



Provision of adoption information and the exercise of the Chief Executive's discretion under section 27(5) of the Adoption Act Guideline

Classification C

XXXXX Insert title of mandatory Classification B Directive document (title should be as short as possible and describe its key focus – eg Adverse events procedure, Records management policy)

Directive documents include Manual of Practice, policies, standards, procedures, protocols, practice circulars that are mandatory for certain staff.

Summary

Provides guidance on the provision of adoption information to applicants and on the Chief Executive's exercise of discretion under section 27(5) of the *Adoption Act 1988*.

1. Purpose

The Department for Child Protection (DCP) recognises the National Apology for Forced Adoptions¹ 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.

The Chief Executive is required by s 27(6) of the Adoption Act to establish and maintain a written guideline regarding the exercise of the Chief Executive's discretion under s 27(5) of the Adoption Act that confers upon the Chief Executive discretion to decide, on a particular ground, that adoption information should not be disclosed to an applicant.

2. Scope

This Guideline provides general information about the process in which certain persons may apply for and obtain adoption information pursuant to s 27 of the Adoption Act.

The 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.

3. 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. This Guideline should be read in conjunction with s 27 of the Adoption Act. It 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;

¹ 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.

- 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.

3.1 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:

- an adopted person
- an adoptive parent
- a birth parent
- 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
- 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 authorise the Registrar of Births Deaths and Marriages to release a pre-adoption birth certificate to an adopted person: 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 earlier (before the adopted person turns 18). However this may only occur 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 complete an Application for Provision of Adoption Information form (**Appendix 1**). The applicant must lodge the application with the DCP Freedom of Information (FOI) Team (refer to Part 14 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
- a postal or email address for the applicant
- 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.

It is preferable that the applicant also provides a contact telephone number and email address in the application, so DCP can easily communicate with the applicant.

Fees and charges

DCP will not charge any fees in relation to an Application for Provision of Adoption Information to access to personal information held in DCP adoption records.

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)

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

This statement of consent must be signed by the birth parent or adopted person. If they have 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 will need to provide proof of their death (eg. Death Certificate / Obituary Notice).

3.2 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 will provide or arrange assistance if needed.

3.3 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 will write to the applicant confirming that the applicant has withdrawn the application. In such a case DCP will not proceed to make a decision in relation to the application.

4. Processing a valid application

4.1 General

Valid application

An Application for Provision of Adoption Information is a valid application if it is made by one of the persons mentioned in 3.1.1 above, and the applicant has requested information of a type that s 27 of the Adoption Act states that that type of person may obtain.

Process for dealing with a valid application

When DCP receives a valid application for adoption information, a research officer will search for the requested information. A delegated decision maker (refer to Part 12 for a definition), in accordance

with this Guideline, the Adoption Act and its objects and principles, will decide which documents/information will be released in full, in part, or withheld.

4.2 Processing times

Upon the receipt of a complete, valid application, DCP will send the applicant an acknowledgement letter specifying the timeframe in which DCP anticipates the application will be processed.

DCP will endeavour to process all applications within 30 to 60 calendar days. In certain circumstances it may be necessary to extend the timeframe for processing beyond this time period. These circumstances will include where additional time is required due to:

- the size and scope of the application
- consultation with other parties to an adoption (procedural fairness, see Part 7)
- the need to undertake further research and archival retrieval or
- the need to contact the applicant for clarification or to seek further information.

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

4.3 Departmental records (research protocols)

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 12 below for a definition of the above file types.

In addition to the file types listed above, further searches for DCP records will be undertaken until the adopted person's 18th birthday. If further information is found, the decision notice (see 5.2) will include details of these records and how they can be accessed. This may also include records from other agencies that DCP can identify.

5. The decision and provision of documents

5.1 General

DCP is committed to enabling certain people who are affected by an adoption to access as fully as possible any information relating to the adoption in accordance with the objects and guiding principles of the Adoption Act. In some cases DCP will have to weigh up conflicting interests when deciding whether adoption information should be provided to an applicant. This means that DCP must sometimes make a decision not to provide adoption information and this may distress the applicant or another party to the adoption.

The Chief Executive's powers and responsibilities under s 27(5) of the Adoption Act are delegated to the Deputy Chief Executive; Executive Director, Out of Home Care; Director, Out of Home Care; Senior Manager/Assistant Director, Out of Home Care; Supervisor, Freedom of Information; Supervisor, Adoption Services; and Director, Legal Services.

Where information is withheld 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 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.

5.2 Notification of a decision

The delegated decision maker must 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 made the decision
- if there is a veto in place and its expiry date
- a list of each file/record that is within the scope of the request
- whether the file/record has been released in full, partially, or withheld
- where a decision maker provides a document in a redacted form, the decision maker will state the redaction code (which provides the reason why the document is not provided in full)
- where a decision maker withholds a document, the decision maker will provide the reason
- 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).

5.3 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.

5.4 Original documents

Where original documents that relate to the applicant 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 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.

5.5 Documents 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, Departmental officers may contact the applicant to seek assistance with the search for documents. For example, in older records, information may be stored in a relative's file or under alternative names. If further searches are conducted and the documents are not located, DCP will provide a written decision notice to the applicant which explains this.

6. Reasons for not disclosing documents or information

The Adoption Act and this Guideline provide the framework within which DCP makes decisions about access to adoption information held by the Department.

The Chief Executive or delegate (delegated decision maker) 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 7 below). The DCP decision maker 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 in 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.

6.1 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.

Code 1 – 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.

Personal information refers to any information or an opinion (including information or an opinion forming part of a database) whether true or not, recorded in any material form, whether on paper or photographically or electronically recorded, about a person or other persons such as family members or carers whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personal information includes demographic information; billing information (Concessions); identifying information (such as racial type, eye and hair colour); case notes; reports and summaries including those provided by external practitioners and contracted services, such as Funded Service Providers and Alternative Care services. It also includes the clients expressed wishes about future provision of services, such as reunification with family, debt reduction, leaving care arrangements, or completion of a young offender order.

1.1 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 7 below).

In making the decision pursuant to s 27(5) of the Act the DCP delegate 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.

1.2 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).

Code 2 – 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

DCP will refuse to provide a document or information, or will redact a document, if the delegated decision maker has determined that the disclosure of the information would give rise to a serious risk to the life or safety of a person.

Code 3 – 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

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 7 below). The Chief Executive 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.

6.2 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')

the veto will remain in place for 5 years from 18 December 2017 (i.e. until 17 December 2022)².

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.

² Date relates to commencement of an amendment to section 27B of the Adoption Act on 18 December 2017.

6.3 Other reasons for not disclosing documents or information

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

Documents or information the disclosure of which is an offence

DCP may refuse to provide a document or information, or may redact a document, if disclosure of the information or document would constitute an offence under any Act, either in South Australia or elsewhere in Australia.

Documents or information subject to Legal Professional Privilege

DCP may refuse to provide a document or information, or may redact a document, if it is entitled to claim legal professional privilege over the information or document. Such information or documents may include, for example, communications between a lawyer (either in-house or external) and DCP, and documents prepared for Court purposes.

7. Procedural Fairness and good decision making

Where DCP receives a valid adoption information application, the DCP decision maker must decide whether information should be withheld on any of the grounds set out in s 27(5) of the Adoption Act, or for any other reason: see Part 6 above.

The decision that is made will generally affect the interests of other persons. If the DCP decision maker forms the view that the disclosure or non-disclosure of the adoption information is likely to affect another person's rights, interests or status, the decision maker should provide procedural fairness. This may involve writing to the other person to seek their views on whether the disclosure of the information would have any of the consequences set out in s 27(5)(a), (b) or (c) of the Adoption Act. When determining whether the disclosure or non-disclosure of the adoption information is likely to affect another person's rights, interests or status, the decision maker must consider various factors including the age and content of the adoption information, and any information held by DCP which indicates the other person's views on the disclosure of the information.

If DCP forms the opinion that documents or information to be provided to an applicant include information that is likely to be distressing to an applicant, DCP will inform the applicant of this. It is recommended that the applicant access support when receiving and reviewing the information and documents.

8. 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).

9. Applicants who are dissatisfied with the processing or outcome of their application

If an applicant requires assistance to understand the matters covered in the decision notice, DCP will provide assistance. Applicants will be advised of their options if they are dissatisfied with the processing or outcome of their application as described in the decision notice.

9.1 Reconsideration of a decision to withhold information

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

An applicant must write to the delegated decision maker within 30 calendar days from the date the decision was made with information about why the decision should be reconsidered. This should include evidence (where available).

The delegated decision maker will review the information supplied by the applicant and consider whether there may be a reason for changing the decision. There will not be a reason for changing the decision if the applicant has not provided any new information or arguments to DCP. The delegated decision maker will provide a reconsideration decision notice to an applicant in writing within 30 calendar days of receiving the request.

9.2 Complaints

The Adoption Act does not specifically provide for review of decisions made under s 27 of the Adoption Act. 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. In addition, if an applicant is dissatisfied with the timeline in which their application is processed, a complaint can be lodged in the following ways:

- Online: <https://www.childprotection.sa.gov.au/department/online-complaints-form>;
- By telephone: 1800 003 305;
- In writing to: Central Complaints Unit, Department for Child Protection, GPO Box 1072, Adelaide SA 5001.

9.3 External complaints

A person may also have a right to refer the matter to Ombudsman SA or seek judicial review of the decision in the Supreme Court of South Australia. A complaint can be made to 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

10. 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 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.
- Information held in Departmental records contains views expressed by Departmental staff, medical professionals and other government and non-government organisations. Much of the information is opinion based and should be treated as such. When applying for information it should be remembered that the information may only provide one version of events.

11. 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.
Delegated Decision Maker	An officer delegated by the Chief Executive to make decisions in accordance with section 27 of the <i>Adoption Act</i> 1988, regulations and this Guideline on whether access is to be granted or withheld.
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.

12. Compliance, monitoring and evaluation

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

13. 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
Delegated Decision Maker	A DCP employee who has delegated powers conferred by s 27 of the Adoption Act on the Chief Executive, and holds

Term	Meaning
	one of the following positions: Deputy Chief Executive; Executive Director Out of Home Care; Director, Out of Home Care; Senior Manager/Assistant Director Out of Home Care; Supervisor, Freedom of Information; Supervisor, Adoption Services or Director, Legal Services
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	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 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

Term	Meaning
	<p>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>

14. Related documents

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

15. 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

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