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Information Access Guideline 8: Care Leavers' access to their Out- of-Home Care Records

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Information Access Guideline 8: Care Leavers' access to their Out-of-Home Care Records

Strong moves have been taken in Australia in recent years to ensure that former care leavers have effective access to the historical records relating to their time in institutional care. Improved access, underpinned by clearer guidance, is widely supported within Australian governments and the community. This objective accords with the importance we place on transparency in government and the human services sector.

As such, this guideline also focuses upon strengthening and improving access to Stolen Generation records for survivors and decedents. It is recognised the important role in accessing historical records plays in truth telling and sharing history, intergenerational healing, redress and reparations for Stolen Generation survivors and their families.

This guideline is issued by the Information Commissioner under section 12(3) of the *Government Information (Public Access) Act 2009* (GIPA Act). The Commissioner may issue guidelines for the assistance of NSW Government agencies about public interest considerations in favour of the disclosure of information.

The Guideline is directed to the public interest considerations that support access being granted to institutional care records and Stolen Generation records as fully and efficiently as possible.

The Guideline aims to strengthen a robust commitment within NSW government to responsible stewardship of information and public trust in those government processes.

Elizabeth Tydd

Information Commissioner

May 2023

1. The Purpose of this Guideline

Government and non-government agencies in Australia hold records about an estimated 500,000 people who were in institutional care as children during the 20th century. Their experience – and their plight – was recognised in the Australian Government’s National Apology to Forgotten Australians and Former Child Migrants in 2009, in the [Report of the Royal Commission into Institutional Responses to Child Sexual Abuse in 2017](#) (the Royal Commission Report) and in numerous other Parliamentary, government and non-government studies and programs.

A strong theme in the National Apology, in the Royal Commission Report and in numerous other Parliamentary, Government and civil society reports, is that stronger guidance is needed to ensure that former care leavers can more easily obtain access to their records relating to their time in institutional care.

The principal focus of this guideline is upon access to historical out-of-home care records. These are records relating to children or young people who were in some form of State care in the past, for example, they were wards of the State. However, the same considerations apply to access to contemporary records relating to children in out-of-home care. This contemporary perspective is a central feature of the records management principles proposed by the Royal Commission.

The Royal Commission Report also supported the adoption of a principles-based approach to records management and access and published a set of five records management principles to influence the approach of institutions that – historically or at present – care for, or provide services, to children. Principle 5 relates specifically to records access:

- **Principle 5:** Individuals’ existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.
- Individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.
- Individuals should be made aware of, and assisted to assert, their existing rights to request that records containing their personal information be amended or annotated, and to seek review or appeal of decisions refusing access, amendment or annotation.

The term ‘Care Leaver’ refers to all people who have left out-of-home care in New South Wales. In particular, these guidelines are to assist care leavers, who as children, experienced institutional or out-of-home care in the previous century. This includes children who were placed in foster care, in government and privately-run orphanages and children’s homes, or who arrived in Australia as child migrants.

This guideline draws from similar guidelines that have been published by other bodies relating to access to institutional care records that are held around Australia by government and non-government agencies. An example is the guidelines published in 2015 by the Commonwealth Department of Social Services, [Access to Records by Forgotten Australians and Former Child Migrants](#). Accordingly, this guideline recognises the importance of national consistency for people who are seeking access to records that may be held by more than one agency.

Access to records – which is the subject of these guidelines – is only one aspect of records management practice relating to out-of-home care records. The Access Principles and Best Practice Guidelines published by other bodies also deal with the creation, management, disposal and sharing of institutional records. The integrity of records access practice depends on effective records management overall. The Information and Privacy Commission (IPC) intends that these access guidelines should form a broader commitment within NSW government to responsible stewardship of information and public trust in those government processes.

2. Out-of-home care records in NSW

A number of government agencies hold historical records relating to out-of-home care arrangements. Agencies with significant record holdings include the NSW Department of Family & Community Services, the NSW Department of Justice, the NSW Trustee and Guardian, the NSW Police Force and the NSW Department of Education.

An extensive range of personal and non-personal information is kept within these records. The different types of information can give rise to different access considerations.

The personal information in a care leaver's record can cover matters such as names (birth names and assigned names), date of birth, Aboriginality, health, family circumstances, conduct in care, and institutional care history and arrangements. The information may have come from many sources, including family, carers, service providers, and other care leavers. A care leaver's record may also contain personal information relating to other people, such as family, carers, and care leavers. It may also contain health information.

Non-personal information that may be found in a care leaver's record could include an institution's care and governance arrangements and forward planning, communications between various institutions, and advice provided by a legal or medical practitioner or social worker regarding a care leaver's circumstances.

3. Accessing Stolen Generation records

The Information Commissioner supports measures that enhance transparent government practices including the provision of access to records held by government.

Accessing Stolen Generation records will help to promote healing for Stolen Generation survivors and descendants and to improve access, management, and preservation of Stolen Generation personal records. It is recognised that by establishing or adopting national principles will enhance a consistent and permissive approach to access Stolen Generation records held by government agencies including the Registries of Births, Deaths and Marriages.

The ability to access to Stolen Generation records based on the *Bringing Them Home* (1997) and *Make Healing Happen: It's time to act* (2021) reports highlight that access to both individual and family Stolen Generations records is essential to locating and reunifying families. It has been observed that while some agencies have received and adopted the recommendations proposed in the reports, problems persist in accessing these records to enable family reunions.

Notably, the Healing Foundation has recently finalised its principles in relation to accessing Stolen Generation Records for survivors and descendants.

The IPC recognises that the Healing Foundation finalised principles will:

- assist in reconnecting family members separated by the Stolen Generation policy, which is an important step towards healing;
- streamline processing, reduce delays and increase flexibility;

- avoid re-triggering trauma through retelling stories; and
- provide greater certainty for both government and non-government organisations in managing access to Stolen Generation records.

In addition, the principles attempt to address the barriers that are inherent in obtaining access to records that are held by a wide range of agencies across Australia (i.e. each operating under their own individual rules and protocols).

It is important that survivors and descendants of the Stolen Generation to re-establish connections with family members, which may only be possible by obtaining access to records available under the GIPA Act pathways. As such, the waiver of fees by agencies to allow Indigenous people to re-establish connections caused by the Stolen Generation policy is important.

4. Access to information mechanisms in NSW

NSW laws and administrative practices enable people to obtain access to government records. The requirements of those laws and administrative practices will be important in individual cases.

There are three main NSW laws that confer a right of access to information and records held by government agencies – the GIPA Act, the *Privacy and Personal Information Protection Act 1998* (PPIP Act), *Health Records and Information Privacy Act 2002* (HRIP Act). The operation of these pathways is set out in greater detail in the IPC resource [How to access personal information from government agencies](#). The *Children and Young Persons (Care and Protection) Act 1998* also provides access mechanisms. The extant legislative arrangements which confer the right to access information are important considerations in determining the public interest in favour of disclosure of information.

The GIPA Act designates four information release pathways. The two pathways that are directly relevant to this guideline are release of government information informally to a person, and release in response to a formal access application. The other two pathways that are discussed in other IPC publications are the mandatory and authorised proactive release of government information.

Under the GIPA Act, agencies have a positive obligation to provide assistance and advice to access applicants.¹ This duty is especially important in dealing with care leaver access requests.

Agencies with extensive out-of-home care records are urged – as key agencies have already done – to establish specially-staffed units that are knowledgeable in locating and providing access to such records, and in talking to care leaver applicants or their representatives or support people. Two examples of issues that may require sensitive explanation are a third party objection from a family member or other person to the release of personal information, or the release to the care leaver of records that contain substantial redactions of exempt or irrelevant material.

5. Access pathways under the GIPA Act

Informal Release of Information

The GIPA Act makes clear that an agency can release documents and information in two ways to a person without requiring the formal lodgement of a valid access application. Firstly, the Act declares that it does not intend to prevent or discourage agencies from giving access as permitted or required by other Acts or laws (s 10). Secondly, the Act spells out that ‘informal release of government information’ is one of the four designated information pathways.

¹ GIPA Act section 16

In practice that feature of the GIPA Act means that, in the absence of any statutory prohibition, an agency can release information on a one-off basis upon receiving an informal request or enquiry from a person. It is similarly open to an agency to establish and publicise an administrative access arrangement by which people can routinely make access applications for information or records, either generally or of specified kinds.

The IPC has encouraged agencies to take that path – see IPC fact sheet [Informal Release of Information](#). The benefits of informal release is that administrative access arrangements can be tailored in a flexible way to the kind of information that is likely to be requested, and for the benefit of the applicants who could use this access pathway. There is no loss of access rights as it is always open to a person to resort instead to their legally enforceable access rights under the GIPA, PPIP and HRIP Acts.

The creation by agencies of administrative access arrangements is a suitable means of enabling care leavers to obtain access to historical out-of-home care records. An example is the information access procedures administered by the Care Leaver Records Access Unit and the Adoption Information Unit in the Department of Family and Community Services and Justice.

The Information Commissioner also strongly supports access to Stolen Generation records through an informal pathway. This pathway provides swift and low cost information which is essential in reconnecting family members separation by the Stolen Generation policy, which is an important step towards healing.

Formal access applications under the GIPA Act

The GIPA Act sets out a formal process that a person may follow to make a valid access application for information contained in a record held by a NSW government agency to which the Act applies.

An agency is required to process a valid access application in accordance with requirements of the GIPA Act that provide legal protection for applicants and for agency decision makers.² Among the protections are that an agency must:

- acknowledge within 5 working days that it has received a person's access application, make a decision on the application within (ordinarily) 20 working days
- refuse access only if there is an overriding public interest against disclosure
- explain in writing any decision to refuse access.

Important elements guiding decisions are timeframes, searches, exemptions, consultation, application of the public interest test and reasoned decision making. Guidance regarding these elements is provided in guidelines and fact sheets issued by the IPC.

Those access procedures give rise to many practical issues discussed below that can complicate or hamper access being granted to out-of-home care records. Among the matters discussed are:

- establishing the identity of an access applicant
- defining the scope of an access request
- dealing with requests that may be framed as questions
- dealing with access requests that seek a large (and potentially unspecified) range of records

² GIPA Act Part 6 Division 1

- delay in dealing with requests
- the costs of access applications
- exemption issues, and
- third-party objections to the release of information.

The GIPA Act recognises that an agency may later find additional information that is relevant to an access request that has already been decided. The agency is not required to make a new decision, but can make a further decision to replace or supplement the earlier decision (s 58(3)). This flexibility may be relevant to care leaver requests that are seeking access to historical records that may not all be located at the same time.

6. Why access to out-of-home care records is important to care leavers – the public interest test under the GIPA Act

Agencies are empowered to decide informal and formal applications under the GIPA Act. In doing so the Agency must apply the public interest test.³ That test is applied in the context of a presumption in favour of disclosure of information unless there is an overriding public interest against disclosure.⁴

Considerations in favour of disclosure

Importantly there is no limit to the public interest considerations in favour of disclosure.⁵ From a public interest perspective, the laws and administrative practices establishing the right to access information should be viewed in a broader setting.

There is general acceptance across Australia, both by government and non-government bodies, that a special commitment going beyond legal requirements is needed to facilitate easier access by care leavers to out-of-home care records. This commitment is based on a number of important considerations which are summarised below:

- Knowing one's identity and personal history is a deeply seated human need. The institutional care practices adopted in earlier years mean that many care leavers have incomplete knowledge of why they were placed in out-of-home care, their personal history, and their family identity and relationships.
- A care leaver may need access in order to explore options for contacting and connecting with their genetic relatives or other care leavers they knew during their period in out-of-home care.
- The records may contain valuable memorabilia of a person's childhood – perhaps being the only mementos that are available. The institutional care records can validate childhood memories.
- Many care leavers suffered personal and social deprivation, and in some cases physical and sexual abuse. They understandably want to know more about their individual circumstances.

³ GIPA Act section 13

⁴ GIPA Act section 5

⁵ GIPA Act section 12(2)

- Learning more about one's personal history and journey is an element of redress.
- Some care leavers either have, or wish, to institute civil proceedings regarding their abuse or mistreatment, or to apply under a government reparations scheme. The records relating to their institutional care can be a key component of a proceeding or application.
- Society has accepted that the standard of institutional care provided in earlier years was unacceptable. There is national regret that many children suffered badly. They may individually want to know more about how their own experience is part of a larger picture.
- Access to information and privacy laws confer upon people a legally-enforceable right to apply to amend an inaccurate record of personal information. This right works in tandem with access to personal information.
- Developments in the law and policy have acknowledged and supported the value of the right to obtain information relevant to institutional care by care leavers.
- Government and non-government policy has developed to facilitate access to information regarding institutional care arrangements.
- Public statements by responsible authorities have encouraged agencies to exercise their discretion in requiring the applicant to establish their identity, taking into account the applicant's unique characteristics and the information sought.
- Information regarding institutional care relevant to an applicant may have already been revealed and/or disclosed through various mechanisms. The release or partial release of information should promote the exercise of discretion in favour of informal or formal release of information.

Irrelevant considerations

The GIPA Act confirms matters that cannot be considered by agencies as public interest considerations against disclosure (s 15). Specifically, an agency cannot consider whether disclosure could embarrass the Government or reduce public confidence in it, or whether the person seeking access will misinterpret or misunderstand any information that is given to them. Nor can an agency rely on a public interest consideration against disclosure that is not listed in the GIPA Act.

7. Consultation under the GIPA Act

Consultation is a crucial element of decision making in the context of access to records regarding out-of-home care by individuals seeking information relevant to them. The requirement for consultation is secured by section 54 of the GIPA Act. This might include, for example, personal information about a parent of the care leaver or another third party. Balancing the competing factors that arise though consultation will necessitate consideration of the individual circumstances and facts of each case.

Importantly the process of decision making commences from a pro-disclosure position which will only be displaced if the weight attributed to other factors, particularly the interests of third parties is so significant that it *outweighs* both the presumption and the factors in favour of disclosure.

The broad application of this requirement is confirmed by section 54A which provides discretion for an agency to consult with another agency to determine whether there is an overriding public interest against disclosure of the information, and/or to identify a person that may be required to be consulted under section 54.

Significantly, records relevant to out-of-home care are commonly held by a number of agencies with the practical consequence of consultation under section 54A.

Agencies are encouraged to consistently approach the public interest test to facilitate the object of the GIPA Act and demonstrate application of established principles and guidance relevant to access to records in the out-of-home care context. That approach should, to the greatest degree possible, inform an agency's response to consultation particularly in circumstances where agencies are practiced in applying the discrete public interest considerations against disclosure provided under the GIPA Act.

Consultation may also involve consideration of the release of personal information of a third party and can also apply to the release of personal information of a deceased person. If so, the consultation is to be done with a close relative of the deceased.

One challenging aspect of decision making following consultation can arise when the information sought involves the shared experiences and information of both the applicant and a third party. In applying the public interest test the starting point is the presumption in favour of disclosure that is mandated under the GIPA Act.

Engagement with the access applicant regarding the importance of access to information may enable identification of individual factors in favour of disclosure that are specific to the application. For example gaining access to information might reveal the names of carers or others which may assist in identifying family members, educational arrangements/attainments and/or health information.

Additionally access to other information might enable the access applicant to exercise any rights available to them and this is particularly important in the context of redress schemes.

An appropriate weight should be applied to these considerations.

In recent decisions the Tribunal has recognised the importance of consultation to determine the appropriate weight to be applied to factors in favour of and against disclosure.⁶ In summary, general assertions will not attract as much weight as identification of the specific type and nature of information which might give rise to considerations for the individuals/agencies involved.

Ascribing a modest, moderate or substantial amount of weight to the factors for and against disclosure that are raised by the applicant and third parties can have a practical and forensic purpose in that competing factors can be measured and then balanced as required under the public interest test.

Accordingly engagement with the applicant and consultation with third parties is an essential part of identifying relevant factors and attributing weight to those factors. Explaining the attribution of weight is then an essential part of decision making and providing reasons for decisions.⁷

The consultation process also provides an opportunity for an agency to discuss with a third party the concerns they may have about disclosure of their personal information to a care leaver. The agency may be able to explain why that personal information could be helpful to the care leaver in learning more about their out-of-home care experience. Other suitable options that could be discussed include the release of information in a redacted or abbreviated form, or the agency taking steps to facilitate communication between the third party and the care leaver.

⁶ Destination NSW v Taylor [2019] NSWCATAP 123

⁷ GIPA Act section 61

The [IPC Information Access Guideline 4](#) provides assistance to decision makers when dealing with applications involving personal information.

After consultation has occurred it is the responsibility of the agency to make its own decision on whether to grant access, or whether there is an overriding public interest against disclosure. If the agency decides to release personal information of a third party contrary to their objection, the agency must notify that person and delay the release of the information pending any action by the person to seek review of the agency's decision.

There are administrative considerations that also arise relevant to the consultation process including an extension of the 'decision period'.⁸

Applicant's personal factors

An agency is entitled to consider the following three matters:

- the applicant's identity and relationship with any other person – for example, another person referred to in a document that a care leaver is seeking
- the applicant's motive for making the access application – for example, to learn more about the care leaver's time in out-of-home care, or to seek out the care leaver's genetic relatives
- any other factors particular to the applicant (s 55).

Those factors may strengthen a care leaver's request to be given access to out-of-home care records and can be taken into account by an agency in applying the public interest test under the GIPA Act.⁹

Importantly, there are express limitations placed upon these personal factors operating against disclosure of the information.¹⁰

It is open to an agency to provide care leavers with greater than normal access and provide information that may not be disclosed in response to an access request from a different person.

Practical guidance on balancing care leaver access and third party privacy

The Commonwealth Best Practice Access Guidelines, in providing access to records (see Appendix), include a seven page guide on how to provide as much factual information as possible to care leavers while respecting third party privacy. Key points include:

- Different privacy considerations can arise depending on whether the third party is a parent/grandparent, sibling/half-sibling, relative (e.g., aunt, uncle, first cousin), external carer (e.g., holiday host), internal carer/staff, or other non-related child, and whether the third party is deceased.
- Different privacy considerations can arise depending on the nature of the personal information of the third party – for example, name, address/contact details, correspondence, photographs, visitors, personal particulars such as education and domestic circumstances, and personal information such as social or sexual conduct or beliefs.

⁸ GIPA Act section 57(2)(a)

⁹ GIPA Act section 12

¹⁰ GIPA Act section 55(3)

- These different considerations are relevant in determining privacy impacts including identifying information that has already been disclosed or revealed, for example in the public domain. Additionally these considerations may impact the amount of information that is redacted prior to provision of access to an applicant. One example of the complexities is responding to requests for photographs from institutions that record individuals as part of a group.
- As much factual information as possible should be given to a care leaver, noting that they may need third party information for family reunification, to establish or confirm identity or belonging, to understand why they were placed in care, or to re-establish contact with people. Possibly, too, the third party information in a record may not be confidential as it may already be known to the care leaver, through memory, other documents or through information provided by family or friends.
- Two situations in which it may be inappropriate to release third party personal information to a care leaver are: first, where the release could cause distress to the third party, for example, by disclosing their personal conduct, or revealing their time in out-of-home care; and, secondly, where the third party has specifically requested on an earlier occasion that their identity or contact details remain private.

The Best Practice Access Guidelines may be helpful in deciding individual access requests and in supporting a national uniform approach to disclosure. It is nevertheless necessary in individual cases that agencies make decisions according to the requirements of the GIPA Act. The [IPC Information Access Guideline 5](#) deals with the consultation process under the GIPA Act.

8. Common legal and practical issues faced by care leavers in obtaining access to records - agency advice and assistance to care leavers

Reports and studies have drawn attention to legal and practical obstacles that care leavers frequently face when seeking access to out-of-home care records. Understanding these obstacles will make it easier for agencies to work with care leavers to avoid or minimise the obstacles and to facilitate access more smoothly. A key objective for agencies should be to utilise the discretionary criteria in the GIPA Act and other NSW access laws to provide care leavers with maximum access to out-of-home care records.

The identity of an access applicant

The identity of an access applicant is a central issue when they are seeking access to their own personal information. Proof of identity enlivens the underlying principle in all NSW information access laws that people should be given unimpeded access to their own personal information. Proof of identity can be equally important when a care leaver is seeking access to information about family members or other people who lived with them as children or worked in the care centre.

An agency must be satisfied of a person's identity before releasing personal information, in order not to contravene privacy requirements. On the other hand, agencies should be aware that a care leaver may face greater difficulty than normal in verifying their identity or in establishing a relationship with family members who bear a different surname.

The Best Practice Access Guidelines advise that flexibility is required in requiring verification of a care leaver's identity:

- Proof of identity requirements can be applied less rigorously. For example, an agency may verify a care leaver's identity from: a photo identity document, such as a driver's licence or passport; a government-issued card such as a Medicare or Seniors Card; a document verifying that a person's name has changed, such as a marriage certificate; or a sworn statement of identity from an official or practitioner who has known the person for more than two years.
- Agencies should be prepared to accept confirmation from another government or non-government agency that it has verified the care leaver's identity. The confirmation may come directly from the other agency or from a support service that has been assisting a care leaver. Flexibility on this issue is important to avoid a potentially distressing need for a care leaver to verify their identity (and to relay their life history) on numerous occasions.
- Agencies should permit a care leaver to authorise another person or support service to act on their behalf in obtaining access to information. A signed authorisation letter can be requested from the other person or body.

Defining the scope of an access request

A threshold difficulty facing many care leavers is to describe adequately the documents or information they seek. This is an explicit access requirement of the GIPA Act, which provides that a valid access application 'must include such information as is reasonably necessary to enable the government information applied for to be identified' (s 41(1)(e)). An access request that is poorly framed will also be harder for an agency to administer efficiently.

Access applicants may frame the application as a series of questions and therefore render the application invalid. In these circumstances applicants may require assistance in framing their request.

Additionally a care leaver will likely be unaware of the exact information or records that were either created by an agency or that are still held by it. The difficulty will be greater if the care agency or centre has closed, restructured or been renamed. The Royal Commission noted that the very process of framing an access request can be traumatising and mystifying for many care leavers. This can be compounded by difficulties such as limited literacy or residing in a rural or remote location.

The advice provided by agencies in dealing with access applications must extend to the access procedure, whether the requested information may be held by another agency, and any reason that may have caused an access application to be invalid.¹¹

Flexibility may also be required in discussing with a care leaver how the access process can be modified to ensure the most satisfactory outcome. For example, an option may be the early release of some records while a search for other records continues or a discussion occurs on revising the request or on dealing with third party objections to release.

Information held by private sector contractors

The GIPA Act can apply to the records of a non-government body contracted by government to provide a public service.¹² This may be relevant if a private sector contractor provides out-of-home care services pursuant to a contract with a government agency. The contract is to provide for the agency to have an immediate right of access to information that relates to the performance of the contract or that the contractor collected from members of the public in providing services under the contract.

¹¹ GIPA Act section 52

¹² GIPA Act section 121

This immediate right of access will enable the agency to deal with a request under the GIPA Act for access to those records.

The IPC has published a fact sheet on the topic: [Non-government organisation's guide to section 121 of the GIPA Act](#) and an [Agency's guide to section 121 of the GIPA Act](#).

Requests that can impose a substantial administrative burden

A ground on which an agency may refuse to deal wholly, or partly, with an access application under the GIPA Act is that 'dealing with the application would require an unreasonable and substantial diversion of the agency's resources'.¹³

Before refusing an access application on this ground an agency is required to give an applicant a reasonable opportunity to amend the application (s 60(40)) and, as noted earlier, has an initial duty to provide advice and assistance to applicants.¹⁴ Agencies rely on this ground at times to refuse access requests unless the request is revised and narrowed in scope. Many agency decisions on this basis have been reviewed by the NSW Civil and Administrative Tribunal, and the IPC has published a fact sheet on the topic: [Unreasonable and substantial diversion of agency resources](#).

The starting point should be that this ground is not relied upon as the initial response to an access request from a care leaver under the GIPA Act. Exceptional circumstances may exist where a care leaver or their representative has declined all reasonable assistance in discussing a request that is unworkably broad in scope. In that exceptional circumstance it may be necessary to foreshadow to the care leaver that a request may be refused if it is not narrowed or revised. However, agencies should be prepared to make a greater effort to assist care leaver applicants to understand and discuss the practical and avoidable difficulties that broadly-framed requests can pose. Additionally, agencies should also ensure that applicants are advised of their review rights.

Access charges

The GIPA Act provides that an applicant can be required to pay an application charge of \$30 and processing and copying charges may also apply. However, an agency has the discretion to waive all or part of an assessed charge.¹⁵

If a care leaver is seeking access to personal information under the GIPA Act, agencies are encouraged to waive any fee or charge. The [IPC Information Access Guideline 2](#) provides information regarding fees and charges under the GIPA Act.

If a care leaver is seeking access to *non-personal* information under the GIPA Act, the agency should examine if the information requested is integrally related to the care leaver's experience in out-of-home care. The agency may decide in its discretion not to impose an access charge for any such request. The matter can also be discussed with a care leaver or their representative or support person.

Providing access

The GIPA Act contains formal requirements on notifying an applicant of the agency's decision on their request and providing access to documents. Agencies may need to go beyond formal compliance in providing out-of-home care records to a care leaver. Issues that are identified in the Best Practice Access Guidelines and other studies include:

- A care leaver may find it difficult to interpret or digest some of the information in a record. It may be helpful to provide some context or support to better understand the record.

¹³ GIPA Act section 60(1)(a)

¹⁴ GIPA Act section 16

¹⁵ GIPA Act section 127

- The information in a record may be confronting or hurtful to a care leaver. It may be helpful to alert the care leaver to potentially distressing material or to provide support when the record is released.
- Material that is redacted from a record to which access is provided may need to be explained, beyond a bare reference to the GIPA Act provision under which the redaction is made.

9. Conclusion

The GIPA Act enshrines the right to access information held by government agencies and private sector entities under contract to provide services to the public on behalf of agencies. A strategic intent of the GIPA Act is to place a legislative obligation upon agencies to respond to and provide access to information upon request. The GIPA Act is to be construed beneficially. Access decisions are to be made in accordance with principles that promote disclosure of information and adoption of guidance issued by the Information Commissioner.

The heightened responsibilities placed upon government to demonstrate responsible custodianship of information is an identified contemporary challenge. Application of the GIPA Act, by agencies in accordance with its intent, provides a tangible demonstration of responsible and responsive stewardship and ensures a significant contribution to our social and economic well-being.

Appendix 1 – Access Principles

The following Access Principles are republished from Commonwealth Department of Social Security, [*Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines in providing access to records \(2015\)*](#)

These principles apply regardless of the location of the records. That is, the responsibility for ensuring the same access rules applies to records relating to Forgotten Australians and Former Child Migrants regardless of the physical location or custodianship of these records.

Principle 1: Maximum provision of access to records

Records Holders will enable maximum information to be available to Forgotten Australians and Former Child Migrants about themselves; their family; identity and connection; circumstances surrounding placement in care; and details of time in care.

Principle 2: All information about themselves, and core identifying information about close family

Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at minimum, include name, community of origin and date of birth where these are available.

Principle 3: Copies of records

Every person, upon proof of identity, has a right to receive a copy of all records found relating to themselves.

Principle 4: No Fees or charges for access to records containing personal information

No application or copying fees or any other charge are to be imposed.

Principle 5: Time limits to respond to requests for records

Every Record Holder will establish timeframes, consistent with their jurisdictional practice for release of information, within which applicants, once any access conditions are met, will receive all relevant records.

Principle 6: Ability to seek review or appeal a decision

Records Holders will establish a review or appeal mechanism which can have another party, not part of the initial assessment, review decisions on what information is made available or withheld, and address any other grievance raised by an applicant, free of charge.

Principle 7: Records will be provided in context and applicants alerted to possible causes of distress

Every applicant will be advised of the nature and context of the information provided and the possibility of distress that may result from accessing records about them.

Principle 8: Right to know about support and assistance services

Every applicant has a right to receive information, both orally and in writing, at the time of application about appropriate support and assistance services available to them and be encouraged to use supported access services.

Principle 9: Care Leavers may annotate records to tell their story and express their wishes to limit access to records

Forgotten Australians and Former Child Migrants may annotate or add to their records to correct, amend and tell their story in relation to the events documented in their records. In addition, they may alert Records Holders that they do not wish records about their time in care to be accessed by family members, while they are still alive. The mechanisms for recording the wishes shall be stored in such a way as to be obvious whenever the records are accessed, and persistently linked to the record/s. The Records Holders will respect such wishes, but may, in exceptional circumstances and subject to demonstrated need (assessed using formally agreed criteria), determine that access is permitted by family members.

Principle 10: Applicants entitled to use the Find and Connect Services and their other support services to assist

Forgotten Australians and Former Child Migrants are entitled to have their Find and Connect Service or other support service, e.g. service provider, counsellor or case manager, involved in the process of locating and releasing records.

Principle 11: Records Holders will work collaboratively to enhance access

Records Holders will work collaboratively to identify and address policy and procedural barriers that adversely impact upon a person's access to records as identified in Principle 1.

Principle 12: Government state or territory records holders are the repository of last resort

Where there is no ongoing legal organisation inheriting responsibilities, assets and/or staff of an organisation that undertook some form of out-of-home care, the state or territory department responsible for children's services will become the repository of last resort for records relating to children in care.