, you can also seek the third party's consent yourself. Such consent must be informed; they must be told of the information about themselves contained in your data before they can validly consent.

It often helps, therefore, if you can get a signed letter from a third party (e.g. a family member) giving permission for access. This can save time and mean more information is released to you in the file. One of our members did this. He even wrote the letters for his brother and father himself, and just asked them to sign them. These letters meant there was much less deleted from the file as a result.

Are there other grounds for withholding my data?

Yes. Your personal data can be withheld if they could incriminate the authority in future legal proceedings (perhaps for neglect or abuse). Your personal data can also be withheld using Statutory Instrument 2000/415.

What is Statutory Instrument 2000/415?

It allows local authorities to refuse to allow access to your file if the information in it is *likely* to cause *serious* harm to the physical or mental health or condition of either yourself or a third party (such as a family member).

Serious harm suggests, to us, physical violence or suicide. Being upset by what you read is not serious harm and therefore not enough reason to withhold your file information. The word 'likely' suggests 'more likely than not'. Only in such cases, in our view, should SI 2000/415 be applicable.

In our view, the use of SI 2000/415 should be exceptional. However, we have heard from good sources in this field that social services departments withhold data on these grounds more than they should. We believe that SI 2000/415 should only be used if a person has a relevant and diagnosed mental health condition. Even in those cases, it should be used sparingly because those with a such a condition can still benefit from files access and may be more than capable of dealing with the information in the file. Agencies should always bear in mind the major positive benefits that can come from accessing one's file.

Will I receive all of my personal data?

Perhaps. However, those providing the file do not have to tell you when they have withheld some of your information, even though the Office of the Information Commissioner considers it good practice that you should be told. Once you have your file, or during the process of obtaining it, you might wish to ask the agency if anything has been left out and, if so, ask them why.

If you are dissatisfied with the reasons given for withholding data, you can make a complaint to the local authority or the Office of the Information Commissioner. In the last resort, you can go to court. However, try to negotiate where possible, either before or during these processes. It will often save you time and trouble if the agency is prepared to respond reasonably.

What does the Office of the Information Commissioner do?

The Office of the Information Commissioner makes sure that 'data controllers' (those who have your file) follow the law. It can issue enforcement proceedings if there has been a clear breach of the Act.

Suppose access to my case file is refused?

Depending on the reason, you could make a complaint to the Office of the Information Commissioner. This could result in the data controller being compelled to grant you access.

If your childhood case file is kept by a charity it is unlikely that the Data Protection Act will catch it. In these cases, a right to view your file may exist under Article 8 of the Human Rights Act 1998. This is because of the landmark Gaskin case heard in the European Court of Human Rights in 1989. Further advice could be obtained from a solicitor, who may recommend seeking Judicial Review. This must be sought in the High Court within three months of the refusal date and so speed is vital.

Suggested letter to request access

Here is a model of a letter requesting your records. You can use it to draft your own letter. Such a letter needs to include as much information as possible (full name, date of birth, the names of siblings and their dates of birth, former addresses and dates of when and where you were in care. If you are hoping to get the data through post (if you live abroad or a long way away), provide some identification, such as a copy of your passport, driving licence or a utility bill with your current address on.

(Insert your address here)

(Insert today's date here)

The Data Protection Manager
(Insert address of agency here)

Dear Data Protection Manager

Subject access request under the Data Protection Act

I was in the care of *(insert local authority or organisation's name)* as a child from *(insert month and year here)* to *(insert month and year here)*. I was in the following homes *(insert names and dates, if you have them)*

Please supply me with a copy of my personal data relating to my time in your care. I enclose a cheque for £10 for this purpose. I will supply you with photocopies of official documents bearing my name and photograph if you require further verification of my identity.

Yours faithfully

(Sign your name here)

(Print your name here)

The meaning of terms used in this guide:

Data: Information held, or intended to be held, on computer or in a 'relevant filing system', or held in an 'accessible public record'.

Personal data: Data that mainly focus on and are biographical about a living individual and which identify that individual. Expressions of opinion about that individual qualify as personal data.

Data subject: A living individual about whom personal data are stored.

Data controller: The organisation that stores personal data. In this guide the data controller is usually a local authority or a charity.

Third party: Any individual other than you or a 'relevant person'. Your family members, including parents and siblings, are third parties in the context of the Data Protection Act.

Relevant person: Anyone who was paid to report on your progress during your childhood, including foster carers & social workers.

Third party data: Data that identify a third party, whether living or dead.

Relevant filing system: A relevant filing system is a highly organised paper-based filing system about people. Finding specific information in a relevant filing system about a person will be almost as quick as with a computerised database system.

Accessible public record: A social services record, whether it is stored electronically or in paper form. If in paper form it need not be organised into a relevant filing system.

Redaction: Censorship, or the editing of data to make them publishable.

Further information

We try to maintain an up-to-date database of contact details for every local authority and voluntary sector organisation in the UK on our website: www.careleavers.com. You need to go to the 'Access to Records' section of the site. Also, the same website contains a number of stories from adults in the Care Leavers' Association who have accessed their files.

You might also read accounts by care leavers who have written books based on the information they gained from accessing their files. There are a number of them, but a couple you might look at are:

- Paolo Hewitt, 'The Looked After Kid'
- Phil Frampton, 'The Golly in the Cupboard'

Both of them are available online via Amazon.co.uk.

You should also try the website of the Office of the Information Commissioner. They can give you a lot of legal background on your rights of access under the Data Protection Act and contact details for England, Scotland, Wales and Northern Ireland: <http://www.ico.gov.uk/>

About the Care Leavers' Association

We are a registered charity (1111988) run by care leavers for care leavers of all ages. We are also a company limited by guarantee, registered in England and Wales with the number 5204243.

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