

## IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: [info@article39.org.uk](mailto:info@article39.org.uk)

## Information about you

Any organisation that you're in contact with – like your school, social care, the NHS and the police – may hold information about you. This information is likely to include:



- + Your name and address
- + Your date of birth
- + Whether you are male or female
- + Your ethnic origin
- + Your parents' names
- + Where you go to school.

Other information about you might also be kept, such as:

- + Information about your health and any medical conditions you have
- + Information about your family, your needs and any help you get (or have had in the past) from social workers or others.

Information about you can be kept in paper files and also electronically (on computers).

## Your rights – general

### Your right to privacy

Your right to privacy is protected by the Human Rights Act, which is a law passed by our Parliament in London in 1998.

Information about you should not be shared with other people without your permission unless this is necessary to protect you or others, or to stop crime.

Very general information about you might be used by the government, the NHS or others for research – like if they are working out how many children get free school meals. In this kind of research, private details about you and your life won't be shared.

Professional people like teachers, social workers, counsellors and police officers must take great care to protect your privacy. For example, they shouldn't talk about your private life in public places, where others can hear, and documents or computers that contain information about you must be stored in a secure way.

If there are meetings about you, the professional people who take part must be very careful about respecting your right to privacy. They must have very good reasons for sharing information about you.

Your feelings are very important. Never be afraid to tell your teacher, social worker or other adult if there are things you don't want mentioned or discussed in a meeting. They should do their very best to avoid you being made to feel uncomfortable or embarrassed.

### **Your right to see and correct information about you**

The law gives children and adults the same right to see and correct information held about them.

Information about you is called 'personal data'. You have the right to:

- + Know what information held about you.
- + See what information is held about you.
- + Correct mistakes and wrong information about you
- + In some situations you can also get the information removed.<sup>1</sup>

We often hear of children and young people being told they have to be a certain age to look at information about them, including their social services files. This is **WRONG!**

The law **DOES NOT** set a minimum age for being able to ask to see information written about you. What is important is that you:

- + Understand what it means to ask for information about you, **AND**
- + Understand any information you get.

The privacy and rights of other people must also be protected. So, information may be blocked out if it concerns another person.

### **Parents asking to see information about you**

Parents or others with parental responsibility may be able to see information about a child or young person, if the child or young person doesn't have enough understanding themselves. However:

- ✦ Where a child shared information expecting their privacy to be respected, or said they didn't want the information to be shared with their parent/s, parents do **not** have the right to see this information.<sup>2</sup>
- ✦ Where parents ask to see information relating to child abuse, what's **best for the child** must take priority.<sup>3</sup>

### **Where there is doubt**

If an organisation is not sure whether to show information to a child or to their parent, it should follow the advice of the Information Commissioner's Office (called ICO for short).

The ICO says that if organisations are unsure about information requests relating to a child, they should think about:

- ✦ The child's level of maturity and their ability to deal with an information request.
- ✦ What kind of information is being asked for.
- ✦ If a court has made any decisions about parental responsibility or the child's contact with his or her parents.
- ✦ If there is any duty of confidence owed to the child or young person.
- ✦ What might happen if a parent sees information about the child.
- ✦ Whether a child might lose out if a parent is not allowed to see information.
- ✦ What the child's views are about his or her parents seeing information about them.<sup>4</sup>

### **Asking for information**

The official way of asking to see information is to make what's called a 'Subject Access Request'. The law that gives you the right to information is the Data Protection Act 2018 (which replaced the Data Protection Act 1998), so it is good to mention this in the request too. But you don't have to use any of these words for your request to be treated properly.

You can ask to see all information about you – for example, if you are in care and want copies of lots of documents which will help you understand and remember your earlier life.

Or you might want a single piece of information, like a report written about you.

Requests for information can be made orally (by speaking!) or in writing. Written requests can be made in a letter or by email or an online form.

The law says organisations must reply "promptly" but definitely within one month.<sup>5</sup> So, for example, if you make a request on 10th August, you should receive a response no later than 10th September.

Organisations shouldn't charge for sorting out information.<sup>6</sup> However, if the request is not justified, or a person asks for lots of information, there may be a fee. Even then, the

law says any fee must be “reasonable”.<sup>7</sup> We think it would be difficult for organisations to justify charging children and young people for information.

If a fee is charged, the “applicable time period” (somewhere between “prompt” and one month) won’t usually start until the fee is received by the organisation.

### **If serious mental or physical harm is likely**

The law says the right to ask for information **doesn’t** apply if it is likely the person asking to see it (or someone else) would suffer serious harm to their physical or mental health, and this would have a bad effect on social work.<sup>8</sup>

This should not be used as a blanket rule to stop you seeing information. Each request must be looked at seriously.

### **Help and support, especially if you grew up in care or were adopted**

If you are in care, or used to be in care, you should be offered good support to help you prepare for seeing information.

Thinking about and reading about your past can be very upsetting.

You might decide to put off seeing information until you are older or more settled. There is no rush when it comes to your rights. Your council must keep information about children in care until their 75<sup>th</sup> birthday, and adoption agencies must keep records until an adopted person is 100 years old, so there is plenty of time from this point of view. And there is no time-limit on your right to request information.

Reading information about our childhoods can have a big impact. The government has written advice that councils must follow when it comes to supporting young people who are leaving care, or who have left care. This advice tells councils that someone should ring or meet you after you make your request. Then you can discuss what you are hoping to find in your records, any particular worries you have and any support you need.<sup>9</sup>

### **If you are adopted**

Once you reach 18 years, you have the right to information which will help you get a copy of your birth certificate (if you don’t already have this).<sup>10</sup>

## Graham Gaskin

We couldn't end this part of our site without remembering Graham Gaskin.

Graham spent virtually all of his childhood in care in Liverpool, England. He left care in 1977.

Graham was very badly treated in care. He wanted his social services files so he could take action against the council for not looking after him properly. The council refused to hand over his files.

Graham took the council to court, but he lost his case. He tried all the different courts in England but didn't succeed. So, he went to the European Court of Human Rights in Strasbourg, France.

### He won!

That was in 1989. Graham's success meant our Parliament had to change the law to give people the right to information. This led to the Data Protection Act 1998.

The rights to information we all have today are largely down to Graham's courage and determination.<sup>11</sup>

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1 See Sections 45-47 Data Protection Act 2018.

2 Part 3 of Schedule 3 Data Protection Act 2018.

3 Part 5 of Schedule 3 Data Protection Act 2018.

4 Information Commissioner's Office (February 2018) The guide to data protection, page 51.

5 Section 54(2) Data Protection Act 2018.

6 Article 12(5) General Data Protection Regulation.

7 Article 12(5)(a) General Data Protection Regulation.

8 Part 3 of Schedule 3 Data Protection Act 2018.

9 Department for Education (2015) The Children Act 1989 guidance and regulations. Volume 3: planning transition to adulthood for care leavers.

10 Section 79(6) and Schedule 2 Adoption and Children Act 2002.

11 <https://www.theyworkforyou.com/wrans/?id=2000-11-01a.99.3>