Who Can Access My Family Court Records?

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Like other family law lawyers, I am often asked whether non-parties (persons that are not directly involved in the family law litigation) are able to access the Court records relating to the case.

Documents filed in a family law case (and other documents relating to the case) are held in a Family Court case file. This information is protected under the *Family Law Act 1975* and the *Family Law Rules 2004*. For example:

- Rule 24.13 of the *Family Law Rules 2004* limits those who are allowed to access the Court's records in family law cases;
- Section 121 of the *Family Law Act 1975* limits the publication of reports of family law proceedings and of lists of cases. There are exceptions to this;
- Family Law Judgments are reported by the Court in a de-identified form (for example, with pseudonyms replacing the parties' real names).

There are also exceptions to the restrictions to a Court file, including research (Regulation 24.13(1)(d) *Family Law Rules 2004*) or by the Australian Taxation Office (*Commissioner of Taxation & Darling* (2014) FLC 93-583).

Because the protection of this information is governed by the *Family Law Act* and the *Family Law Rules*, family law lawyers can provide you with further advice in relation to how these protections will apply to your circumstances.

An interesting case…

An interesting case was recently considered by the Full Court of the Family Court of Australia, which involved a request by an adult child to have access to his parents' Court file.

In the case of *Carter & Carter* (2018) FLC 93-828, an adult child appealed to the Full Court of the Family Court after the Trial Judge refused to grant him access to his parents' Family Court file. The Appellant's reason for accessing the Court file was noted (at [17]):

"He wishes to better understand, hopefully from reading the court file, why those arrangements were made and why he was separated from his siblings".

The Appellant further noted (at [20]):

"*I've had treatment for mental illness and that access to the file may help in my treatment and recovery. Both my parents have declined to grant me access to the file. They appear to have reversed that today …*".

The relevant consideration (when determining whether to grant access to a Court file) is set out in Rule 20.13 of the *Family Law Rules 2004*. That involves:

(1) The following persons may search the court record relating to a case, and inspect and copy a document forming part of the court record: …

(c) with the permission of the court, a person with a proper interest:

(i) in the case; or

(ii) in information obtainable from the court record in the case; ...

(3) In considering whether to give permission under this rule, the court must consider the following matters:

(a) the purpose for which access is sought;

(b) whether the access sought is reasonable for that purpose;

(c) the need for security of court personnel, parties, children and witnesses;

(d) any limits or conditions that should be imposed on access to, or use of, the court record.

In this case, the Trial Judge refused access to the file because there was some concern as to what benefit the Appellant may obtain from inspecting the file. The Trial Judge did not consider "*that the pursuit of such information is reasonable*". This decision was appealed.

Access Granted

The Full Court of the Family Court allowed the Appellant to have access to the Court file (to inspect it, but not to photocopy it). Justice Ainslie-Wallace noted (at [39])

"The correct application of the rule should have been once proper interest is established the question whether access is reasonable, not whether the appellant will benefit from that access."

Why should you see family law lawyers?

Family law lawyers can provide you with advice in relation to these and other family law related matters, including:

1. The extent to which your personal information will need to be disclosed during the family law litigation process;
2. What information is relevant and how this information can be obtained;

3. How this information may be used, and what is the range of outcomes.

It is important that you discuss these issues with family law lawyers when seeking advice in relation to a family law dispute.

For advice about negotiating a Property Settlement Agreement contact us on 1800 300 170 or email us at familylaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.