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# Foreword

| *Baroness Lola Young of Hornsey OBE*

Living in an age where, for years now, we each have had access to the equivalent of thousands of dictionaries, encyclopaedia, medical texts, films, music, etc, via a small device nestling in our back pockets, it's important to remember that we still haven't quite worked out how this excess of information can serve us and be shaped to improve lives.

Access to records for care leavers is a salutary case in point.

The promise is there: when you leave the care system, you may have the complete record of the time spent looked after in children's homes and/or foster care. The local authority, your corporate parent, will have kept meticulous records, all of which will be revealed when you put in the request.

Unfortunately, it's not as simple as it might seem. Suppose, for example, that it's when you've reached the age of 40 years old that you decide to seek your care records? Or let's say you have a family of your own, and you feel ready to reflect on your past. You've left the system in a different state of mind from when you were 18 or 20 years old, and so retrieving your case notes is often a very different experience from what it would have been earlier in your life course. You may also find that your postcode determines whether or not you receive effective and efficient support and/or a truly complete leaving pack.

As with any public service, you will find pockets of good practice, and our hope is always that it is these model operations that will be replicated everywhere. Sadly, that's not currently the case.

Since the General Data Protection Regulation and the Data Protection Act 2018 came into force, other challenging situations have arisen. Understandably, governments felt that the growing mountains of data harvested from our phones and other devices needed to be regulated, but as is sometimes the case with legislation, there have been unintended consequences. Local authorities (and other bodies) are justifiably nervous about contravening laws, regulations and government guidelines and will often take a conservative approach to avoid litigation. Add into this mix competing claims on a key element of the legislation – that is, the right to privacy – and this further complicates the situation. For example, you may want to know about your family, but they may not want you to know anything about them. And so we end up with a recipe for dissatisfaction on all sides and the potential for litigation.

Thanks to the tireless efforts of practitioners, campaigners, local authorities and legal representatives, more clarity about how to deal with these difficult, complex situations is beginning to emerge. The guide, *Access to Information for Adult Care Leavers*, supports social workers and Access to Records Officers who are keen to ensure that all care leavers receive the best service possible.

# Introduction

This practice guide has been written for social workers and Access to Records Officers (AROs) in England, and will, we hope, be of assistance to practitioners in Northern Ireland, Scotland and Wales. Other professionals, including lawyers, may also find it useful. Its purpose is to offer guidance and practice examples to assist decision-making about providing information to an adult care leaver who makes a Subject Access Request (SAR) under the Data Protection Act 2018 (DPA). The DPA is sometimes misunderstood as legislation that limits an individual's right to see their personal information held about them, rather than enabling legislation that gives a person the right to find out what data is held about them and the lawful basis for holding any personal data.

The Information Commissioner's Office (ICO) is responsible for overseeing that organisations holding personal data deal with such data lawfully, securely and fairly. The Office has recently issued guidance to organisations setting the standards for responding to requests to organisations to share with an individual their personal data.<sup>1</sup> Whilst this is in general terms, it is a helpful starting point for what is expected when a SAR is made. The guidance provides an important reminder that it is a fundamental right of everyone to know what personal data an organisation holds about them.

The former Information Commissioner, Elizabeth Denham CBE, made a commitment to enhance the trust that people can place in organisations holding their data by ensuring greater transparency and accountability. At a symposium in July 2019, organised by the MIRRA Project (Memory – Identity – Rights in Records – Access) at University College London, she said: 'Records of people's past don't just help to shape their memories, but help to shape how people see themselves today. This is too important an issue not to get right.'

The DPA is the UK-wide vehicle for implementing the requirements of the General Data Protection Regulation 2016 (GDPR) (which came into effect in 2018), a Europe-wide legal framework imposing legal and enforceable requirements on any organisation holding and processing personal data. The GDPR continues, at the time of writing, to apply to the UK, although the UK is no longer a member of the European Economic Union.

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1 <https://bit.ly/3dEwlcD>

The DPA dictates that each SAR is dealt with on a case-by-case basis, and decisions about sharing with the individual seeking their personal data take into account the reason for their request and the reasons why the organisation is holding their data. Inevitably, this results in differing responses to each request, with varying standards of practice across the UK.

This guide is informed by the day-to-day experiences of social workers and AROs tasked with making decisions and judgements about providing information to adult care leavers. It is also informed by adult care leavers themselves and their experiences of asking local authorities and other agencies for information about their time in care. It is intended to help workers make empathetic and constructive decisions about information sharing to enable adult care leavers to have sufficient information about:

- their family, their background and their time in care to enable them to have an understanding of their past;
- decisions made while they were in care; and
- how this may have affected their journey throughout their childhood and into adulthood.

The guide refers to guidance issued by the ICO about responding to a SAR (see footnote 1) and the statutory guidance applicable to England, issued by the Government through the Department for Education (DfE) in May 2014. Many groups are asking for this statutory guidance to be updated to reflect properly the principles and requirements of the current DPA and GDPR. At the time of writing, this has not been done. Many local authorities and voluntary agencies have procedures to support workers responding to requests from adult care leavers to access their care files; however, many do not.

There is still a lot to learn in this area. The intention of this guide (now in its third edition) is to build on the good practice already in place, informed by what adult care leavers tell us, alongside recent research findings, so that the quality of decision-making by professionals and agencies is enhanced and policy and practice are continuously refined and focused on the rights of adult care leavers.

## A NOTE ON TERMINOLOGY

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The term “adult care leaver” is used in this guide, but some people who grew up in care may refer to themselves as “post-care adults”, “care-experienced adults”, or simply as “a person who grew up in the care system”. The term is used to include anyone who has spent all or part of