

19 December 2025

The Hon. Paul Anastassiou KC
Commissioner
Child Safety Commission of Inquiry

By email: secretariat@childsafetyinquiry.qld.gov.au

Dear Commissioner,

Child Safety Commission of Inquiry

The Office of the Information Commissioner (**OIC**) welcomes the opportunity to make a submission to the Child Safety Commission of Inquiry (**Inquiry**).

An individual's right to know about their time in care has been recognised in international instruments as well as many national and state inquiries and reports. This information assists an individual to understand their early life, develop their sense of identity, establish family and cultural connections and, in some instances, obtain redress.

As the entity responsible for conducting merit reviews of decisions by Queensland Government agencies regarding access to such information, OIC has a unique independent perspective on the issue. From this perspective, we are observing individuals who face significant challenges accessing meaningful information to which they seek access from the Department of Child Safety, Seniors and Disability Services (**Department**) about their time in care, including their family history, circumstances that brought them into care and considerations relating to reunification (**care records**).

In 2025-26, OIC has observed a sharp increase in the number of individuals seeking external review of Departmental decisions refusing access to care records requested under the *Right to Information Act* (Qld) (**RTI Act**).

This submission provides an overview of the current avenues available to individuals seeking access to their care records, namely administrative access and RTI access, and highlights current limitations that we submit are worthy of consideration by the Commission as we consider they broadly fall under its terms of reference.

About the OIC

OIC is an independent statutory body that reports to the Queensland Parliament. The Information Commissioner is an Officer of Parliament with statutory functions under the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**).

The RTI Act promotes openness, accountability and transparency by facilitating greater access to government-held information. It supports Parliament's intent outlined in the RTI Act that government-held information should be released administratively as a matter of course unless there is good reason not to. Formal applications for government-held information under the RTI Act should be made as a last resort only.

The IP Act provides safeguards for the handling of personal information in the public sector environment. It sets out the Queensland Privacy Principles which govern the collection, management, use and disclosure of personal information by Queensland agencies.

Key observations

The *United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*¹ states, 'The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care unless this is contrary to the child's best interests' (Article 9). This Declaration was recalled in the preamble to the *United Nations Convention on the Rights of the Child*,² which resolved that state parties, 'Respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference' (Article 8).

An individual's right to know about their time in care has been recognised in various inquiries and reports including the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (*Bringing them Home* report, 1997), Commission of Inquiry into Child Abuse in Queensland institutions (*Forde* report, 1999), Queensland Child Protection Commission of Inquiry (*Carmody* report, 2013), Inquiry into Child Migration (*Lost Innocents: Righting the Record* report, 2001) and Inquiry into Children in Institutional Care (*Forgotten Australians* report, 2004).

In 2009, the Federal Senate Community Affairs References Committee noted the following in the *Lost Innocents and Forgotten Australians Revisited* report:

An issue of particular concern in relation to records was the effect of privacy restrictions on access to information concerning third parties. This restriction impacts harshly on care leavers, who are continuing to receive records with information relating to third parties blacked out. In many cases, this information concerns family members—a cruel outcome for people who are often seeking to establish the family relationships or sense of self and personal identity that was denied by the circumstances of their upbringing. The Committee supports calls for the Commonwealth and States to seek to reform FoI and privacy regimes to ensure better provision for care leavers to access information on their relatives and family, for example, through a discretion to allow third-party access in FoI legislation in legitimate cases.³

The Committee recommended that the Commonwealth Government pursue the reform of national freedom of information and privacy legislation to ensure that care leavers are not hindered in obtaining access to information about their childhood and family, and that current and future reviews of Commonwealth and State freedom of information regimes explicitly address this issue.⁴ The Commonwealth Government supported this recommendation in principle.⁵

Administrative access

Overview

In Queensland, the Department operates a 'Time in Care Information Access Service' (**TICIAS**) for individuals seeking access to their care records.⁶ Following an application process, individuals may receive a Time in Care Report summarising information about their time in care, together with documents such as their birth certificate, school reports and medical

¹ Adopted by United Nations General Assembly Resolution 41/85 on 3 December 1986.

² Adopted by United Nations General Assembly Resolution 44/25 on 20 November 1989; ratified by Australia on 17 December 1990.

³ [Lost Innocents and Forgotten Australians Revisited – Parliament of Australia](#) at 6.71.

⁴ Recommendation 12 at 6.72.

⁵ [Government Response: Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports](#) at pp 13-14.

⁶ Individuals may be eligible if they were a child in care under the *Child Protection Act 1999* (Qld) or *Children's Services Act 1965* (Qld) or a State child under the *State Children Act 1911* (Qld).

reports. Individuals currently in care or transitioning from care may be able to access information from their child safety officer.⁷

The Department has advised OIC that it considers administrative access via TICIAS is a better process than formal access applications under the RTI Act as it involves a more trauma informed process.

Importantly, under TICIAS, individuals cannot seek an external and independent review by the Information Commissioner of information the Department has determined not to release to an individual as a TICIAS decision is administrative in nature and does not constitute a 'reviewable decision' under the RTI Act.⁸

Confidentiality provisions

The Department must comply with the confidentiality provisions in the *Child Protection Act 1999* (Qld) (**CP Act**). These provisions prohibit disclosure of the identity of 'notifiers' (section 186A), disclosure about an individual's affairs (sections 187(1) and (2)) except to the extent it is about them (their personal information)⁹ as well as disclosure by receivers of information about an individual's affairs (section 188).

Section 188C of the CP Act provides that the chief executive may disclose information to an individual (who is a child in care or formerly in care) which is about the individual and also about another person or third party. This provision was inserted into the CP Act following legislative reforms made in 2017. The Explanatory Notes for the *Child Protection Reform Amendment Bill 2017*¹⁰ describes the reason for the inclusion of this additional section as follows:

... the Bill introduces a new section 188C to enable the chief executive to disclose information to a child in care, or an adult who was in care, including departmental records about the department's involvement with the person, that may contain information about other individuals, such as siblings or carers ... This amendment is necessary to enable the department to provide information to people about their personal history and to reduce adverse effects on their identity and sense of self that can result from being in out-of-home care and having information about their care, family history and circumstances withheld.

Whilst section 188C of the CP Act does not confine exercise of the chief executive's discretion to provide administrative access to information via TICIAS, OIC has observed through external reviews it has undertaken for care leavers that the Department consider that section 188C relates to TICIAS only. The effect of this appears to be that individuals receive limited access to information and documents on their care record of the type described in the Explanatory Notes. Consequently, they must then seek access to their care records under the RTI Act.

Section 5A of the CP Act provides that the key principle for administering that Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of a child's life, are paramount (**paramount principle**). Further, the chief executive has an obligation to assist a child in care to transition to independence from when the child turns 15 until they turn 25 (section 75(2)(a) and (b) of CP Act). Section 75(3)(h) of CP Act provides that this may involve helping a child to access information about themselves and their time in care, and refers to section 188C for information the chief executive may disclose to the person.

⁷ [Right to information | Department of Families, Seniors, Disability Services and Child Safety; TICIAS Information Sheet.](#)

⁸ Section 85; schedule 5, definition 'reviewable decision'; schedule 4A lists reviewable decisions.

⁹ Section 187(4)(a) of CP Act. The information may also be disclosed to someone else, if that person is, or becomes, an adult and consents in writing (section 187(3)(e) of CP Act).

¹⁰ [Child Protection Reform Amendment Bill 2017 Explanatory Notes](#) at pp 18-19.

The Commission may wish to give consideration to whether this obligation to assist individuals with accessing information about their time in care should be extended beyond 25, and whether the constraints OIC has observed individuals face in accessing their care records via the RTI Act is consistent with the paramount principle given the way schedule 3, section 12 of RTI Act interacts with section 187 of CP Act.

RTI access

Overview

The RTI Act provides individuals with a general right of access to documents held by a Queensland government agency, subject to certain limitations and grounds for refusal of access.¹¹

Individuals seeking access to their care records can make an RTI application to the Department. Through the context of external reviews involving care records, OIC has observed the amount of information to which individuals gain access using this formal process under the RTI Act is often limited.

Information that Parliament considers is 'exempt information' on the ground that its disclosure would, on balance, be contrary to the public interest is set out in schedule 3 of the RTI Act.¹² This includes information which is prohibited from disclosure by listed other Acts¹³ and certain provisions of the CP Act and *Adoption Act 2009* (Qld) are included in this list.¹⁴

If information is not exempt information, OIC goes on to apply a public interest test. This involves assessing whether disclosure of information would, on balance, be contrary to the public interest. A decision maker must undertake a number of steps detailed in the RTI Act.¹⁵ Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case.

OIC has observed that the Department, when dealing with RTI access requests from individuals seeking access to their care record, often acknowledge receipt of requests as related to electronic records only. This has the effect of narrowing the scope of the individual's request, which applicants routinely appear to be unaware of until their matter comes to OIC on external review.

Exemption provisions

As noted above, schedule 3 of the RTI Act provides that 'exempt information' includes information if its disclosure is prohibited by the confidentiality provisions in the CP Act, specifically sections 186A, 187 and 188.¹⁶ Whilst a number of exceptions to these confidentiality provisions exist within the CP Act,¹⁷ in OIC's experience, these exceptions rarely apply.¹⁸

There is a further exception in the RTI Act which provides that information will not be 'exempt information' if it is only the personal information of the applicant.¹⁹ In OIC's experience, this

¹¹ Section section 23 of the RTI Act. Section 47 of the RTI Act sets out the grounds on which access to information may be refused.

¹² Section 48(1) and (2) of the RTI Act.

¹³ Schedule 3 section 12 of the RTI Act.

¹⁴ Specifically, sections 186 to 188 of the CP Act.

¹⁵ Section 49(3) of the RTI Act.

¹⁶ Schedule 3, section 12(1) of the RTI Act.

¹⁷ For example, exceptions to the confidentiality obligation in section 187(2) are set out at section 187(3)(a)-(e) and (4)(a)-(b).

¹⁸ In the past, it was accepted that the exception in section 187(4)(a) enabled shared personal information to be released to an applicant. However, the insertion of section 188C appears to now preclude this interpretation.

¹⁹ Schedule 3, section 12(2) of the RTI Act.

exception rarely applies to enable access to information of interest to individuals due to the intermingled nature of the information contained in care records.

In practice, this means documents on care records are subject to extensive redactions and refusals of information on the grounds that the information is exempt. In nearly all instances, shared personal information cannot be disclosed which is adverse to care leaver applicants.

Adverse outcomes

Under the current legislative settings, the information released to individuals is relatively low in volume and abstract in nature, often providing little information about an individual's childhood circumstances, removal from their family and time in care.

OIC has observed that in some instances, redactions of information relating to other individuals has led applicants to draw incorrect conclusions about family relationships or the existence of other siblings to their personal detriment.

In OIC's view, these redactions have wide ranging practical implications and may prevent individuals from accessing the following information:

- why they were placed in care
- occurrence and nature of any incidents which occurred while they were in care
- details available to the Department, and its actions or inaction, regarding the individuals
- general family history
- family members' genetic conditions
- parent's comments about any incidents involving the individual
- information that was intended for the individual that the Department did not release, for example, letters and cards, from the parent to the individual.

Current guidance

In 2015, the Australian Government published, *Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Record Holders & Best Practice Guidelines in providing access to records*.²⁰ These documents represent action on a number of recommendations in the *Forgotten Australians* report, including the agreement by government and non-government agencies on information access guidelines that incorporate the commitment to the flexible and compassionate interpretation of privacy legislation to allow a care leaver to identify their family and background.²¹

The Best Practice Guidelines support a proactive and open approach to releasing care records and provide a guide on how to release as much factual information as possible while respecting the privacy of third parties. The Guidelines adopt a different view of what constitutes a third party, proposing 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 ... 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.²²

²⁰ [*Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders, Best Practice Guidelines in providing access to records*](#)

²¹ As above at page 4, recommendation 16.

²² Page 21.

OIC notes that, 'Privacy rights were never intended to extend to interfere with the normal discourse within families nor to impede a child's identity development.'²³

The Office of the Australian Information Commissioner's *FOI Guidelines* (2024) provides that, in determining whether disclosure of a document would involve the unreasonable disclosure of personal information, an agency or Minister must, amongst other things, have regard to any matters that the agency or Minister considers relevant,²⁴ 'For example, where a care leaver requests access to third party personal information, decision makers should note that it is government policy that a care leaver have such access.'²⁵

Consideration of possible reforms to improve access to care records

OIC believes this Inquiry presents an opportunity to examine the legislative settings for individuals obtaining access to meaningful information and documents on their care records giving due regard to the best interests and wellbeing of individuals who have spent time as children in care.

An option to address the issues raised in this submission would be to amend schedule 3, section 12(1) of the RTI Act by only including section 186A of the CP Act²⁶ as being exempt information. Taking this approach would place the assessment of access to the remaining information under the public interest test set out in section 49(3) of the RTI Act, for which non-exhaustive factors are set out in schedule 4 of the RTI Act. This would also ensure that an individual to whom information is refused has a right to apply for internal review by the Department and/or merits review by the Information Commissioner.

Amendments to address the impact on individuals accessing their care records, due the operation of section 187(4)(a) and section 188C of the CP Act as currently drafted, may also be something the Inquiry could examine. The Inquiry may also wish to consider whether offence provisions in the CP Act are having a disproportionately chilling effect on transparency.

Much of the focus of this submission has been on access to care records by individuals who were previously in care and who seek access to their care records via TICIAS and the RTI Act. Consistent with the object of the RTI Act, which promotes proactive disclosure and administrative access to documents held by government, OIC recommends that any future improvements ensure they adopt a 'transparency (or access) by design' approach that allows for individuals to obtain access to meaningful information about their time in care promptly and consistent with taking a human-centric approach.

Thank you for the opportunity to make a submission. We trust our comments will assist with the Inquiry. Should you require further information, please contact us at [REDACTED] or on [REDACTED].

Yours sincerely

[REDACTED]
Joanne Kummrow
Information Commissioner

²³ [OKP and Department of Communities](#) (2009) at para 117.

²⁴ Section 47F(2)(d) of the *Freedom of Information Act 1982* (Cth).

²⁵ [OAIC FOI Guidelines](#) at para 6.135, footnote 125.

²⁶ This section deals with notifier information and should remain exempt from disclosure.