



The courts and your privacy

Open justice

In most circumstances, courts and their decisions are accessible to members of the public. This policy of 'open justice' is reflected in section 97 of the *Family Law Act 1975*, which provides that all proceedings should be heard in open unless a court decides otherwise. The principle of open justice is fundamental to ensuring that courts remain transparent and accountable for their decisions.

However, the special nature of family law proceedings, which often involve children, requires that a balance be struck between the need for open justice and a family's right to privacy. Accordingly, section 121 of the Family Law Act makes it an offence to publish proceedings that identify persons or witnesses involved in family law proceedings. This prohibition also extends to the publication of any picture. For exceptions to this general prohibition, see section 121(9) of the Family Law Act.

What personal information do the courts hold?

The Family Court of Australia and the Federal Circuit Court of Australia, hold personal information to carry out their function as courts. 'Personal information' means information about a person from which his or her identity can be worked out.

Courts hold this information for two main purposes; to:

- help resolve and, if necessary, determine family disputes that are brought to them (the judicial purpose), and
- assist in their administration (the administrative purpose).

The judicial purpose

Information used for judicial purposes is held in court case files and the case management computer system (known as Casetrack). The *Privacy Act 1988* and *Freedom of Information Act 1982* do not apply to this information. Instead, other statutory provisions and non-publication powers of the Court, designed to protect parties and their children, apply to this information.

The administrative purpose

This information is collected in the day-to-day running of the Court. It includes information about:

- court staff
- those who supply the Court with goods and services, and
- security issues.

The Privacy Act and Freedom of Information Act apply to this information. The 'Information Privacy Principles' in the Privacy Act govern the collection, storage, disclosure and use of this information. The Freedom of Information Act may allow access to and correction of it in certain circumstances.

This fact sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court of Australia and Federal Circuit Court of Australia cannot provide legal advice.

Can I see a case file?

Yes:

- if you are a party to a case, or
- if you have a proper interest in the case or in the information in the file and the relevant Court has given you permission.

Rule 24.13 of the *Family Law Rules 2004* and Rule 2.08 of the *Federal Circuit Court Rules 2001* put restrictions on who is allowed to inspect a case file. They also prevent the Court from supplying information about a case, except in limited circumstances.

Generally, if you inspect a case file, you will not be shown correspondence which may be between other parties and the Court. For more information or to inspect a court file, speak to court staff.

Can others see my case file?

Yes, but only in limited situations. The rules of court mentioned above give third parties such as the Attorney General or those acting on his/her behalf, and a person with a proper interest in the information who has obtained the Court's permission, the right to inspect the file.

If a location, recovery or publication order is made, the Court may release information about you. This information may be released to the other party in your case, or to any other person who has sufficient interest in the information, such as a lawyer or the police. The information may be released with or without consent of the parties.

Where a lawful request for information is made by a person or body with the legal authority to obtain the information, the Court has a legal obligation to supply it.

If a divorce order is made, any person is entitled to apply for a copy of the divorce order. The application must be made to the Court's registry manager.

Is my court hearing open to the public?

Yes. Unless the Court orders otherwise, all court hearings are heard in open court.

In limited situations, the Court may restrict a person or group of people for all or part of the court hearing.

Can information about me and my case be used for research?

Yes. Information about you and your case may be used to help evaluate and improve court services or for research purposes. This research may be conducted by people outside the Court, such as academic researchers. Where the research would amount to a disclosure of your personal information that is not allowed unless you consent, court staff may contact you and ask if you wish to take part. If this happens, it is not compulsory to take part in research or an evaluation and your decision will not affect your case in any way.

More information

If you want more information about the Court and your privacy, you can write to:

- in the Family Court:
Administrative Law Co-ordinator
Box 9991 Canberra ACT 2601, or
- in the Federal Circuit Court:
Registrar
Box 9991 Melbourne Vic 3000.

If you have any legal questions, you should contact a lawyer. You can seek legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

For questions about privacy matters generally, you may also contact the Office of the Privacy Commissioner at www.privacy.gov.au or call 1300 363 992.