

## USING THE DATA PROTECTION ACT



## HOW TO MAKE A SUBJECT ACCESS REQUEST FOR YOUR INFORMATION

### Background

Cafcass is committed to full compliance with the Data Protection Act 1998 ('the Act') and recognises the rights and obligations established by the Act in relation to the management and processing of personal data.

### The Data Protection Act

The Act provides various safeguards relating to the management of individuals' personal data. The Act gives individuals the right to establish what data on them are being processed. In order to exercise that right, an individual must make a written request for their data. Applying for personal information is termed making a Subject Access Request.

### Definition of 'Personal Data'

The Act applies to 'personal data', that is data about identifiable living individuals. This covers both automated personal data held electronically and manual or paper data held in structured files or easily accessible systems.

The term 'processing' set out in the relevant legislation describes any action taken in relation to personal data, such as obtaining, recording, holding, adapting, retrieving, altering, disclosing or destroying it.

To determine whether you have any rights under the Data Protection Act (DPA) you must first establish whether the information being held is the sort of information covered by the Act.

Rights will only arise in respect of information if:

- It relates to you
- You can be identified from the information
- The information is held electronically or in paper form

### Your rights under the Data Protection Act

You have a right to:

- Be informed as to whether personal data is being processed (including being held/stored)
- A description of the data held, the purposes for which it is processed and to whom the data may be disclosed
- A copy of the information constituting the data
- Information as to the source of the data

Data subjects have access rights to all records irrespective of when they were created. There are a number of exemptions, however, to these access rights.

## **Exemptions to the requirement under the Act to disclose personal data**

Part IV of the Act

These include:

- All data in adoption and HFEA proceedings
- Health data
- Social Work data
- Crime and Taxation data
- Educational Records
- Legal professional privilege
- Where a response would contain the personal data of another individual
- Risk of serious harm to staff

## **Data protection principles**

The Act is based on a number of principles, which require that Cafcass ensure that personal data is:

- Processed fairly and lawfully
- Obtained for a specific and lawful purpose and not processed in any manner incompatible with the purpose
- Adequate, relevant and not excessive for the purpose
- Accurate
- Not kept for longer than necessary for the purpose
- Processed in accordance with the Data Subject's rights
- Kept safe and secure from unauthorised processing, or accidental loss, damage or destruction
- Not transferred to a country or territory outside the European Union, unless that country has equivalent levels of protection for personal data

## **Roles and Responsibilities**

The responsibility for processing Subject Access Requests (request for personal information) lies with Cafcass Service Managers.

The responsibility for providing advice to Service Managers on Subject Access Requests lies with the Cafcass Data Controller based at the Cafcass National Office.

## **How to make a Subject Access Request**

Any person may exercise the right to request personal data held about them by submitting a written or emailed request to the Cafcass local office dealing with the case.

Cafcass charges a £10.00 fee to process a Subject Access Request. In exceptional circumstances this amount can be waived. This decision is at the discretion of the Service Manager handling the Subject Access Request.

Cafcass requires the following documentation to be provided, prior to processing a Subject Access Request:

1. A letter/email specifying, in detail, the information the Data Subject is seeking. Cafcass is not obliged to provide any data unless sufficient information is provided. No reason for requesting this information needs to be provided
2. A cheque to the value of £10.00 made out to 'Cafcass'
3. Proof of identity – a photocopy of the passport page that bears the Data Subject's name, signature and photograph
4. Proof of Residence – a recent utility bill

Cafcass is not required to process the application until these four items are supplied.

Cafcass will aim to provide a response to every Subject Access Request within 40 calendar days and to acknowledge receipt of applications within 7 calendar days. If an extension is needed, Cafcass will advise the Data Subject to this effect as soon as possible.

### **Making a Complaint**

Should an individual not be satisfied with a response to their Subject Access Request, he/she may wish to make an appeal in writing to request that the response submitted is reconsidered. Such an appeal would be directed to a Head of Service. The Head of Service will assess the initial response and respond to the individual with Cafcass' decision within 40 calendar days of receiving the appeal.

In addition to this internal appeal procedure, a Data Subject can complain directly to the Information Commissioner ([www.ico.gov.uk](http://www.ico.gov.uk)).

The Information Commissioner is an independent office-holder appointed by the Crown to administer and enforce the Data Protection Act, the Freedom of Information Act and other legislation governing the use of, and access to, information. The Information Commissioner is independent of government and reports directly to Parliament.

Under the Data Protection Act, the Information Commissioner may serve an enforcement notice upon a Data Controller who the Information Commissioner is satisfied has contravened or is contravening the Data Protection principles.

## **Processing sensitive personal data**

The Act provides a separate definition for 'sensitive personal data'. This relates to information concerning a Data Subject's racial or ethnic origin, political opinions, religious beliefs, Trade Union activities, physical or mental health, sex life or details of criminal offences.

## **Requests from the police or other officials**

Cafcass will aim to assist any officials as far as possible and particularly as the Act does allow disclosure of data if it relates to:

- The prevention or detection of crime;
- Apprehension or prosecution of offenders; or
- The assessment or collection of any tax or duty

Generally, information requested for these purposes is covered under Section 29 of the Act.

Cafcass is moving towards data sharing protocols with a number of public bodies that will formalise information sharing.

## **Third party data and the Subject Access Right**

Cafcass will not provide data as part of a response to a Subject Access Request that identifies or relates to other parties, unless the other party has consented to disclosure, the information was not given in confidence and/or other conditions are met.

## **Requests from Children**

A child who has capacity to make their own Subject Access Request is entitled to the same subject access rights as an adult, and, therefore, to the same rights of protection with respect to his/her personal data. In accordance with guidance from the Information Commissioner, a child who has reached the age of 12 is generally presumed to have such capacity.

Where the child does not have capacity to make their own Subject Access Request, a person with parental responsibility for the child may make a Subject Access Request on that child's behalf and is entitled to receive a response from the Data Controller.

Where a child has capacity in their own right, Cafcass will notify any parent who made a Subject Access Request on the child's behalf of that position and that Cafcass will only respond directly to the child if the child makes a Subject Access Request in his/her own right.

## **Request from Agents**

Solicitors representing a Data Subject are able to make a Subject Access Request on behalf of the Data Subject.

The Freedom of Information Act does not override the Data Protection Act. It cannot be used to obtain personal information about people, other than that which relates to the Applicant.

## **Preventing the processing of information**

You have the right to send Cafcass a notice within a reasonable time period asking Cafcass to stop processing your information. This is called a 'data subject notice'.

The notice must specify:

- Your identity and the personal data to which you refer
- The nature of the processing and whether it is the processing for a specified purpose or in a specified manner to which you object
- When you require processing of your personal information to cease or to instruct that processing does not commence
- That the processing of personal information is causing or likely to cause you or another person substantial, unwarranted damage or distress
- The reason why the processing of personal information is causing or likely to cause you or another person substantial, unwarranted damage or distress

## **Right of Rectification**

If the Data Subject believes that the data recorded about them are inaccurate, he/she may write to Cafcass and request the data be rectified. Cafcass will assess the request and the data for inaccuracies and make the changes as necessary in accordance with the individuals Data Protection rights. The Data subject is also able to address incidents of inaccurate data processing via the Cafcass Comments, Concerns and Complaints policy. Data Subjects can if they are not satisfied with Cafcass' decision/action apply to the court, for an order, or to the Information Commissioner for an enforcement notice, either of which may require that the inaccurate data, and any expression of opinion based on it, is rectified, blocked, erased or destroyed.

## **Useful Links**

[www.foi.gov.uk](http://www.foi.gov.uk)

[www.ico.gov.uk](http://www.ico.gov.uk)