

Access

Archives are kept so that they can be used. A good access policy ensures that archives are able to be used as widely as possible. Internationally, the archival profession is moving towards a new culture of openness, in line with the changing expectations of individuals and societies.¹

However, your access policy also needs to clearly document any appropriate restrictions to access. These restrictions may be required by laws, ethics or donor requirements. Clear and consistent rules will ensure that you can provide users with appropriate access to records, and prevent unauthorised access that might breach a person's privacy.

Access is always something of a balancing act between openness and privacy. For organisations holding records of Forgotten Australians and Former Child Migrants, it is particularly important to have an access policy that provides guidance for people to make reasonable, considered decisions, and help to uphold people's rights to access information.

This document sets out some of the factors that should be considered when designing an access policy.

Users

In formulating your access policy, it can be useful to start by consider the range of people who might use the archive and any procedural differences in the way access requests from different user groups are dealt with. Key groups of users might include past clients and their relatives, historians and researchers, as well as other members of staff.

Equity of Access

Equity of access means that everyone has equal access to an archive. This does not necessarily mean that an archivist should spend an equal amount of time on each access request but rather that their efforts should be proportionate to the needs of the user. For example an archivist may need to spend more time helping users with poor literacy skills in order to ensure they have the same opportunity to access information.

Many access policies require users to complete an Application for Access form before they use the archives. It is important to ensure that this application process does not put an unnecessary burden on potential users of the archive who were in 'care' as children. In particular, requiring forms of identification like a drivers' licence or a birth certificate can be very onerous for some care leavers. The

¹ In August 2012, the International Council on Archives adopted the Principles of Access to Archives. This document provides a useful basis for the development of an access policy. The 10 Principles are available here: <http://www.ica.org/13619/toolkits-guides-manuals-and-guidelines/draft-principles-of-access-to-archives.html>

procedures need to take into account that producing such identification is difficult (or even impossible) for some people, and allow for a flexible approach to be taken where necessary.

Service Charges

The access policy should include a statement regarding the fees charged for various services offered by the archive, such as retrieving documents or providing photocopies. It has been recommended in reports on Forgotten Australians and Former Child Migrants that service fees for those who are seeking information about their time in 'care' be waived.

Legislation

It is critical that organisations are fully aware of all Acts, ordinances and regulations that apply to the records they create and maintain. Different laws will apply in different states and territories, and depending on whether your organisation is government-funded. Generally speaking, the most important laws to be aware of in developing an access policy, are those relating to freedom of information and to information privacy. Sometimes health records legislation might be applicable.

These laws set out who has a right to access information, as well as any exemptions or exceptions restricting access to information. The exceptions often involve organisations to make a judgement about what is 'reasonable' to release in a particular circumstance.

If you need help in working out what obligations apply to your archival collection, get in touch with the Office of the Australian Information Commissioner for advice: <http://www.oaic.gov.au/index.html>

Sensitive or confidential records

Your archival collection will almost certainly include sensitive and confidential material such as personal and health information. It is critical that records of this nature be considered when drafting an access policy and a clear procedure for release documented. Judgements about what should be confidential change over time, depending on the age of the records, as well as other factors, like changing community attitudes.

Privacy

A Privacy Policy or statement should encompass your organisation's responsibility in handling personal information and should be based on common sense and respect for the privacy of the individual. Your privacy policy should reflect the eleven basic principles laid out in the National Privacy Principles as well as any specific regulations which apply in your jurisdiction. In particular, this statement should address the principles relating to Collection, Storage, and Access and Amendment.

For a plain English version of the principles see:

<http://www.privacy.gov.au/materials/types/law/view/6892>

For a full version of the National Privacy Policy see:

<http://privacy.gov.au/materials/types/policies/view/6810>

Other useful resources include:

- Website for the Office of the Australian Information Commissioner (OAIC)
<http://www.privacy.gov.au>
- Information on the use of photographs
<http://www.privacy.gov.au/topics/surveillance>
- Information on putting photos on the web
<http://www.privacy.gov.au/faq/business/gen-q5>
- Information on using social media
http://www.privacy.gov.au/index.php?option=com_content&view=article&id=762&Itemid=1610

Interpreting and applying the principles

In accordance with recommendations in reports such as *“Forgotten Australians: A report on Australians who as children experienced institutional or out-of-home care”* it has been advocated that organisations should, where possible, apply a more liberal interpretation and application of the relevant Privacy Acts to assist care leavers to (a) reconnect with their families and communities and (b) develop a greater sense of identity and belonging. The issue of interpretation of relevant legislation is most relevant when assessing whether to release information about 'third parties' which appears in a person's records.

Access to 'third party' information for 'care' leavers

The privacy principles around access start with a presumption of comprehensive access, but there are exceptions that might apply. One of these exceptions is where providing access would have an unreasonable impact on the privacy of other individuals.

It is not uncommon for care leavers' records to contain information about 'third parties', including family members (eg parents, siblings), other residents, carers or other staff members. Sometimes, this information is precisely what the care leaver is seeking, in order to establish their identity, learn more about why they were put in 'care', or to attempt reconnecting with lost family members.

Decisions about what third party information is 'reasonable' to release should take into account the importance of this information to Forgotten Australians and Former Child Migrants. It might also be useful to think about what a person could reasonably be expected to know about 'third parties' – the names of family members, other children and carers might be reasonable to release. However, it might not be reasonable for someone to know personal details about these third parties.

Rather than taking a 'blanket' approach to applying the exceptions around third party information, an organisation can take steps to release information as fully as possible, while not having an unreasonable impact on the privacy of other individuals. These steps might include notifying/gaining the consent of

individuals (where this is possible), or removing or redacting the information about third parties that would be unreasonable to release.²

² A case note from Victoria provides a fuller discussion of this issue. See *Complainants AS v Contracted Service Provider to a Department* (2011), available at <http://www.privacy.vic.gov.au/domino/privacyvic/web2.nsf/files/complainants-as-v-contracted-service-provider-to-a-department-2011>