

TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Inquiry into the Operation of the *Freedom of Information Act 1982*

Melbourne – Wednesday 13 March 2024

MEMBERS

Dr Tim Read – Chair

Hon Kim Wells – Deputy Chair

Ryan Batchelor

Jade Benham

Eden Foster

Paul Mercurio

Rachel Payne

Belinda Wilson

WITNESS

Kirsten Wright, Program Manager, Find & Connect, University of Melbourne.

The CHAIR: We are reopening this part of our public hearing for the Integrity and Oversight Committee's inquiry into the operation of the *Freedom of Information Act*. To our witness, just bear with me while I cover some formalities.

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All evidence given today is being recorded by Hansard, and you will be provided with a proof version of the transcript for you to check once that is available. Verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

I welcome from Find & Connect Web Resource at the University of Melbourne Kirsten Wright, Program Manager. Thank you very much for your submission and for coming along this afternoon, and for bearing with us as we get started. Do you have any brief opening comments?

Kirsten WRIGHT: I do, if that is okay.

The CHAIR: We would love to hear them.

Kirsten WRIGHT: Okay, fantastic. Well, thanks very much for inviting me along today. I am really happy that you are interested in this issue. So yes, the Find & Connect program is funded by the Commonwealth Department of Social Services [DSS] to support people who grew up in out-of-home care in the 20th century: forgotten Australians, former child migrants, members of the stolen generations and care leavers. I am from the web resource part of that program, which is based at the University of Melbourne.

Just over a month ago Premier Jacinta Allan delivered an apology to Victorians who experienced historical abuse and neglect as children in institutional care. She highlighted that people who grew up in care were:

... denied that most basic right – knowing who you are.

She described how people were:

... forced to piece together your identity and history from your records – documents that were either incomplete, blacked out, or littered with lies made up about you and your family.

This goes to the heart of the issue today. For those of us who grew up in our families, I would like you to think about what we just take for granted. We know our parents' names and siblings, aunts and uncles. We know the details of our cultural backgrounds. We know about medical issues that might affect multiple family members. And think about those family records that are created, shared and passed down: photographs, school records, family films and documents. For people who grew up in care, the *Freedom of Information Act* has been the instrument by which this knowledge must be learned and also how people's histories have been withheld from them. So we support the release of these records through an administrative or informal release process, with a formal FOI [Freedom of Information] process being used only as a last resort when all other options have been exhausted. We note that other submissions to this inquiry have called for this process for all personal and health information, and while our focus is on care records, we do support this broader approach as well.

Using an informal or administrative release process will improve two main areas currently causing distress for care leavers – so they are backlogs in releasing receiving records, and redactions. So backlogs – many care leavers face waits of months or even years to receive all information held about them, compounding the uncertainty many face when all their records are provided to them and then what they might find in those records. The work of the Care Leaver Records Service in the Department of Families, Fairness and Housing – they have done a lot of work to reduce that request backlog, but we do need to note that this is an ongoing issue.

Redactions – the application of the personal privacy exemption is one that causes immense distress in this space, and for many people it is precisely this third-party information that they are seeking, again thinking

about those names of family members, siblings and other relatives. We know of some people who have received entire pages blacked out with no explanation why except for a reference to a section of legislation. We also know that exemptions and redactions can be applied haphazardly, depending on who is processing that request. Some people have reported requesting their records multiple times and receiving different redactions in each release. It is also important to recognise that in this space we have seen many people angry and distressed about redactions in the records they have received. We have never seen any anger about the release of too much information.

I want to again acknowledge the work of the Care Leaver Records Service. It has made a big difference in this space. They have been very open and transparent about the issues that they are facing and the delays that they have got, and the policy that they use to guide their work is a great underpinning and is based on best practice guidelines. But the work of the Care Leaver Records Service has been hampered by the requirement to process each request through the FOI Act. Unlike adoption records, which are released under specialised provisions in the *Adoption Act*, care leaver records are required to go through this general release process, placing a bureaucratic burden on applicants and being time-consuming for the department. Any informal or administrative release scheme for child welfare records would reduce distress and uncertainty for requesters and enable the care leaver records service to be much more flexible and responsive when providing access. There are guidelines and potential models to follow, and I am happy to discuss these. There are also publications such as the DSS *Access to Records by Forgotten Australians and Former Child Migrants*, which provides both access principles and best practice guidelines, and is already used by many non-government record-holders.

Just to finish, I want to say that none of these issues are new. Issues around access to records were raised in the *Bringing Them Home* report, which is almost 30 years old now. And other State and national inquiries and commissions have also provided ample evidence and recommendations about how these systems must change and the injustice of this group of people not having access to this fundamental identity information. But the conclusion must be drawn that until the legislation is altered, wholesale changes in this space will not happen. This Committee's investigation into the application of the FOI Act, noting Premier Allan's recent apology, is the perfect opportunity to enact important change in this area, one that will have ongoing and long-lasting positive effects for care leavers now and into the future. So thank you, and I am very happy to answer your questions.

The CHAIR: Thank you very much. Ryan Batchelor, you might want to start.

Ryan BATCHELOR: There is a lot I would like to ask. But I might start with – you have touched on it a bit; maybe if you could just articulate slightly more what you think some of the tangible benefits of an alternative release scheme outside of FOI might be for care leaver records. Related to that, it may not be the case that it has any impact, but is there any implication for accessing redress, the ability of an individual to access their records? And in the development and formulation of the redress scheme, are you aware of any consideration being given to what needs to change on the access to records front?

Kirsten WRIGHT: Yes, okay. So I will go back to –

Ryan BATCHELOR: Sorry, I distracted myself and you with the second part of the question. Why don't we do them in sequence.

Kirsten WRIGHT: Yes. In terms of benefits to an alternate release scheme, I think personal information under FOI covers such a gamut of things, right. It covers, 'I'm having a dispute with the local council and I want my records' and 'I've had an operation in hospital and I want my health records.' I think there is something different about care records, people having to go to the government to say, 'Who are my parents? Who are my siblings?' I think that is very different. It is much more personal and foundational to a lot of the other records covered under that kind of personal information category under FOI. So absolutely, people are requesting records for their personal and family identities. They are also requesting records for redress, and we can talk about that.

Some of the benefits I think are: release can be more timely, because departments are not having to go through that full FOI process and at the moment are consulting and assessing, so again, that whole assessment process can be a lot quicker, which means records get out sooner; and that ability to provide records with minimal or no

redactions, not as constrained by the exemptions under the Act, so again, there is much more flexibility in terms of a response that someone can provide outside of the Act. I think it also means that organisations can be a lot more responsive to what that individual requester needs. If they are after a particular piece of information or they are after a summary or whatever, that can be done a lot quicker and is easier outside of a formal FOI process, because rather than having to just release the documents that exist, there is a bit more analysis that can be done.

I also think it is important to not forget about the kind of non-personal records, those administrative records that might not mention somebody by name but provide that context about that overall picture of care, and again they can be released now; they can be requested under FOI. But I think having an informal mechanism for release makes the release of those records far easier and more proactive as well. There can be a proactive release of those records, which I think can also help manage expectations, because a lot of times these records are really disappointing for people. They want the whole story of ‘what happened to me, what happened to my family, why was I put in care,’ and often those records do not provide those answers. Someone might have their entire history of childhood written down as one line in a register, and so providing that more contextual information can help them get that information in a different way and also kind of manage those expectations around what they will receive in terms of personal information. At the moment someone might have care records under the Department of Families, Fairness and Housing, they might have juvenile justice records and they might have education records. They are having to make multiple requests through multiple agencies. I do think under an informal release scheme there is the potential to kind of make that into a one-stop shop and have a central point for releasing of the records regardless of the department they are from originally. I think that is a potential as well.

In terms of redress: for example, under the stolen generations reparation scheme that is operating at the moment, people do have the option as part of their redress response to receive their records. That is something that was built into the redress scheme. I do not think it is mandatory, but if they want to receive a copy of all their records, they can do so. My understanding is that the design of that care leaver redress scheme is still in quite early stages. I am not aware if something like that is being considered, but I would absolutely hope that it is, because, yes, I think it can be an important part of people coming to terms with their childhoods and moving towards healing and that sort of thing – if people want. They might not want it, but if they want it. So yes, I think it is an important option to be considered in a redress scheme. I will say, as well, people often want their records in order to apply for redress. They might not need them, the scheme may say it is not a requirement, but it is often just to verify what institutions they were in at what time and who was running those institutions. So I think it is an important part of any sort of redress scheme in that sense as well.

Ryan BATCHELOR: Thanks.

The CHAIR: Let us go to Eden Foster.

Eden FOSTER: Thank you. Thanks, Kirsten. As you are probably aware, jurisdictions like New South Wales have a push FOI model. How does New South Wales approach the release of care leaver records under the GIPA Act?

Kirsten WRIGHT: The New South Wales model and the South Australian model – actually they are very similar. Their care leaver records are actually released under their children and young people Acts. They are not released under GIPA [*Government Information (Public Access) Act 2009 (NSW)*] or FOI. New South Wales has the *Children and Young Persons (Care and Protection) Act 1998*. That is for statutory care records. They also have a separate unit outside of the GIPA processing unit that provides access to those records. So, again, it is more flexible. The form that they have got lists all the different types of records that may be released, and so that information is up-front about what types of information people might be receiving. There is an option to also receive adoption records as part of that process as well, so that is built in. Records are released free of charge, which is also the case under the care leaver records service here, but again that is kind of built into the system, and it means that things like redactions are minimised. They are able to release a lot more information to people, particularly if the person can show they already know, for example, their family members’ names and there is no need to redact. They are able to release a lot more information. I understand, and this might seem like the flip side, they are also very good at telling people up-front when there is no information, which can be quite important. Again, under the current Victorian model people might be waiting for their FOI request

for months only to be told there is nothing, whereas I think under the New South Wales model they are able to be very up-front very quickly about, 'We don't have anything; search elsewhere.'

There are still delays. It is not perfect. Again, resourcing in this area is always an issue, but there is a system of priority requests in place so people for health reasons or for redress reasons or that sort of thing can kind of show that there is an urgency, and there is a priority system in place there as well. There is a lot more choice about how the person receives their records, which is a really critical part of it. Instead of just sending it out in the post, they might want to receive it in a different way or with a support service and that sort of thing, so again that is a much more flexible model. The Care Leaver Records Service here has done I think as well as they can, but they are hampered by what they need to do under the FOI Act. I will say as well: it is only those statutory care records, so in terms of considering a model like that for Victoria, I do think it is important to have a quite broad definition of what care records are. For example, in New South Wales those juvenile justice records are still done under GIPA, and I understand that the service in New South Wales is very good about referring people to GIPA when they know there are records that can be released. Having that kind of quite broad definition of what is covered under the notion of a care record I think is important. But it seems to be a much better system; they are very transparent about how long things are going to take and when records will be provided.

The CHAIR: Paul Mercurio, do you want to take Question 4?

Paul MERCURIO: Thank you. I do appreciate that. Firstly, I just want to say thank you for your opening statement. I thought that was very powerful. There was some discussion yesterday in this room about, 'Do we call it Freedom of Information or right to information?' I just think with your statement and with care leavers in particular it is a right, not a freedom.

Kirsten WRIGHT: Absolutely.

Paul MERCURIO: It is an absolute right, and I feel very frustrated that they do not have that right.

Kirsten WRIGHT: For reasons outside of their control.

Paul MERCURIO: Exactly.

Kirsten WRIGHT: They did not choose to be put into care.

Paul MERCURIO: No. So if we could change that. New question: So what are your general observations on the information-management and record-keeping practices of Victorian agencies who hold child welfare records, and how can they be improved to ensure timely access to information?

Kirsten WRIGHT: So I can mainly speak about historical care records. We do not have a lot to do with current child protection records. Just on the more current stuff, I will say that there has been a lot of work in this space around designing systems that might be better to hold these records and to be able to move with the child and provide them with the child. There are various charters of rights to these records, yes, so there is quite a lot of work happening in that space. Again, my observation for more current care records is that there is still a disjunct[ion] between the work of child protection workers doing the work on a day-to-day basis and understanding that the records they are creating as part of that work are these child welfare records in the future. I think there is still a piece there.

In terms of those more historical records, now the Department of Families, Fairness and Housing – but when they did the work it was the Department of Health and Human Services – have made significant improvements in the management of these historical care records. There were some quite scathing reports in the 2010s around the management and access to these records, and they have done a great amount of work to both list these records and index them. They have got a fantastic website that, again, provides information about all the records that exist and how to get access to them. They have transferred a lot of records to the Public Record Office for retention as State archives. I think that kind of piece has been done to address that particular issue.

Again, I would say, looking more broadly across the government records that a care leaver might request, it can be anywhere from Department of Justice, Education, kind of all over the place. No-one is talking to each other. Again, someone who wants their school records as well as their care records would have to put in multiple

requests – which is quite a daunting process, to decide to look for your records – and so to then have to repeat it over and over again I think can be tricky. Resourcing is always an issue both for the people on the ground managing the records and then responding to requests. Quite a few requests are obviously coming through lawyers and legal firms these days for redress or civil litigation. They are sometimes prioritised over the requests of individuals, which can be difficult I think for people. I think it is about having that understanding that there is quite a broad selection of records that might be part of this information management system, knowing where they all are and then how to get access to them, which is something again that we try and do on Find & Connect – list the records that are relevant. But we can only go on the information that the departments know themselves, and so often there is a lack of internal knowledge about the records as well.

Paul MERCURIO: We heard earlier that if you do not know the right questions to ask, you can miss information. Can you talk about that at all?

Kirsten WRIGHT: Absolutely, yes. There have been cases – not so much in Victoria, but I think it is still an issue – with the response being like, ‘Tell us what you want, and we’ll provide you with that.’ How can you know what exists to then ask for what you want? So I think that is a bit of an issue. And again, the Department of Families, Fairness and Housing has done a lot of work around indexing those records and listing them and making them more available so that hopefully those types of issues are not happening as much. But it is the ongoing issue of, if you do not know what exists, and it is not listed and it is sitting in a box in a storeroom somewhere, how is anyone going to find it? So that work to catalogue, digitise, index, list it in a way that people who are then processing the request can search for it and find it is ongoing and is really time-consuming and resource-heavy but needs to be done.

Paul MERCURIO: Absolutely. Thank you.

The CHAIR: Thanks. Out-of-home care is largely outsourced to non-government agencies these days. So does this present particular barriers to care leavers accessing information under FOI, and how should that be addressed?

Kirsten WRIGHT: Well, I guess that is one thing to note – many people were moved around to different institutions, and many of those institutions were run by non-government organisations, even if the person themselves was a ward of the state. In thinking about records requests that someone has to make, they are having to go to that non-government organisation for records access. They are having to request their ward file. They are potentially having to go to multiple non-government organisations. And some people were moved interstate, so they are dealing with other jurisdictions as well. It is not uncommon for people to have to make multiple requests. I am not saying – would it be rare for someone to only make one request? Probably not, but for a lot of people, they are by definition making at least two requests if not three or four. Those non-government records are never released under FOI. They are still held by many of the past providers, the non-government record-holders.

Those records are being released under the provisions of the privacy Act [*Privacy and Data Protection Act 2014* (Vic)] generally, which again has meant that some non-government organisations are doing really great work in that space. They can because they are dealing with the privacy Act rather than the FOI Act. So releasing care leaver records outside of FOI in a sense brings the government records in line with the non-government records released in this space. I think it is partly an education or communication issue, which again is hopefully something that Find & Connect helps with, around people knowing they have a right to access their records, people knowing where the records they are interested in accessing are and where they are held and then how to get access to them.

We are seeing younger people accessing their records sooner. With the cohort that we primarily deal with, there is often quite a delay between exiting care and then wanting to come back and come to terms with their childhoods. That often happens when people might be in their ’50s and ’60s, so there is a trend for younger care leavers to request their records earlier. But yes, being informed that they have these rights – and, as you say, going back to that notion of this right to this information, people were not told that. They were not even told that records were being created about them, and it was never thought that they would see their records. So yes, people being told where their records are is really important.

The CHAIR: You talked about people getting lots of redactions. I wonder if you could talk a bit about whether any of these redactions are in the public interest. Are some of these redactions necessary versus some that obviously are not?

Kirsten WRIGHT: I mean, ‘in the public interest’ – this is something that the DSS guidelines and best practice principles go into a lot of detail about. It is a really useful, really practical document in that sense. Surely there is no harm in somebody knowing their parent’s name. There might be harm in releasing sensitive medical information about that person if that is also in the file. Is it in the public interest? You know, is it going to cause harm to that person if they are still living? Perhaps. So I think there is a balance to be drawn. I am not necessarily saying all records should be released completely unredacted at all times, but I absolutely think that there needs to be almost a generosity and an empathy when dealing with these records. Again, what do we know as part of our families that these people do not know, and again, through no choice or fault of their own.

One thing I always come back to is that it is such a common security question to be asked, ‘What’s your mother’s maiden name?’ That would be considered third-party redacted information under a strict interpretation of FOI. So how much of this information is actually shared information is one thing to think about, but yes, most of it is not against public interest to disclose. Most of it is not going any further than the person. They are requesting this file for them because they want the information. They are not necessarily going to make it public. It is not for public consumption. It is for their own use.

Another issue that happens a bit is with photographs. I do not think this happens as much anymore, this practice has basically stopped, but it is the classic school photograph. They are released to care leavers with all the other kids’ faces blocked out except for their own face. My primary school photos are up on Facebook – you know, someone put the class photo up. That happens all the time. But for some reason there is this extra layer of concern that goes well beyond how these records are treated outside of this care leaver situation – even if they are exactly the same records. I do not know if that answers your question.

The CHAIR: I think it goes a long way, yes. Any other questions?

Paul MERCURIO: Just on that question also, I am flabbergasted that I could ask for the same information three times and get different redactions.

Kirsten WRIGHT: Absolutely.

Paul MERCURIO: How does that happen?

Kirsten WRIGHT: Different people on the day deciding.

Paul MERCURIO: That is it? But is there no record of the request and the information being sent and –

Kirsten WRIGHT: Often no, which also means if organisations are doing work to improve their records access, and they must come across a whole new range of records, they are not necessarily contacting people who have requested before who might be interested in those records. Again, hopefully that has changed now. The department has done a lot of work, but yes, absolutely. Or we have heard of siblings all requesting their files and comparing who gets which bits of information.

Paul MERCURIO: That is good to know.

Kirsten WRIGHT: It is good to know. The thing is in a lot of cases people know what that information is, or they can guess. They are like, ‘I know this is this person’s name,’ or ‘I think this is referring to this issue.’ They were there. They experienced it. So it is a lot of work and it is really time-consuming, and again, you have to ask: To what end? If you are redacting information people already know and it is inconsistent, what is the point?

The CHAIR: Any other questions you want to –

Ryan BATCHELOR: They were there. That is my biggest, like –

Kirsten WRIGHT: Yes. They were there. They were there when the photograph was taken that they then cannot get the full photograph of, and they were there to experience the good stuff and the bad stuff. Why are organisations now preventing them from having information about that? They experienced it all.

The CHAIR: Do you want to ask anything?

Kim WELLS: No.

The CHAIR: I mean, one gets the impression that it is almost an overly punctilious interpretation of the Act that leads to needless redactions.

Kirsten WRIGHT: Yes. And again, I think now the Care Leaver Record Service is doing the best that it can under the circumstances it is working in under the Act and all that stuff, but I think there is a long legacy of information not being provided, which again, I think it is important to note for this cohort is on top of the absolute lies they were told as children. You know, they were told their parents did not want them. They were told they were not needed by anyone. Letters from family members were not provided to them – you know, all of that sort of stuff. So there is kind of this repeating pattern.

The CHAIR: Adding insult to injury.

Kirsten WRIGHT: Yes, absolutely.

The CHAIR: All right. Well, look, thank you very much for your submission and for coming along and enlightening us. At this point I declare the public hearing closed. Thank you, everybody.

Committee adjourned.