



Guideline

Provision of adoption information and the exercise of the Chief Executive’s discretion under section 27(5) of the *Adoption Act 1988*

Classification C

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Summary

Provides guidance on the provision of adoption information to applicants for adoption information and on the Chief Executive's exercise of discretion¹ not to reveal adoption information under section 27(5) of the *Adoption Act 1988*, and about the provision of adoption information under s27 of the *Adoption Act 1988*.

1. Purpose

The Department for Child Protection (DCP) recognises the National Apology for Forced Adoptions² and acknowledges the importance of family, identity and cultural background to those affected by adoption. The language used in this Guideline is consistent with the *Adoption Act 1988* ("Adoption Act") and is not intended to offend.

In addition to the guidelines regarding s27(5), this Guideline provides general information about the process by which certain persons may apply for and obtain adoption information pursuant to s 27 of the Adoption Act. This Guideline has been established as required under s27(6) of the Adoption Act, regarding the Chief Executive's discretion not to reveal adoption information under s27(5) of the Adoption Act. This Guideline is publicly available on DCP's website (www.childprotection.sa.gov.au/adoption/applying-adoption-information) and a copy will be provided to any person who requests it.

2. The Application Process

This Guideline provides information to the parties of a South Australian adoption, and certain relatives or descendants of adopted persons who are eligible to make an application for adoption information under the Adoption Act to access adoption information held by DCP. The law regarding the release of Adoption information is governed by the Adoption Act, in particular s27. This Guideline is intended to assist applicants with understanding how DCP applies that law to an application to obtain adoption information. This Guideline provides guidance on:

- who can make an 'Application for Provision of Adoption Information';
- how an application for documents and information can be made;
- how applications are processed;
- restrictions placed on the release of information;
- the circumstances in which DCP may refuse to provide a document or information, or may provide a document in redacted form; and
- the avenues for complaint if an applicant is dissatisfied with the process or the outcome of the application.

2.1 The Application

Who can make an Application for Adoption Information

Once an adopted person is 18 years of age or over, an application for provision of adoption information pursuant to s 27 of the Adoption Act can be made by:

- a 'party' to an adoption being
 - an adopted person;
 - an adoptive parent;
 - a birth parent;

or

- where the adopted person is deceased or cannot be located - a lineal descendant (for example a son, daughter, grandson, granddaughter etc.) of an adopted person;

¹ Please note that this discretion may be delegated to senior officers within DCP.

² On 21 March 2013, the then Prime Minister Julia Gillard apologised on behalf of the Australian Government to people affected by forced adoption or removal policies and practices.

- where the birth parents consent or are deceased or cannot be located - a person who would have been a relative of the adopted person if the adoption order had not been made.

Section 27 of the Adoption Act specifies the types of documents and information that each of these applicants can obtain.

DCP can also advise the Registrar of Births Deaths and Marriages about access to pre-adoption birth certificates: see s 41(4) of the Adoption Act.

Information may be provided earlier

Section 27A of the Adoption Act provides that information may be provided before the adopted person turns 18 if consent to the disclosure is given by:

- In the case of disclosure to an adopted person—
 - the adoptive parents; and
 - if the name of a birth parent is to be disclosed—that parent; or
- in the case of disclosure to a birth parent—
 - the adoptive parents; and
 - if the adopted person has attained the age of 12 years—the adopted person.

Making an application

To make an application pursuant to s 27 of the Adoption Act, an applicant must either complete an Application for Provision of Adoption Information form (**Appendix 1**) or make a request in writing stating that the request is made pursuant to the Adoption Act.

The applicant must lodge the application with the DCP Freedom of Information (FOI) Team (refer to Part 13 for contact and address details of the FOI Team).

The application must provide the following information:

- the applicant's full name and date of birth;
- proof of identity of the applicant (e.g. drivers licence, pension card, signed statement from financial institution);
- a postal or email address for the applicant (also helpful if phone number is provided);
- details of the information that the applicant wants to obtain;
- identify which party they are to the adoption; or
- if the person is not a party to an adoption, their relationship to the adoption person.

Proof of identity

The preferred proof of identity for an applicant is:

- photo identification with a signature (for example, a driver's licence or passport); and
- where relevant, evidence of a name change (for example, a marriage certificate)

Applications by descendants

If the applicant is a descendant of an adopted person, or an adoptive parent or relative of a birth parent, the applicant must attach a statement from the birth parent or adopted person stating that they give their consent for the applicant to apply for the adoption information.

This statement of consent must be signed by the birth parent or adopted person. If the birth parent or adopted person has changed their name since the adoption, copies of documents which prove the change of name must also be provided.

If the birth parent or adopted person is deceased, the applicant must provide proof of their death (e.g. Death Certificate / Obituary Notice) and proof of the applicant's relationship to the deceased.

2.2 Incomplete applications

Where insufficient information is provided in the application form to enable the application to be processed, DCP will notify the applicant in writing that the request is incomplete and what additional information is required. DCP may provide or arrange assistance where possible.

2.3 Withdrawal of applications

An applicant may choose to withdraw their application, either verbally or in writing, at any time prior to DCP making its written decision.

DCP cannot process any applications which are incomplete or have not been made by persons specified on 2.1 or where the information sought falls outside the scope of information provided for in s27 of the Adoption Act.

3. Processing an application

3.1 Processing times

Upon the receipt of a complete application, DCP will send the applicant an acknowledgement letter specifying the timeframe in which DCP anticipates the application will be processed. Processing time for the application will depend on a number of matters including:

- the size and scope of the application;
- the need to contact the applicant for clarification or to seek further information;
- the need to undertake further research and archival retrieval; or
- consultation with other parties to an adoption (procedural fairness, see Part 5).

If an applicant requires their information urgently for a particular reason such as legal, medical or service provision, the applicant must provide evidence of this and identify the request as urgent.

3.2 Type of information provided

Unless otherwise requested in the application, DCP will search for and provide the following types of adoption records:

- For local adoptions where the adoptee is over 18 years of age:
 - Department's adoption files;
 - Department's adoption index cards;
 - Sealed envelope held at State Records for adoptions completed pre-1989;
 - Maintenance or Affiliation file (if relevant to the adoption).
- For intercountry adoptions where the adoptee is over 18 years of age:
 - Department's adoption files;
 - Department's adoption index cards;
 - Australians Aiding Children Adoption Agency file (approx. 1990-2005);
 - Information about the adoption provided to Department by the relevant overseas country (some of this may require translation before consideration for release, and both language versions will be made available).

Please see Part 13 of this Guideline below for a definition of the above file types.

3.3 When documents are not provided or redacted

If a decision is made to refuse to provide a document, or part of a document on the basis of s 27(5) of the Adoption Act or for other reasons, DCP will either not provide the document or will remove ('redact') the information from the document. The applicant will be informed of the refusal in writing.

The redaction of information is the process of removing information from view by blocking out information in the copy of a document provided to the applicant. Where information has been redacted from a

document, a code (see section 6 below) indicating the type of information redacted will be provided. This code will then be explained in the decision notice.

3.4 Notification of a decision

The delegated decision maker will notify the applicant of the decision in writing. This decision notice must include the following information:

- the decision about what information will be provided;
- the date the decision was made;
- who to contact about the decision;
- if there is a veto in place and its expiry date (see 6.2 of this Guideline);
- authorisation to access pre-adoption birth certificate from the Registry of Birth Deaths and Marriages (if applicable).

A copy of the decision notice and all documents that come within the scope of the request will be retained in Departmental records (in both redacted and un-redacted form).

3.5 How access is to be provided

The applicant will be provided with a copy of the released or partially released documents in paper or in electronic (CD or USB) form, depending upon the applicant's preference.

Each file or record released to the applicant will include a file cover or header detailing what the file or record is.

3.6 Personally Significant Original documents

Where personally significant original documents, such as those mentioned below, are located during the processing of a request, they may be provided to the applicant and a colour copy will be retained in DCP records.

Examples of personally significant original documents include but are not limited to:

- education, training and certificates of achievement (including school reports);
- correspondence addressed to the adopted person (including from relatives);
- photographs.

3.7 Documents that cannot be located or do not exist

Where searches have been conducted and some or all of the documents within the scope of the request cannot be located, DCP will provide a written decision notice to the applicant which explains this and the steps taken to locate the documents.

4. Information or documents which are not disclosed – Guideline to the application of s27(5)

When making a determination about whether information/documents will be provided or not, the Chief Executive will take into account any relevant information held in DCP files, including any information that has been provided to DCP by a person affected by the disclosure of the information (see Part 6 below regarding natural justice). The CE will also have regard to the objects and guiding principles of the Adoption Act set out in s 3 of the Adoption Act, and the intention behind s 27 and any other relevant provisions in the Adoption Act.

Section 27 of the Adoption Act reflects support for the concept of open adoption by providing that (in general), parties to an adoption may obtain adoption information. However, there are some circumstances in which the Chief Executive or their delegate may withhold access to adoption information. These are discussed below.

4.1 Section 27(5) of the Adoption Act

Section 27(5) provides that the Chief Executive has an absolute discretion to determine that adoption information should not be provided because the disclosure of the information would:

- (a) be an unjustifiable intrusion on the privacy of the person to whom the information relates; or
- (b) give rise to a serious risk to the life or safety of a person; or
- (c) in the case of information relating to a person adopted before 17 August 1989—not be in the best interests of the adopted person, taking into account the rights and welfare of the adopted person and any other prescribed matter.

Guidance on these grounds is set out below with reference to files refused as discussed at 4.4.

Section 27(5)(a): The Chief Executive has determined that disclosure would be an unreasonable intrusion on the privacy of the person to whom the information relates.

The delegated decision maker will consider whether the information is personal information relating to a person other than the applicant, and whether the disclosure of the information would be an unreasonable intrusion into the privacy of that person.

The decision on what constitutes an unreasonable intrusion of a person's privacy will be made on a case by case basis. It is an objective test based upon whether the ordinary person would find this measure as intrusive. The test does not require special consideration of whether a given person is aggrieved by the intrusion, but whether an ordinary member of the community would take this view.

Documents or information that would disclose the names of birth siblings of the adopted person

Section 27(4) of the Adoption Act provides that DCP must not reveal the names of siblings of the whole or half-blood of the adopted person ("birth siblings") where those siblings have not attained the age of 18 years. However, if the birth siblings of the adopted person have attained the age of 18 years, DCP must apply s 27(5) of the Adoption Act to determine whether or not the release of the siblings' names would be an unjustifiable intrusion on the privacy of the person to whom the information relates (see Part 6 regarding natural justice below).

In making the decision pursuant to s 27(5) of the Act the CE will take various factors into account including:

- whether there is an indication in the adoption file that the birth siblings are aware of the existence of the adopted person; and
- whether the adopted person already knows the names of the birth siblings.

Other personal information relating to a third party

Other examples of documents or information where disclosure may be an unjustifiable intrusion on the privacy of the person to whom the information relates include, but are not limited to:

- Letters to and from other parties that are not related to the circumstances of the adoption;
- Personal information about third parties, including but not limited to:
 - financial affairs;
 - criminal records;
 - marital or other personal relationships;
 - employment records;
 - personal qualities or attributes;
 - health information not related to the adoption;
 - the addresses of birth relatives if they were not aware of the adoption.
- Personal opinions or personal statements made by third parties;
- Information arising from personal discussions between birth parents and or adoptive parents and Departmental staff. A summary of key contact may be provided;
- Names of third parties (such as birth parents' friends, medical practitioners or other personal advisers);

- Documents relating entirely to another party and not the circumstances of the adoption (e.g. assessment by the Department of the adoptive parents when they first applied to adopt a child).

Section 27(5)(b): The Chief Executive has determined that disclosure of the information would give rise to a serious risk to the life or safety of a person

The decision whether the release of information would give rise to a serious risk to the life or safety of a person will be made on a case by case basis. However, it should be understood that the threshold for ‘serious risk’ is high and that a general concern that a person would be distressed or unhappy about the release of information would not ordinarily meet the statutory requirement. It would also be expected that some evidence would be provided in support of such a claim.

Section 27(5)(c): the Chief Executive has determined, in relation to documents or information relating to a person adopted before 17 August 1989, that the disclosure of the information would not be in the best interest of the adopted person, taking into account the rights and welfare of the adopted person and any other prescribed matter

In addition to the consideration of the rights and welfare of the adopted person the Chief Executive (or delegate) will take into account any relevant information held in DCP files, including any information that has been provided to the DCP by a person likely to be affected by the disclosure of the information (see Part 6 below regarding natural justice). The Chief Executive (or delegate) will also have regard to the objects and guiding principles of the Adoption Act set out in s 3 of the Act, and the intention behind s 27 of the Act and any other relevant provisions in the Adoption Act.

4.2 Where there is a veto in place

Section 27B of the Adoption Act provides that:

- where a person was adopted before 17 August 1989, and;
- an adopted person, a birth parent or an adoptive parent has lodged a direction that the Department cannot disclose information in its possession that would enable the person to be traced (“an old s 27B direction”, commonly referred to as a ‘veto’)³.

The veto will remain in place for 5 years from 18 December 2017 (i.e. until 17 December 2022)⁴.

If a veto is in place, DCP is unable to release any information about the person who placed the veto that may allow the person to be traced. When an adoption information application is processed, an applicant will be advised if there is a veto in place.

If a veto is in place at the time of the application the following information will be withheld:

- the name of the person who placed the direction;
- the name of other parties connected to the person;
- any addresses, places of work, schools etc. of the person;
- any other information that may enable the person to be traced.

Where one of the parties has a veto in place this will prevent the release of identifying information about them, but it does not prevent the release of identifying information about the other parties unless that information would tend to enable the person who placed the veto to be traced.

4.3 Other reasons for not disclosing documents or information

There may be other reasons why DCP do not disclose information, such as:

³ In the Adoption Act, this is referred to as a “direction”. It is commonly referred to as a veto.

⁴ Date relates to commencement of an amendment to section 27B of the Adoption Act on 18 December 2017.

- documents or information the disclosure of which is an offence;
- documents or information subject to Legal Professional Privilege.

5. Natural Justice and Procedural Fairness requirements

Procedural fairness, or as it is otherwise known, natural justice is a set of principles which apply to all decisions of government which may adversely affect the rights and legitimate expectation of a given person or persons. The natural justice requirements around government decision making is often referred to as administrative law, and is principally concerned with ensuring a fair process is adopted, rather than being focussed on the outcome or result.

Following a range of decisions in the High Court of Australia, government departments of all levels are legally obliged to apply these natural justice principles during particular decisions making steps. Decisions made by the Chief Executive in relation to adoption applications are not immune to these requirements. In a practical sense, this may mean that in some circumstances, DCP may need to locate and contact one or more of the parties to the adoption. The purpose of this is to notify the other parties that information that may affect them may be released by DCP. If they are concerned with the release of this information, this is their opportunity to inform the decision maker and state why it should not be released.

Before the process is undertaken, the applicant will be notified in writing of the decision to undertake the procedural fairness process. DCP recognises this may be a sensitive subject for an applicant and will not proceed with contacting other parties until an applicant is aware that DCP is undertaking this process.

The fact that a person has expressed their concern about the release of the information does not mean the applicant will be refused. The refusal must still fall within the Chief Executive's discretion provided in s27(5) of the Adoption Act.

6. Access to other Departmental records (Freedom of Information and provision of information to care leavers)

Where an adopted person over the age of 18 years is seeking access to Departmental records which do not come within the types of adoption information specified in s 27 of the Adoption Act (for example, information about their time in out of home care under a foster care arrangement), they can request this information pursuant to s 153 of the *Children and Young Person (Safety) Act 2017*. An application under the *Freedom of Information Act 1991* is also another way to access Departmental records.

Applicants who wish to make either of these applications are encouraged to contact DCP's FOI Team (see 14).

7. Applicant's right of review

7.1 Reconsideration of a decision to withhold information

Where a decision has been made to redact or withhold information and the applicant is dissatisfied with this decision, the applicant may apply to have the decision reconsidered.

The applicant must write to DCP within 30 calendar days from the date the decision was made and provide information setting out why the decision should be reconsidered. This should include evidence (where available). The Chief Executive will review the information supplied by the applicant and consider whether there may be a reason for changing the decision. The Chief Executive will provide a reconsideration decision notice to an applicant in writing within 30 calendar days of receiving the request.

7.2 Complaints

The Adoption Act does not specifically provide for review of decisions made under s 27. A person may contact the DCP's Central Complaints Unit if they are not satisfied with a decision made under s 27 of the Adoption Act. A complaint can be lodged in the following ways:

- Online: <https://www.childprotection.sa.gov.au/departement/online-complaints-form>;

- By telephone: 1800 003 305;
- In writing to: Central Complaints Unit, Department for Child Protection, GPO Box 1072, Adelaide SA 5001.

7.3 External complaints

An applicant may also seek an external review of any decision made by the CE under the Adoption Act by the Ombudsman SA under its general complaints handling process. The Ombudsman can be contacted as follows:

Telephone: (08) 8226 8699

Toll free: 1800 182 150 (outside metro SA only)

Facsimile: (08) 8226 8602

Email: ombudsman@ombudsman.sa.gov.au

Street address: Level 9, 55 Currie Street, Adelaide SA 5000

Postal address: Ombudsman SA, PO Box 3651, Rundle Mall SA 5000

There is no statutory right of appeal against decisions of the Chief Executive under s25. However, it may be possible to seek judicial review of the decision in the Supreme Court of South Australia.

8. Support to parties of an adoption and other information

Parties to an adoption should be aware of the following:

- It is recommended that parties to an adoption have a person to support them during their search for records about the adoption. DCP has prepared a Factsheet that is available on the DCP website (<https://www.childprotection.sa.gov.au/adoption/applying-adoption-information>) which sets out information about support services that may be available to assist. There are also other Factsheets available on the DCP website that provide information on DCP records and information about other agencies that may hold adoption information.
- The language used in past Departmental records reflects the attitudes of Australian society at the time that the records were made. Today, some of this language is considered to be inappropriate. Its use in past records is not intended to cause offence or distress.

9. Roles and responsibilities

Role	Authority/responsibility for
Departmental Research Officer	Undertakes thorough research to locate documents and information that comes within the scope of the application for adoption information.
Chief Executive	Section 27 of the Adoption Act confers certain powers on the Chief Executive. These powers are formally delegated to other officers in the Department for Child Protection, including (at this point in time) Deputy Chief Executive, Director – Legal Service, Supervisor – FOI, Supervisor, Supervisor – Adoption Services.

10. Compliance, monitoring and evaluation

The procedure will be monitored by the Supervisor, Freedom of Information and reviewed and updated as required.

11. Definitions and abbreviations

Term	Meaning
Affiliation file	A file associated with the adoption file.
Australians Aiding Children Adoption Agency	A non-government adoption agency that was operational in South Australia (under section 29 of the Adoption Act) to conduct certain intercountry adoption activities from about 1990 to 2005. The agency no longer exists.
Chief Executive	Chief Executive, Department for Child Protection.
DCP	Department for Child Protection.
Contact register	Prior to the commencement of the <i>Adoption Act 1988</i> (17 August 1989), the Department kept a list of parties to an adoption who sought contact with the other parties should they apply.
Index card	Prior to the introduction of electronic data bases, the Department maintained details of each adoption on hard copy cards. These form part of the adoption record.
Maintenance file	Prior to the introduction of Commonwealth legislation regulating parental child support payments, the Department for Child Protection was responsible for such regulation. This was conducted by the Department's Maintenance Branch, which created a file for each matter where payment was required for a child. This included payment by a putative father of a child to be adopted for such costs as hospital fees and the fee for the child's birth certificate.
Procedural fairness	Otherwise known as Natural Justice or due process, Procedural fairness is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. Australian courts have decided that decision-makers must follow a fair and proper procedure when making a decision. If they do not do so, the decision may be invalid. A decision-maker who follows a fair procedure is more likely to reach a fair and correct decision. ("Personnel Security Procedural fairness guidelines", Australian Government, 2010).
Sealed envelope	The <i>Adoption Act 1988</i> provided for openness in adoption (access to identifying information). Prior to this, adoption was a secret matter and the Adoptions Court would seal court documents with identifying details (such as the child's original birth certificate) in an envelope. These could only be opened via a court order. When the <i>Adoption Act 1988</i> commenced, the Court gave these sealed envelopes to the Department as they were considered part of the record of the adoption that could be accessed (under s27 of the Act) by the relevant parties.
Veto	Adoption information vetoes (called a "direction" in the Act) were introduced on 17 August 1989 at section 27B of the <i>Adoption Act 1988</i> . Vetoes could be placed by

Term	Meaning
	<p>adopted people, birth parents and adoptive parents. A veto limited the right of another party to the adoption to obtain information that would enable the person placing the veto to be identified or traced.</p> <p>On 18 December 2018 an amendment to the Adoption Act commenced that effectively abolished adoption information vetoes at the end of a five year period. All vetoes in place on that date will cease to exist on 17 December 2022. It is no longer possible to place a veto.</p>

12. Related documents

- *Adoption Act 1988*
- *Freedom of Information Act 1991*
- Sections 153 and 154 of the *Children and Young People (Safety) Act 2017*

13. Contact details

For assistance with making an application or for any enquiries regarding access to DCP records, please contact:

The FOI Team

Department for Child Protection

Postal Address: GPO Box 1072, Adelaide SA 5001

Telephone: 8226 4399

Email: DCP.FOI@sa.gov.au

14. Document control

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