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## Short Article

# Privacy and dignity in recordkeeping for out-of-home care: A discussion

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### Abstract:

This paper provides a preliminary exploration of recordkeeping contexts for young people in residential care experiencing criminalisation and at risk of exploitation. Within the Australian context, the paper explores the potential ramifications of certain recordkeeping processes – notably those of a deficit-based, accusatory or pejorative nature – on a young person's rights to privacy and dignity. An emergent hypothesis questions whether negative sentiments within these records might indirectly precipitate or amplify challenging behaviours that subsequently face criminalisation. While empirical research in this area remains limited, this discussion piece serves as a foundation to instigate conversations and further investigations into the interplay between recordkeeping, identity perception, and behavioural outcomes. As a foray into a relatively uncharted domain, this article aspires to be both a contribution and a call to action for the research community, underscoring the profound significance of records beyond mere administrative utility and their potential role in shaping the lives of children in the care system.

## Child protection systems and care recordkeeping research

The records created and kept by professionals in the child protection continuum not only demonstrate adherence to legislative and professional mandates but are pivotal for transparent, consistent, and responsible child social care (Brown et al., 2020; Gursansky et al., 2012; Hoyle et al., 2019; Prince, 1996).

In Australia, reviews, inquiries, and royal commissions, together with recent research in this area, have underscored the deficiencies of recordkeeping systems in child protection systems, especially in the aftermath of child fatalities or serious injuries. Critiques range from data discrepancies and subjective and pejorative narrative styles, to an absence of children's voices and views (Commonwealth of Australia, 1997, 2001; Evans et al., 2020; Evans,



McKemmish & Rolan 2019; Golding et al., 2022; Humphreys & Kertesz, 2015; Nyland, 2016; Ogle, Vincent & Hawkes, 2022; Reed et al., 2018; Royal Commission into Institutional Responses to Child Sexual Abuse, 2017; Senate Community Affairs Reference Committee, 2004; Shepherd et al., 2020).

Such limitations have been identified as impeding early detection of child maltreatment and compromising transparent, accountable care systems that uphold children's rights. They also hamper the upholding of a child's future identity needs and potentially result in profound distress for those mentioned in the reports, especially children who have experienced trauma or those with care experiences.

This paper discusses recordkeeping issues within the context of children and young people's rights as prescribed by Article 16 of the United Nations Convention on the Rights of the Child (1989) (UNCRC). Article 16 states that 'No child shall be subjected to arbitrary or unlawful interference with his or her privacy (...) nor to unlawful attacks on his or her honour and reputation'. When we consider recordkeeping processes in children's social care, what might be considered 'arbitrary' or 'unlawful' interference with privacy? What could be an unlawful attack on the honour and reputation of a child or young person in care? If recordkeeping processes are dictated by social care policies and procedures, we can be confident they are lawful. However, recordkeeping research on care records suggests that many records created are felt and/or perceived by subjects of the records as attacks on their honour and reputation (Senior, 2023; Wilson & Golding, 2016).

### **Trauma, care systems, and care experiences**

Research often focuses on the material outcomes of care leavers rather than on the subjective experiences, meaning-making and identity formation of individual children and young people. Life story work goes some way towards expressing the importance of life narrative in personal development and healing from trauma, loss and grief. Much work in this field is instructive on how to support positive identity formation (Kontomichalos-Eyre et al., 2023).

The focus on trauma in alternative care contexts is often presented as being outside of the care system, relating to events that precipitate removal from family or in exploitation experienced outside of care placements (Commission for Children and Young People, 2021; Lloyd et al., 2023). However, we are becoming increasingly aware of aspects of care systems that create their own trauma as we hear from care-experienced people and care sector stakeholders through major inquiries and reviews (Yoorrook Justice Commission, 2023).

The South Australian Office of the Guardian for Children and Young People's final report concerning young people involved with child protection and youth justice observes 'systems abuses' in routine practices of care authorities:

Harmful or inappropriate decisions are made at different levels of the decision-making hierarchy that have associated problems and possible



lifelong implications. It is difficult to avoid the conclusion that ongoing child protection system practices such as poor placement matching, problematic staff training or competency expectations, and a propensity to call police to manage behaviour in residential care constitutes systems abuse. These practices foreseeably cause harm to children and young people and help propel them deeper into the youth justice system (Office of the Guardian for Children and Young People, 2022, p. 83).

Reports into the criminalisation of young people in residential care typically highlight staff reactions to challenging behaviours as leading to police involvement (Baidawi et al., 2022). Are there events and experiences preceding challenging behaviours that are so far being missed in our analysis of these complex problems?

### **Stability and care**

Similarly, instability in care (typically measured by the number of placements, though this is not necessarily a true measure) is often attributed to young people exhibiting challenging behaviours (Bollinger et al., 2021). Young people are said to become too difficult to place in family-based care and end up in residential care placements. These explanations obscure or omit young people's explanations as to why they may not become settled in a given placement or in any.

Which care practices may be experienced by children and young people as aggravating, disempowering, angering or triggering? Could aspects of care recordkeeping be experienced by children and young people as invasions of their privacy? Could the routine notetaking and recordkeeping practices of institutional care contribute to a felt loss of dignity?

### **Recordkeeping practices**

The individual impacts of the creation, 'sharing' and/or distribution of care files on individual children and young people, the *subjects* of these records remain largely unexplored. Do any of these lawful and routine practices contribute to young people's trauma and become expressed through challenging behaviours that may become pathologised or criminalised? If this was a concern for young people, how might that negatively influence feelings and contribute to negative identity development? This excerpt from a Centre for Excellence for Children's Care and Protection (CELCIS) blog suggests these are significant concerns for care-experienced people. In a section titled 'Reports and letters are almost what define you', a hearings-experienced young person called Helene argues:

Language is so important, especially when you're in care. It's a period of your life when so much is happening, and the only way to keep track of what's going on is through paperwork. So, if the language in hearings and paperwork is constantly negative about you and your family it's going to make you feel worse, especially as a child. You think, 'if everyone else is thinking that then maybe I should be thinking that too.'



It's really strange that adults are allowed to speak to children in this way and call them 'badly behaved' and 'challenging' and 'a nuisance', when the reality is, that child's going through a hard time (Miskimmin-Logan, 2023).

Care records primarily detail young people's affect and behaviours, critical incidents, goals and planning. Care leaver academics have highlighted how their records make assumptions and judgements that paint them in a bad light (Senior, 2023; Wilson & Golding, 2016). Professionals and carers reading these files prior to meeting young people are likely to be making judgements based on this information alone as they have access to little else.

Such records could contribute to the criminalisation of care-experienced people and surveillance bias in relation to care-experienced parents (Purtell et al., 2021). When a child or young person is brought before the courts, who is reading their files and what information is represented? What rights do care-experienced people have to challenge their 'records', which are taken as evidence relevant to a court's decisions?

### **Regressive or progressive policy innovation?**

Moral panic about deepening youth crime crises has recently led to policies seeking the suspension of the Queensland Human Rights Act by the Queensland Government in Australia to allow children in police custody to be kept in adult prison watchhouses (Williams, 2023). A crisis in foster care recruitment and retention (Arney et al., 2022) and growing numbers of children placed in out-of-home care (The Productivity Commission, 2023) will likely exacerbate existing placement shortages, resulting in placement instability and challenging behaviours from young people who are unsettled (Miles & Lee, 2023). What do we know about how to ensure that children and young people placed in care are safer than they were previously?

### **Policy and practice realities**

In the context of foster and kinship care in South Australia (SA), the SA Charter of Rights for Children and Young People in Care (Guardian for Children and Young People, 2021) and Section 80 of the Children and Young People (Safety) Act 2017 SA, alongside Article 16 of the UNCRC, stress the importance of children and young people being adequately informed about their carers while safeguarding their personal information from undue sharing. This is fortified by the information privacy principles and Manual of Practice of the SA Department for Child Protection (the government department responsible for statutory child protection in SA), which underscore the protection of privacy and judicious information sharing, with paramount consideration being given to the safety of the child.

Despite the foundational principles established, submissions to SA's 2022 Independent Inquiry into Foster and Kinship Care revealed a stark disconnect



between policy and practice (Arney et al., 2022). Submissions to the inquiry highlight instances where confidential details about foster and kinship carers, the child's birth family, or other children were wrongly disseminated, leading to compromised privacy, safety concerns, and negative perceptions within the foster care system, through 'the recording, retention and sharing of defamatory, misleading, insulting, prejudicial or otherwise inaccurate information by the Department and other persons and bodies involved in foster care or kinship care' (Arney et al., 2022, p. 93). Many foster and kinship carers also reported delays in obtaining critical information, often post-placement, potentially endangering the safety of the child and others in the household. This communication gap meant carers were inadequately equipped to care for the child, leading to unstable placements or the neglect of certain health, behavioural or cultural requirements. Such lapses arguably jeopardise the privacy and safety of carers, children, and birth families. Such a practice environment also likely contributes to placement instability.

In navigating the intricacies of child social care, the lens of recordkeeping emerges as a pivotal tool, yet remains a double-edged sword. While recordkeeping is vital for transparency, understanding the nuances of the rights to participation in decision-making provided by Article 12 and the rights provided by Article 16 of the UNCRC brings forth the ethical considerations of privacy and dignity. The discrepancies between policy and actual practices demonstrate the ongoing struggle of balancing bureaucratic processes with human experiences.

To better understand the human experiences we need to employ diverse methodological approaches in research. We need a range of evidence to support our learning about young people's identity development, their feelings about their care, and their impressions of the records that are kept about them to form their 'care files', which for some are their main source of family and personal history. It is beholden on care stakeholders to ensure that our research produces reliable evidence that informs effective safeguarding policies, which are implemented in practice.

Records are more than just archival data; they hold significant emotional and legal weight, impacting rights to privacy and dignity as well as a young person's perceptions and identity. As we work to refine these processes, we must foreground the lived experiences of those in care, ensuring records not only meet administrative demands but also honour and respect the stories they encapsulate and the wishes of young people.

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