

Adoption Advocate



Adult Adoptee Access to Adoption and Birth Records: History, Controversy, Legislation, and Societal Change

BY ABIGAIL LINDNER

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The issue of adult adoptee access to adoption and birth records in the United States has a long history of controversy and associated legislation. One reason for this is that differing perspectives on the topic have continued to emerge over the years. At the heart of the controversy is the convergence of ethics, privacy, confidentiality, and an adopted individual's rights. In considering this as a policy issue, it is important to take into account prior case law, the privacy rights afforded to birth parents, and our current understanding of the importance of these records to many adopted individuals across the lifespan.

Adoption Records Terminology

Adoption records contain a mix of non-identifying and identifying information. Disclosure of non-identifying information would not positively reveal the identities of the birth family while disclosure of identifying information might positively reveal the identities of the birth family. For instance, non-identifying information may include

the adoptee's place and date of birth, the ages and general descriptions of the birth parents, the education levels and occupations of the birth parents, the reason for the adoptee's placement, or the existence of half-siblings. Identifying information may include current or past names of the birth parents, employment records, or addresses.¹ When discussing birth records, the focus is often on original birth certificates (OBC), which fall into the category of identifying information.

In the United States, the practice of sealing adoption records upon the completion of a child's adoption dates back to 1917, when Minnesota passed the first statute in the country to protect the records from public inspection. The statute did not, however, restrict members of the three adoption parties—often called the adoption triad or triangle and consisting of the birth parents, the adoptive parents, and the adopted individual—from accessing the documents. From the 1930s to the 1980s, other states passed more restrictive statutory prohibitions on access to court and birth records for birth and adoptive parents and minor adoptees,² and eventually adult adoptees.³

¹ Access to adoption records: state statutes current through December 2019. (2019). *Child Welfare Information Gateway*, <https://www.childwelfare.gov/pubPDFs/infoaccessap.pdf>.

² Hughes, S. (2007). The only Americans legally prohibited from knowing who their birth parents are: rejection of privacy rights as bar to adult adoptees' access to original birth and adoption records. *Cleveland State Law Review*, 55(3), 429-462, <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1189&context=clevstlrev>.

³ Samuels, E. (2001). The strange history of adult adoptee access to original birth records. *Adoption Quarterly* 5(2), 63-74, https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1477&context=all_fac.

“Age of majority” is the legal age at which a person is considered an adult. States designate the age of majority.⁴

In the past three or four decades, a movement within the adoption community has pushed for the liberalization of access to adoption and birth records for adult adoptees. In almost all states and territories, an adopted individual, once they reach the age of majority, may access the non-identifying information in adoption records.⁵ Access to identifying information, and birth records specifically, is more complicated. The American Adoption Congress maintains an online resource of state and D.C. legislation on OBC access for adult adoptees, ranging from “Unrestricted Access” to “Sealed.” As of this writing, 10 states grant unrestricted access to adult adoptees, 19 states and the District of Columbia seal the records, which often require a court order to open, and the remainder allow access in full or in part with restrictions.^{6,7}

Background of the Movement

Speaking in general terms, it is our view that only a truly extraordinary claim can constitute good cause sufficient to trump the confidentiality and privacy rights of the other parties to the adoption triangle. While we are not without

sympathy for those who seek to learn about their “roots”, we must not allow the good cause requirement to become a nullity.

Opinion for Philip S. et al. - 881 A.2d 931 (R.I. 2005)

The quote above comes from a case begun in 2001 in the Rhode Island Family Court that was appealed to the Supreme Court of Rhode Island in 2005. The case considered the request of Philip S., a man born in 1971 and adopted through the Sophia Little Home, for a court order that would allow him access to adoption records with the identities of his birth parents. The Supreme Court of Rhode Island affirmed the ruling of the Family Court that Philip S. provided insufficient good cause for receipt of this information and upheld the Family Court’s decision to deny the request out of regard for the birth mother’s right to privacy.⁸

The reasons for the initial shift to greater secrecy regarding adoption records are unclear, though Samuels⁹ and Hughes¹⁰ both suspect some relation to the perceptions of family following the dislocations of World War II. Namely, the destruction of millions of lives during the war spurred a “postwar family imperative” that promoted the biologically related nuclear family, and in adoption the goal was to blur the lines between adoptive

⁴ Child Welfare Information Gateway. (2021). Adopting an Adult. <https://www.childwelfare.gov/topics/adoption/adoptive/choices/adult/>

⁵ Ibid.

⁶ Povich, E. (2021). Adoptees press states for access to original birth certificates. *PewTrusts*, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/04/26/adoptees-press-states-for-access-to-original-birth-certificates>.

⁷ State adoption legislation. (2021). *American Adoption Congress*, <https://americanadoptioncongress.org/state.php>.

⁸ The full opinion for *Philip S. et al.* can be read [here](#).

⁹ Samuels, E. (2001). The strange history of adult adoptee access to original birth records. *Adoption Quarterly* 5(2), 63-74.

¹⁰ Hughes, S. (2007). The only Americans legally prohibited from knowing who their birth parents are: rejection of privacy rights as bar to adult adoptees' access to original birth and adoption records. *Cleveland State Law Review*, 55(3), 429-462. <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1189&context=clevstlrev>.

parents and adopted children so that the family appeared to be the product of nature rather than design.^{11,12} Moreover, Samuels and Hughes propose that statutes sealing any records from anybody both reflected social attitudes and, in time, influenced them, prompting the establishment of additional statutes with wider impact until this secrecy became a facet of U.S. domestic adoption.

Another motivation behind sealing adoption and birth records was sparing adopted individuals the stigma that, through the first half of the 20th century, surrounded birth to unmarried mothers—a main driver of child relinquishment before the 1960s—and encouraging the development of the bond between the adoptee and the adoptive parent(s).¹³

Julia Ryan McGue, a woman adopted in 1959 who spent five years and employed several agencies in search of information on her roots, explains, “Closed adoption was born out of society’s desire to hide the shame of children born to unwed mothers. It was also intended to protect the privacy of birth parents while preserving the rights of adoptive parents to raise their child without the distraction or interference from birth parents.”¹⁴ A 1979 *New York Times* article adds, “The theory that justifies the sealing of original birth records... is that it protects the ‘integrity’ of the adoptive

process and [ensures] that nothing from the past will disturb the relationship between the child and adoptive parents.”¹⁵

The national movement for right to access for adult adoptees was spurred by the publication of books like Jean M. Paton’s *Orphan Voyage* (1968), Florence Fisher’s *The Search for Anna Fisher* (1973), and Betty Jean Lifton’s *Twice Born: Memoirs of an Adopted Daughter*.¹⁶ Paton, an adoptee, found her birth mother and started Orphan Voyage in 1953 as the first advocacy group in the U.S. for unsealing records.¹⁷ Another catalyst in the adoptee access movement was *In Search of Origins: The Experience of Adopted People* (1975), by John Triseliotis, which evaluated the psychological impact of adoption and unknown heritage on 70 of the 98 Scottish-adopted individuals who in 1970 requested information on their birth parents.¹⁸

In light of the gradual de-stigmatization of out-of-wedlock birth and single parenthood in the United States since the mid-20th century, obscuration of a child’s “illegitimacy” fell away as a reason for sealed records. What began as protection of the birth parents and the children they placed for adoption against discovery by families and communities of an unwed pregnancy morphed into protection of the birth parents from the adoptive family, including the birth parents’ adopted children,

¹¹ Samuels, E. (2001). The strange history of adult adoptee access to original birth records. *Adoption Quarterly* 5(2), 63-74. https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1477&context=all_fac.

¹² DeLuzio, C. (2016). The personal and political postwar American family. *American Studies* 54(4), 119-132, <https://core.ac.uk/download/pdf/162640907.pdf>.

¹³ Silverman, B. (2001). The winds of change in adoption laws: should adoptees have access to adoption records? *Family Court Review* 39(1), 85-103, <https://doi.org/10.1111/j.174-1617.2001.tb00596.x>.

¹⁴ McGue, J. (2021). Closed adoption: A legal magic eraser. *The Imprint*, <https://imprintnews.org/opinion/closed-adoption-a-legal-magic-eraser/55546>.

¹⁵ Bird, M. (1979, Nov 23). Issue and debate: closed adoption records: new challenges to established tenets. *The New York Times*, p. B16.

¹⁶ Samuels, E. (2001). The strange history of adult adoptee access to original birth records. *Adoption Quarterly* 5(2), 63-74. https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1477&context=all_fac.

¹⁷ Anderson, C. (1977). The sealed record in adoption controversy. *Social Service Review* 51(1), 141-154, <https://www.jstor.org/stable/30015462>.

¹⁸ *Ibid.*

and vice versa.¹⁹ Anonymity provides finality for birth parents and enables them to try for a fresh start while adoptive parents may raise their children without worries about birth parents “taking them away.”²⁰ In either situation, the emphasis was on preservation of privacy.

Reasons Adopted Individuals Request Access

While the reasons that adopted individuals request access to original records are often as unique as the adopted individuals themselves, historically there have been some common reasons, often centered on mental health, psychological distress, and/or medical conditions. Yet as long as adoption and birth records have had some degree of confidentiality, adopted individuals who have wanted to access them in the affected states have been required to present “good cause” for their admission; mere curiosity is generally deemed insufficient by courts.²¹ What constitutes good cause is not clearly established by law, and judicial interpretation and guidance have been limited.²² Practical considerations,²³ like meeting psychological or medical needs and facilitation of inheritance, are cited as good causes, though researchers have observed that past attempts to gain

access to records on such bases have often not met the standards of the court.

Hughes,²⁴ for instance, presents the case of Carolyn Dixon, a wife and mother who experienced emotional deprivation as a child, had suffered severe depression for several years because of the distress from not knowing her birth parents, and whose request for access in 1982 was still rejected through the interpretation that Dixon’s curiosity to meet her birth parents was greater than her psychological need. The previous year, James G. George, a 33-year-old man who suffered from chronic myelocytic leukemia, a blood cell cancer that begins in the bone marrow, requested information on his birth family on the basis that a blood relative would likely have the same genetic markers and so serve as a good bone marrow donor, if amenable.²⁵ Among arguments on constitutional rights, George’s request was denied because medical evidence suggested that his birth mother would likely be unable to donate bone marrow, so disclosure would not aid him.

Aside from these cases, the broader reasons for seeking access encompass the idea that adopted individuals who do not know their birth families often lack the “psychohistorical dimension of identity creation” as described by Arthur Sorosky in *The Adoption Triangle*, and through efforts to obtain adoption and birth records they

¹⁹ Samuels, E. (2001). The strange history of adult adoptee access to original birth records. *Adoption Quarterly* 5(2), 63-74. https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1477&context=all_fac.

²⁰ Silverman, B. (2001). The winds of change in adoption laws: should adoptees have access to adoption records? *Family Court Review* 39(1), 85-103. <https://doi.org/10.1111/j.174-1617.2001.tb00596.x>.

²¹ Ibid.

²² Anderson, C. (1977). The sealed record in adoption controversy. *Social Service Review* 51(1), 141-154. <https://www.jstor.org/stable/30015462>.

²³ Ibid.

²⁴ Hughes, S. (2007). The only Americans legally prohibited from knowing who their birth parents are: rejection of privacy rights as bar to adult adoptees' access to original birth and adoption records. *Cleveland State Law Review*, 55(3), 429-462. <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1189&context=clevstlrev>.

²⁵ *Application of George*, 625 S.W.2d 151 (M.O. 1981).

aspire to fill that dimension.²⁶ The questions “Who am I?” and “Where did I come from?” call for answers. Steve Inskip, a co-host at National Public Radio (NPR) who was adopted in 1968, received his adoption records and notes from Indiana and the Children’s Bureau after a 2018 Indiana law opened access to adult adoptees so long as someone involved in the adoption had not objected before. In an opinion piece for *The New York Times*, he writes, “It’s been nearly two years since I first read those documents, and I’m still not over it. Knowing that story has altered how I think about myself, and the seemingly simple question of where I’m from. It’s brought on a feeling of revelation, and also of anger... I am angry that for 50 years, my state denied me the story of how I came to live on this earth.”²⁷

“I was 46 years old and invested time talking to my parents and others who had experienced adopting a child to ensure I understood all sides of the equation. I began looking more into my adoption history and through the help of others I am grateful I had access to my birth records. They were an important step in my process—eventually leading to connecting with and building a great relationship with my birth mom and siblings.”

- Mike Thorne, NCFR Board Chair-elect

A Practitioner’s Perspective

The New York Clean Bill of Adoptee Rights §3419 law, which went into effect on January 15, 2020, permits adoptees over 18 years old and their direct line descendants unrestricted access to their sealed birth certificate. Although the controversy over whether to pass this law appeared to focus on whether the birth parent(s) had an expectation of confidentiality at the time of placement, the State of New York ultimately provided thousands of adoptees the same rights given to all people— to know their full identity.

Prior to the passage of this bill, one would be required to petition the Court to request the birth certificate based on “good cause” pursuant to New York Domestic Relations Law (DRL) §114. This was a challenge to get a Court to open records and to find *good cause*. Even in the case of a 14-year-old with a rare genetic medical condition that I filed prior to the law going into effect, the Court reviewed the adoption file in camera [in the judge’s private chambers] from 50 years ago and communicated there wasn’t any rare medical condition noted in the file. No names, no opportunity to see if a family member could provide information to the doctors treating this young man, simply “sorry, that’s the best we can do.” Today, rather than petition the Court, or spend countless hours untangling DNA results, requests are made to NY Vital Records or NYC Department of Health & Mental Hygiene, depending on where the original birth certificate was filed. The Clean Bill focuses on obtaining one’s pre-adoption birth certificate; however if additional documents, including the order of adoption, were filed with the pre-adoption birth certificate, the adoptee will receive related documents as well.

This bill ended the treatment of adoptees as second-class citizens whose story starts in the second chapter. An adoptee can start at the beginning without wondering what happened in the first few pages that set the scene for the rest of the story. As of August 18, 2021, the most updated statistics from NYS Bureau of Vital Records reveals 12,796 orders have been received. This doesn’t include the requests made to NYC Department of Health and Mental Hygiene, adoptions that were filed in the boroughs of New York.²⁸

- Adoption Attorney Faith Getz Rousso, Esq.

²⁶ Hughes, S. (2007). The only Americans legally prohibited from knowing who their birth parents are: rejection of privacy rights as bar to adult adoptees’ access to original birth and adoption records. *Cleveland State Law Review*, 55(3), 429-462, <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1189&context=clevstrev>.

²⁷ Inskip, S. (2021, Mar 26). For 50 years, I was denied the story of my birth. *The New York Times*, <https://www.nytimes.com/2021/03/26/opinion/closed-adoption-laws.html>.

²⁸ New York Adoptee Right Coalition, (2021, Aug 13). Update: New York State Applications. <https://nyadopteerights.org/nyarc-new-york-state-august-13-2021/>.

Changes and Considerations for the Future

While a legal right to unhindered adoption and birth record access has not been realized, over the past couple of decades states have enacted statutes and programs to provide adopted individuals the opportunity to access them and birth parents the opportunity to maintain anonymity by disallowing contact or withholding consent.

One system in place is the mutual consent registry, which at least 30 states have.^{29,30} The mutual consent registry works by allowing those involved in the adoption to “register their willingness to meet and exchange information”; in the absence of consent from either party, no information is released.³¹ It is passive in that registration by one does not guarantee a responsive registration by the other, as the supervising agency does not search for the birth parents (or adopted individual) who correspond to the adopted individual (or birth parents).

An alternative that addresses the deficiencies of the mutual consent registry is a search-and-consent procedure, such as a confidential intermediary system. In this system, at the request of and with a fee from an adopted individual, “specially trained ‘adoption

For some adopted people, just the knowledge that their biological parent hasn’t forgotten about them is enough. I was working with one adult adoptee early on in our therapeutic relationship when he decided to enter his information into a dual opt-in adoption registry. He was unsure what type of relationship (if any) he was looking for if he were matched. I remember him expressing relief and joy when he was matched with his biological mother within just days; that it was amazing to know that she entered her information in several years ago and was hoping to be connected with him again.

- Pam Shepard, LCSW, **Supervisor of Clinical Services at Holt International**

intermediaries’...search for biological relatives” to inquire whether they would consent to the release of their identifying information and possibly to contact from the adopted individual.³² Being active, this method has been more effective than the mutual consent registries.³³ More than 10 states have confidential intermediary systems.

Allowing for openness in adoption by making access, rather than concealment, the default are the affidavit and disclosure veto systems.³⁴ In both, the adopted individual may access their adoption and birth records so long as the birth parents have not submitted a nondisclosure affidavit or a disclosure veto.

In the 1990s, two legislative actions notably broadened access to records for adopted

²⁹ Williams-Mbengue, N. (2019). Adult adoptee access to original birth certificates. *National Conference of State Legislatures*, <https://www.ncsl.org/research/human-services/adult-adoptee-access-to-original-birth-certificates.aspx>.

³⁰ Access to adoption records: state statutes current through December 2019. (2019). *Child Welfare Information Gateway*, <https://www.childwelfare.gov/pubPDFs/infoaccessap.pdf>.

³¹ Cahn, N. & Singer, J. (1999). Adoption, identity, and the Constitution: the case for opening closed records. *Journal of Constitutional Law* 2(1), 150-194, <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1453&context=jcl>.

³² Williams-Mbengue, N. (2019). Adult adoptee access to original birth certificates. *National Conference of State Legislatures*, <https://www.ncsl.org/research/human-services/adult-adoptee-access-to-original-birth-certificates.aspx>.

³³ Cahn, N. & Singer, J. (1999). Adoption, identity, and the Constitution: the case for opening closed records. *Journal of Constitutional Law* 2(1), 150-194, <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1453&context=jcl>.

³⁴ Fleming, C. (2005). The open-records debate: balancing the interests of birth parents and adult adoptees. *William & Mary Journal of Women & the Law* 11(3), 461-480, <https://scholarship.law.wm.edu/wmjowl/vol11/iss3/6>.

individuals: the Tennessee contact veto registry and the 1998 Oregon Ballot Measure 58. The Tennessee adoption reform law opened access to previously sealed adoption and birth records for all adopted individuals at least 21 years of age and, in an effort to ensure birth parents' privacy, instituted a state contact veto registry whereby birth parents are consulted about their willingness to be contacted by the adopted individual and, if unwilling, may file a contact veto that forbids the adopted individual from contacting the birth parents.³⁵ Measure 58 likewise granted adult adopted individuals, upon written request to the state registrar, the right to access birth records. Amendment HB 3194, added in 1999, allowed birth parents to designate a contact preference that is similar to the contact veto provision of Tennessee.³⁶ These two statutes are especially significant in that both were challenged by birth mothers, brought to court, and ultimately defended as constitutional.³⁷

In addition to the many changes in formal means for obtaining birth record information, modern DNA technologies have eliminated the possibility of complete birth parent confidentiality. In-home DNA testing linked to national databanks of information provides adopted individuals relatively easy access to this information, rendering restrictions on OBC ineffectual.

It should be noted that surveys by researchers

like Paul Sachdev, author of *Unlocking the Adoption Files* (1989),³⁸ indicate that the majority of birth parents believe that adopted individuals should have access. Though the greater liberality of access today compared to the mid-20th century has softened attitudes, the contrary stance is not uncommon. Rachelé Davis, a private investigator who specializes in reconnecting biological family members, explains that a birth mother may have a variety of reasons for rejecting contact and reunion. Among them are shock given the assumption of eternal anonymity if a closed adoption plan was created, regret over the relinquishment, desire to keep the adopted individual's existence hidden from current family, desire to protect the adopted individual from unsavory elements of their conception or birth, fear of the biological father, and suspicion toward the adopted individual, who is a practical stranger.³⁹

Conclusion

Speaking to *The New York Times* in the late 1970s, Neil Hegarty, a director of casework, said, "We can't foresee what social and legislative changes will occur in the next 15 or 20 years. And that means we can't guarantee confidentiality to the [birth] parents anymore."⁴⁰ Twenty years after this statement, it is true that social and legislative changes have altered the dialogue about and activity around adoption

³⁵ Deloney, W. (2007). Unsealing adoption records: The right to privacy versus the right of adult adoptees to find their birthparents. *Whittier Journal of Child and Family Advocacy* 7(1), 117-144, <https://heinonline.org/HOL/P?h=hein.journals/wjcfad7&i=128>.

³⁶ Ibid.

³⁷ See Fleming (2005) and Deloney (2007) for more information on these contentions.

³⁸ In his study of the adoption triad in 1958, 1968, and 1978, Sachdev found that 88.5% of birth mothers supported the release of identifying birth information to adopted individuals.

³⁹ David, R. (2019). Adoption search diplomacy: why some birth parents don't want to be found. *Pursuit Mag*, <https://pursuitmag.com/adoption-search-diplomacy-why-some-birth-parents-dont-want-to-be-found/>.

⁴⁰ Bird, M. (1979, Nov 23). Issue and debate: closed adoption records: new challenges to established tenets. *The New York Times*, p. B16.

and birth record access for adopted individuals and privacy considerations for birth parents. Legislators continue to seek a balance between the interests and rights of the two families, birth and adoptive, and

the adopted individual as they navigate the arguments in favor of and in opposition to more open access. Time will tell what further developments will be made in the next 15 or 20 years.



Additional Resources

- [Access to Adoption Records](#) - State statutes on adult adoptee access to adoption and birth records, current as of December 2019
- [Searching for Birth Relatives](#) - Resources to prepare for a search, access reunion registries and support groups, conduct a search within the United States, and conduct a search for birth relatives in another country
- [State Adoption Legislation](#) - An online resource of state and D.C. legislation on original birth certificate (OBC) access from the American Adoption Congress
- [The United States of OBC](#) - Summary of any restrictions limiting adult adopted individuals' access to an original birth certificate in all 50 states, plus the District of Columbia, maintained by the Adoptee Rights Law Center
- [Steve Inskeep's NY Times Opinion Piece](#) - Steve Inskeep, a co-host of NPR's "Morning Edition" and "Up First," an adoptee and an adoptive father, writes about his personal story and perspective on the importance of adopted individuals having access to their records.
- [NCEA Search and Reunion Resources: Birth Parents](#)
- [NCEA Search and Reunion Resources: Adopted Individuals](#)
- [NCEA's Member Directory: Find an Attorney](#)

Note: Additional information that may guide a particular adopted individual or birth parent may be found in their state's code as well as in specific agency regulations and case law, so consulting with an adoption attorney may be helpful.

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About the Author

Abigail Lindner is an adopted individual born in China and raised on both coasts by her adoptive American family. In middle school her family lived in Xi'an, the capital of China's Shaanxi Province, to serve foster children. Her own background combined with that experience has grown in Abigail a love for her home country and a passion for foster care and adoption anywhere. Abigail was previously a summer research intern at the National Council For Adoption, and now is a contract researcher while she completes her studies in mathematics.

Abigail is a middle daughter in a family of six children, three adopted other than herself and two biological. Her family lives in Southern Massachusetts with their two bichon-poodle mixes and seven backyard chickens. When not studying math, Abigail enjoys writing stories, reading any book that she can find (not horror or thriller, though!), practicing yoga, and baking bread.



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