



OBTAINING OFFICE OF REFUGEE RESETTLEMENT RECORDS FOR CLIENTS WHO WERE DETAINED AS CHILDREN

By Andrew Craycroft

I. Introduction

Advocates should generally try to obtain as much information as possible about their clients' cases through Freedom of Information Act (FOIA) and other records requests. For clients who are or have been detained in an Office of Refugee Resettlement (ORR) facility, this includes making a request for their ORR file. This practice advisory discusses the importance of requesting ORR records, which documents can be obtained through an ORR records request, and the process for obtaining them

II. What is ORR?

ORR is an office in the U.S. Department of Health and Human Services' Administration for Children and Families division.¹ Under the 2002 Homeland Security Act, ORR is charged with the care and custody of unaccompanied children (UCs), referred to in federal immigration law as "unaccompanied alien children" or "UACs."² A UC is defined as a child who:

- has no lawful immigration status in the United States;
- has not attained eighteen years of age; and
- with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody.³

Typically, a child is first apprehended by U.S. Customs and Border Protection (CBP) at the U.S. border or by Immigration and Customs Enforcement (ICE) in the interior. If the child is determined to be a UC, they are then sent to ORR custody. Many minors who are designated as "unaccompanied" actually *do* have parents or legal guardians in the United States—however, for various reasons, usually out of fear, they do not come forward initially to pick up their children, although they may later "sponsor" them out of ORR custody.⁴

ORR operates several different types of detention settings including shelter, staff secure, and secure facilities. ORR also has limited "therapeutic" facilities for children with more significant mental health needs, and administers a

¹ U.S. Department of Health and Human Services, ORR, About, available at <https://www.acf.hhs.gov/orr/about>.

² 6 U.S.C. § 279(b).

³ *Id.* at § 279(g)(2) (defining the term "unaccompanied").

⁴ "Sponsor" is the term used to describe the adult to whom ORR releases a UC from custody. It is important to note that sponsoring a child does not make the sponsor the child's legal guardian, which requires a court order.

network of federal foster homes for youth who may be eligible for or have been granted some type of immigration relief but do not have an adult in the United States who can act as their “sponsor” out of immigration detention. ORR facilities are meant to provide different levels of care for children. ORR contracts the operation of these facilities to different care providers that it oversees.⁵ Consequently, the nature of a child’s detention in ORR custody varies depending on the type of facility they were placed in.

III. How do I know that my client has an ORR file?

In general, anyone who was detained in immigration custody as a child has an ORR file, unless they were detained in a family detention facility with a parent.⁶ When a child is detained by ORR, ORR is required to create a file that contains the records of the child’s detention as well as other records related to their removal proceedings, as discussed further in the next section. Minors who were not designated as unaccompanied, such as minors who were detained in a family detention center, will not have an ORR file. Those minors should follow the normal FOIA process to obtain their A-file and detention records.

In general, whether someone has an ORR file depends on whether they were ever designated a UC. Accordingly, even youth who were initially detained in ORR custody but later found to be over eighteen through age redetermination and transferred back to DHS custody may still have ORR records.⁷

IV. Which documents are in the ORR file?

An ORR file contains many documents related to a UC’s detention including shelter records, resource materials for UCs and sponsors, medical records, educational records, reports, and legal documents. Depending on the nature and length of custody, an ORR file may include hundreds of pages of records. A complete list of ORR file documents can be found on ORR’s website.⁸ Key documents that advocates should look for in the file include:

- A copy of the UC’s birth certificate;
- The Notice to Appear;
- The Form I-770 Notice of Rights and Disposition;
- Documents from immigration court hearings that occurred while the UC was in custody;
- Medical records and progress notes, including for mental health services and counseling;
- Significant Incident Reports (SIRs) documenting any incident that occurred in custody that the UC was involved in or witnessed;⁹
- ORR Verification of Release, which can serve as a photographic identity document in some circumstances if the UC does not have any other forms of identification.¹⁰

Keep in mind that not all of the important documents for a UC’s case are included in their ORR file. For example, the Form I-213 Record of Deportable/Inadmissible Alien is generally not included in the ORR file and must be separately obtained from DHS. In most cases, a FOIA request will be necessary in addition to an ORR records request.

⁵ U.S. Department of Health and Human Services, ORR Guide: Children Entering the United States Unaccompanied, § 1.1, January 30, 2015, available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied> (hereinafter “ORR Guide”).

⁶ See ORR Guide at § 5.6.2.

⁷ See *id.* at 1.6.

⁸ *Id.* at § 5.6.2.

⁹ SIRs can also include incidents that occurred outside of ORR custody that the UC disclosed to shelter staff. See *id.* at §§ 5.8.4, 5.8.6, 5.8.7.

¹⁰ *Id.* at § 5.6.2.

V. Why should I make an ORR file request?

If your client has been in ORR custody, it is important to request a copy of their ORR file. Like a FOIA request for a client's A-file, an ORR records request is a critical tool for advocates to obtain information about a client's case and documents that can support their claim for relief.

Moreover, even though there are many protections for UCs under federal law, there is no law or policy preventing ORR from sharing its records with DHS. This means that ICE or U.S. Citizenship and Immigration Services (USCIS) may have access to these records. ORR records include sensitive documents, such as progress notes from therapy and other mental health services that the child has received while in ORR custody. Additionally, ORR states that it is obligated to disclose some significant incidents to DHS.¹¹ If a UC's records contain negative information or information that may conflict with their claim for legal relief, it is important to be aware of and review such information.

There are also documents in the ORR file that may be helpful to a UC's case. Therapy records or progress notes may help to corroborate facts that are central to the UC's claim for relief. If a UC no longer has their identity document, such as a birth certificate or ORR Verification of Release, it may be in the ORR file. Finally, the ORR file includes important documents from DHS related to removal proceedings, such as the Notice to Appear and Form I-770.

VI. How do I request an ORR file?

The process for requesting and obtaining ORR records is distinct from the FOIA process, which other federal immigration agencies use. Records requests must be made directly to ORR by e-mailing Requests.DUCS@acf.hhs.gov.¹² The UC's full name and A-number should appear in the subject line of the email. Requesting parties also must submit a Form ORR UAC/C-5 Authorization for Release of Records (ARR), and include any supporting documentation as necessary, such as a G-28, E-27, or E-28 from the UC's representative.¹³ The ARR and instructions for completing it can be found on the ORR website by visiting <https://www.acf.hhs.gov/orr/resource/requests-for-uac-case-file-information>. The ARR and any supporting documentation should be attached to the email requesting the file.

If the UC is fourteen years of age or older, they must sign the ARR. If the UC is under fourteen years of age, the ARR must be signed by the UC's caregiver if the UC is not in ORR custody. The caregiver must provide their name, relationship to the minor, address, and phone number below their signature. While a caregiver who is not the child's parent or legal guardian may sign the ARR, that individual cannot provide permission to release medical records pertaining to HIV/STD information. If a UC is under fourteen years of age and still in ORR custody, ORR retains discretion as to whether to consent on their behalf to release their information. In all cases, the ARR must also be signed by a witness. The witness must state their name and relationship, if any, to the UC below their signature.

In addition to the ARR, additional supporting documentation may be required depending on the requestor. If the requesting party is an attorney or a BIA accredited representative representing the UC in immigration court, they must submit a complete G-28, E-27, or E-28 signed by the UC, and submitted to DHS or the immigration court, as appropriate. If the requesting party is an attorney representing a UC (but not in immigration court), the attorney

¹¹ ORR Guide at § 5.8.5.

¹² U.S. Department of Health and Human Services, Requests for UAC Case File Information, Apr. 14, 2014, <https://www.acf.hhs.gov/orr/resource/requests-for-uac-case-file-information>.

¹³ Information and documentation submitted by sponsors in the Family Reunification Packet (FRP), assessments and/or Home Studies or Post-Release Studies will not be released to a requesting party without the written consent of the sponsor.

must provide a written statement or a court document confirming that they represent the UC. ORR does not provide examples of what types of situations this may cover, but it might include an attorney who is representing the UC before USCIS but not the immigration court, or an attorney who is representing the UC in a state court proceeding. If the attorney provides a written statement confirming that they represent the UC, the statement must be written on the attorney's firm or organization's official letterhead and signed by the UC. However, if the UC is represented by a legal service provider, pro bono attorney, volunteer attorney, or staff person that receives Federal funding pursuant to a contract or sub-contract with ORR, no documentation confirming that the individual represents the UC is required. ORR, however, will make efforts to confirm the identity of the requesting party, and use its discretion in determining whether to release the information requested.

If the requesting party is a government agency outside of the Department of Health and Human Services' Administration for Children and Families, no additional supporting documentation is required unless a specific request is made by ORR for more information. If the request is made by a government agency, ORR will make efforts to confirm the identity of the requesting party and use its discretion in determining whether to release the information requested.

VII. How long does ORR take to process a request, and can it be expedited?

ORR may take several months to respond to a records request. As such, it is important for advocates to request them as early in the case as possible. ORR records were previously sent via mail as paper files, but ORR now sends records electronically via e-mail.

It is possible to expedite a file request if the child will have a court date or turn eighteen within thirty days of the request.¹⁴ Other reasons for expediting a request, such as an upcoming asylum interview or a pending removal order, may be accepted at the discretion of the ORR/DCS Division Director. To expedite a request, the requestor must include the word "URGENT" in the e-mail subject line. The requestor must also indicate the basis for the expedited request on the Authorization for Release of Records.

ORR retains the right to reject requests for the ORR file if the request is incomplete, does not follow ORR policies and procedures, for safety reasons, or for other reasons, as it deems necessary.¹⁵ Because the procedure to request the ORR file is outside of the scope of the FOIA process, ORR does not have to inform recipients if it withholds or redacts information or provide a reason. Furthermore, there is no right to appeal a denial of a request for an ORR file.

If a request is denied and/or an incomplete set of records is provided, advocates may wish to make a FOIA request to the Department of Health and Human Services for these records.¹⁶

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ For more information about submitting a FOIA request to the Department of Health and Human Services' Administration for Children & Families (which can be submitted online), visit <https://www.acf.hhs.gov/freedom-of-information-act>.



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About the Immigrant Legal Resource Center

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