

# DATA PROTECTION ACT 1998:

## Section 7

### Subject Access Requests

#### Procedures and Guidance Manual

This Procedure & Guidance provides the theoretical underpinnings of Data Protection and 'Subject Access Requests' (SARs). It also provides a worked example to explore some of the practice issues. This procedure only applies to SARs from members of the public and service users.

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## Introduction to Using the Guide

This Procedure & Guidance provides the theoretical underpinnings of data protection and 'Subject Access Requests' (SARs).

The Data Protection Act 1998 (the Act) gives individuals the right to find out what data about themselves are either processed by data controllers electronically, and/or held on manual records that form part of a relevant filing system. In order to exercise this right an individual must make a written request for their data called a SAR. Cafcass must respond to an individual making a written SAR

- Key Features of the Act and how it applies to Cafcass are outlined in [Chapter 1](#).
- A specific procedure is set out in [Chapter 2](#).
- Cafcass should be as open as possible when responding to a SAR, however, there are some circumstances where data requested cannot be disclosed. These are outlined in [Chapter 3](#).
- A procedural checklist to be used when responding to a SAR in [Annex 2](#)
- Template letters to support the procedure are provided in [Annex 3](#).
- A distilled version of the procedure is presented in diagrammatical form in [Annex 4](#)
- A glossary is provided in [Annex 5](#), which defines and gives a brief explanation of the most frequently used terms.
- Frequently asked questions can be found in [Annex 6](#).

*This procedure only applies to SARs from members of the public and service users. SARs from all Cafcass employees and self-employed contractors (Staff) should be forwarded to the relevant Human Resources Advisor. Related procedures (for responding to appeals, and ensuring personal data are held by the relevant local offices) are also set out in Chapter 2.*

This procedure and guidance has been drafted using terminology consistent with the Data Protection Act and guidance issued by the Information Commissioner. It is hoped that this will introduce staff to the particular language of data protection and enable staff to use the terminology (if they wish) when responding to enquiries. It incorporates advice from Cafcass Legal Services, the Information Commissioner's Office, the Department for Education, the Department for Constitutional Affairs and specialist lawyers contracted by Cafcass.

## Roles and Responsibilities

The **Information Assurance & Data Handling (IA&DH) Officer, Cafcass National Office**, is the designated Data Controller and has responsibility for ensuring that Cafcass complies with the Act and for liaising with the Information Commissioner. Please note that this guidance uses the term 'Data Controller' (upper case) to refer to the Information Assurance & Data Handling Officer in their role as Data Controller for the purpose of data registration. The term 'data controller' (lower case) refers to all employees of Cafcass and is the term used in this procedure and guidance.

**The Chief Executive and Operational Directors** have overall responsibility for service delivery and will liaise, as necessary, with the Information Commissioner on behalf of Cafcass on matters relating to the Act.

**Heads of Service** are responsible for:

- addressing any appeals in accordance with the procedure set out in this document (paragraphs 2.12-2.13);
- ensuring that any electronic or manual document containing personal data is located in the relevant local office.
- the operation of the Act within their region.

**Service Managers** are responsible for:

- responding to SARs in accordance with the procedure set out in this document (paragraphs 2.1-2.11);
- ensuring that practitioners, support staff and self employed contractors, are aware that any personal data they provide and process may need to be disclosed by Cafcass to individuals;
- ensuring that all data processed by self employed contractors (Contractors), on behalf of Cafcass, are processed in accordance with Cafcass policy and procedure, and returned to Cafcass as soon as possible after that Contractor completes work on a case (paragraph 1.4).

**Office Managers** are responsible for:

- establishing and maintaining systems for data;
- providing administrative support for responding to SARs;
- putting together the policy pack as per the instructions below.

All Cafcass managers should take the time to familiarise themselves with the Act, which can be accessed at [www.opsi.gov.uk](http://www.opsi.gov.uk) The Information Commissioner's Office website, [www.ico.gov.uk](http://www.ico.gov.uk) also contains useful information about the Act. Since some SARs are related to complaints all Cafcass managers should also take time to familiarise themselves

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with the Complaints Policy and the Procedure & Guidance. This can be accessed via the Cafcass intranet.

## Instructions on Putting the Policy Pack Together

1. Print the SAR checklist in Annex 2.
2. Print the flow diagrams in Annex 4.
3. Adapt the template letters in Annex 3 to reflect local office details (addresses, and phone and fax numbers).
4. Print a copy of this Procedure & Guidance and store it in a ring binder for reference.

## Section 1 Subject Access Requests: Summary of Key Features of the Act and Application to Cafcass

### Right of subject access

- 1.1 The Act gives individuals the right to find out whether and, if so, what data, or information about themselves, are held by a 'data controller' (see paragraph 1.3 below).
- 1.2 Underlying the Act is the principle of openness, that is, unless there is good reason, individuals are entitled to know what 'personal data' (see paragraph 1.6 below) are held about them. Individuals also have a right to a timely response, and in any event, within 40 days of receipt of the request<sup>1</sup>. It is Cafcass policy to acknowledge such requests within 7 calendar days of receipt.

### Who does the Act apply to?

- 1.3 All data controllers must comply with the Act. A data controller determines the purpose and manner for which data will be processed. In this procedure and guidance all employees of Cafcass are to be regarded as data controllers. However, as it requires a named individual, the Information Assurance & Data Handling Officer, is named as the Data Controller for the purpose of data registration.
- 1.4 A self-employed contractor working for Cafcass (Contractor) is regarded as a data processor of Cafcass as they process data on behalf of, and only under the instructions of, Cafcass. Cafcass has developed special contractual arrangements, policies and procedures for all Contractors to follow when processing data on behalf of Cafcass. Service Managers must ensure that all data processed by Contractors on behalf of Cafcass are done in accordance with Cafcass policies and procedures, and returned to Cafcass as soon as possible after that Contractor completes work on a case<sup>2</sup>.

### What data may be covered by a subject access request?

- 1.5 Under the Act an individual is entitled to be notified whether, and, if so, what personal data are held by a data controller, and to be provided with a copy of those data.
- 1.6 Personal data are all data relating to a living individual who can be identified:
  - from the data; or
  - from the data and other information that a data controller possesses or is likely to possess

<sup>1</sup> The 40 day timeframe begins from receipt of a request which fulfils the requirements in paragraph 2.3

<sup>2</sup> This should usually be within two weeks of the final hearing date.

- 1.7 Personal data can include any expression of opinion about that individual and any indication of the intentions of the data controller or any other person in respect of that individual. Some personal data are classed as '[sensitive personal data](#)' and must be treated with special caution when being dealt with. These are data that relate to:
- Race or ethnic origin;
  - Religious beliefs;
  - Political opinions;
  - Membership of a trade union;
  - Physical or mental health or condition;
  - Sexual life;
  - The commission or alleged commission of any offence;
  - Any proceedings for any offence committed or alleged to have been committed and the disposal of such proceedings or the sentence of any court in such proceedings.
- 1.8 The Act covers personal data that are either processed electronically (for example, emails and material held in electronic files) or held on manual records that form part of a 'relevant filing system'. Manual records include both handwritten and typed notes.

### What is a subject access request?

- 1.9 Individuals can only exercise their rights to subject access by making a [written](#) SAR. This may be done electronically (that is, by email or fax), or by letter.
- 1.10 A data controller is not obliged to comply with a SAR until an applicant has provided the necessary supporting items (see paragraph 2.3).
- 1.11 The Act provides that the data controller [has 40 calendar days](#) from receipt of the necessary supporting items in which to fully respond to the SAR, and that the data controller must promptly make any request for the items.

### Data that an applicant is entitled to receive

- 1.12 Subject to the exemptions set out in Chapter 3, an applicant who has made a written SAR is entitled to be told by a data controller [whether](#) their personal data are being processed. If data is not being processed the data controller should write back to the applicant to form them that it is so. If data are being processed, the applicant is entitled to know:

[What:](#) A description of their disclosable personal data<sup>3</sup>; the information constituting their personal data with any unintelligible (for example, technical or illegible) terms explained. This may be complied with by simply providing the applicant with a permanent copy of the information constituting their personal data, unless the person

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<sup>3</sup> The applicant will normally know in general terms what data are being held on them by Cafcass.

agrees otherwise<sup>4</sup>. Data may need retyping for the response to the applicant if only part of a data is to be provided or the data is difficult to read<sup>5</sup>.

Why: *Details of the purposes for which their personal data are being processed*

Who: *Details of the recipients or the classes of recipients to whom their personal data may have been disclosed.* The list of recipients that Cafcass has notified on the Register of Data Controllers for each data category can be accessed on the Information Commissioners office website: [Registration Number: Z5384497](http://www.ico.gov.uk/tools_and_resources/register_of_datacontrollers.aspx)  
[http://www.ico.gov.uk/tools\\_and\\_resources/register\\_of\\_datacontrollers.aspx](http://www.ico.gov.uk/tools_and_resources/register_of_datacontrollers.aspx)

1.13 Any information available to the data controller about the source of the personal data. Where the source is, or can be identified as, another individual, then their identity may be withheld as set out in paragraphs 1.18-1.19.

1.14 Note that a data controller is **not** exempt from the requirement to provide access due to disproportionate effort, such as difficulty in gathering relevant data due to the size of the file. Subject to any relevant exemptions, he/she is obliged to disclose the data that have been requested. The reference to disproportionate effort in sections 8(2)(a) and (b) of the 1998 Act only applies to the **way** in which the data are disclosed. So, for example, if providing a photocopy of data to an applicant would involve disproportionate effort due to the amount of material involved, the data still has to be provided but the applicant can be invited to view the data instead of having a copy provided to them. **If in doubt, seek advice from Cafcass Legal.**

## Recognising subject access requests

1.15 All Staff are responsible for recognising any SAR, whether or not it is expressly stated to be one. For example, individuals may merely request copies of all data relating to them. Sometimes this may be part of a complaint. All staff are responsible for immediately forwarding the SAR to the responsible manager. This is the manager holding responsibility for current service provision. For example providing a service to the court, a response to a complaint, a response to an appeal and a response to a parliamentary enquiry on behalf of a constituent, will all relate to different managers in Cafcass. It is the responsibility of that manager to sign off the SAR. **Staff must be aware that they may be asked to provide personal information from a variety of sources including, but not limited to, the following:**

- [Case files](#)
- [Complaints files](#)
- [the Request Feedback Log on Cafcass' Case management System and](#)
- [emails](#)

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<sup>4</sup> For example, if it is difficult to provide a copy of the data an applicant may agree to view their data in the office, or the applicant may already have a copy of the data or they only wish for specific data to be provided. Note that in the event that Cafcass has good reason to believe the applicant already has a copy of the data (for example, because it was disclosed to them during proceedings), Cafcass must still inform the applicant that the data exists and that Cafcass is not providing a further copy because it considers the applicant already has one. A further copy should be provided if the applicant subsequently requests one.

<sup>5</sup> Note that a Service Manager should respond helpfully to any request by an applicant for clarification about the meaning of a specific term included in the response to the applicant.

If you require further guidance on how to locate and retrieve the relevant information please contact the Information Assurance & Data Handling Officer.

### Timeframe for Responding

- 1.16 A data controller must acknowledge any correspondence regarding a SAR request within 7 calendar days. A data controller, once in receipt of a valid SAR (that is, one for which the request has been made in writing and all of the items outlined in paragraph 2.3 have been received) must respond to the request within 40 calendar days.
- 1.17 When the SAR is received by letter, the date it is received in a Cafcass office must be marked on the letter. The request should be forwarded immediately to the Service Manager of the local office where the relevant data are primarily being processed and held.

### Personal data of another individual

- 1.18 Except in limited circumstances (paragraphs 1.30-1.32) the rights relating to SARs do not extend to the personal data of another individual ('third party'). That is, data that name or otherwise identify another person ('third party data'). Extreme care should be taken before disclosing such data. Under no circumstances should identifying personal data not relating to the data subject be disclosed. This includes, but is not exhaustive of, names, addresses of staff and users, contact telephone numbers and email addresses.

### Where third party data relevant to a SAR are distinct from another person's data

- 1.19 In these circumstances the data/identity of the third party can be protected by:
- Deleting them within the copy of the data to be provided to the person who has made a SAR; or
  - Re-typing the data that are to be included in the response to the SAR on a new piece of paper but omitting any third party data that are not to be so included.

### Where third party data relevant to a SAR are not distinct from another person's data

- 1.20 Applying the rights of subject access becomes more difficult where protecting the data/identity of a third party would mean denying an individual who has made a SAR part of their personal data. For Cafcass this may often be the case (for example, interview notes often refer to a number of third parties).
- 1.21 A data controller must first consider if the information is third party information. The data controller is not obliged to provide data where to do so would disclose the name or identity of a third party, unless:
- It is reasonable in all circumstances to comply with the request without the consent of the third party; or

- The third party has consented to the disclosure.

### Reasonable disclosure

1.22 The Act sets out the following factors that a data controller must have particular regard to when determining whether it is reasonable to disclose data that identify a third party without their consent:

- *Whether any duty of confidentiality is owed to the third party.* In practice this is only likely to arise in a narrow range of cases for Cafcass because data Cafcass record in the course of an enquiry must be able to go into a Court report. A duty of confidentiality would only apply where the court has made an order limiting the disclosure of certain evidence.
- *Any steps taken with a view to seeking consent of the third party to the disclosure* (see paragraph 1.25);
- *Whether any express refusal of consent had been given by the third party.*

1.23 Given the sensitive nature of the work Cafcass is involved in, there are unlikely to be many times when it would be reasonable to disclose the data of a third party without their consent. Unless one of the general exemptions in Chapter 3 applies, it may be reasonable to disclose data of a third party without their consent where:

- The third party data are on the record of proceedings and/or the person who made the SAR already has a copy of them (for example, a statement by a third party that is already recorded in the Cafcass report to the court);
- The source of the third party data is clearly the person who made the SAR (for example, in their own interview notes).
- Cafcass has good reason to believe that the person making the SAR already knows about the third party and that such data have been disclosed to Cafcass.
- For reasonable disclosure with consent – see [template letter 3](#).

### Sensitive personal data

1.24 Extreme caution should be taken before deciding to disclose any sensitive personal data without an individual's consent. **Seek advice from Cafcass Legal if you are in doubt.**

### Unreasonable disclosure

1.25 If it is not reasonable to disclose third party data without the third party's consent, Cafcass should consider whether to contact the third party to see if they would consent to release of their data. It would not be necessary or appropriate to take such steps where:

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- Cafcass has good reason to believe that the third party would be unlikely to consent to their data being released to the applicant (for example, because the relationship between the two individuals is acrimonious or the data were given in confidence);
- The third party is not capable of giving their consent (for example, because they are too young to understand the issues), in which case Cafcass should consult holders of parental responsibility. In situations where there is doubt, or conflict between holders of parental responsibility, **seek advice from Cafcass Legal Services**;
- One of the circumstances in Chapter 3 applies;
- A duty of confidentiality applies (refer to paragraph 1.22);
- It would require disproportionate effort for Cafcass to locate the third party.

### Data that identify and/or were generated by another agency or professional

1.26 Third party data may identify an individual who was acting in a professional capacity (for example, a Cafcass officer, a teacher, a social worker, or health professional), and/or may have been generated by an agency other than Cafcass (for example, a Social Services Department). Such data should normally be included in the response to the SAR, unless:

- Cafcass owes a third party a **duty of confidentiality**;
- **Risk** would be caused to that third party. There may be occasions where, for example, the identity of a particular professional should be withheld because to disclose it would cause risk to that party. At the same time, it is important to note that there is an argument that, where data are provided in a person's professional capacity, the amount of risk such person can be expected to tolerate is higher than a member of the public – for example, the fact that a social worker may have to deal with a complaint about data they provided to Cafcass is not necessarily a reason not to disclose those data; and/or
- One of the **exemptions** in Chapter 3 applies.

1.27 At times it will be difficult for Cafcass to determine on its own whether one of the circumstances above applies. Unless confident that none of those circumstances apply (for example, because the person making the SAR already knows about the data), Cafcass should approach the third party to seek their consent to the disclosure.

### Concealing third party data

1.28 Where, following the above procedures and guidelines, Cafcass has decided that the data relating to the third party should be withheld in order to protect the rights of the third party, Cafcass should:

- Only remove the name or other data identifying the third party where that is necessary to protect the rights of the third party.
- Only remove those parts of a document containing third party data where that is necessary to protect the rights of the third party;
- Only withhold all of a document where no part of that document can be disclosed without infringing the rights of the third party.

## Personal data of children

### Requests from children

- 1.29 A child who has [capacity](#)<sup>6</sup> to make their own SAR is entitled to the same rights of subject access as an adult, and therefore to the same rights of protection of their personal data. In accordance with guidance from the Information Commissioners Office, a child who has reached the age of 12 is generally presumed to have such capacity. **If in doubt, seek advice from Cafcass Legal Services.**

### Requests from those with parental responsibility on behalf of children

- 1.30 Where the child does not have capacity to make their own SAR, a person with parental responsibility<sup>7</sup> for the child may make a SAR on that child's behalf and be entitled to receive a response from the data controller.
- 1.31 Where Cafcass makes the judgement that a child has capacity in their own right, Cafcass should notify the parent who made the subject access request of that position and that Cafcass will only respond directly to the child if they make a SAR in their own right.
- 1.32 Before responding to a SAR from a person with parental responsibility whose child does not have capacity to make their own request, [Cafcass must be satisfied that the disclosure sought would be for the benefit of the child, rather than the person who is making the request.](#)

## SARs by an agent

- 1.33 A data controller is obliged to comply with a SAR made by an agent on behalf of a data subject where the data controller has sufficient information to be able to satisfy him/herself that the data subject has authorised that agent to act on their behalf. Where the request comes from a solicitor, unless a data controller has reason to believe otherwise, generally the data controller may assume they do have such authority.

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<sup>6</sup> Has sufficient maturity and the ability to understand the implications of making a SAR.

<sup>7</sup> In many cases it will be straightforward to identify the individuals who hold parental responsibility. If there is doubt (for example, a local authority has parental responsibility through a Care Order), seek advice from Cafcass Legal Services.

## Repeated SARs

- 1.34 A data controller is not obliged to comply with a SAR from an individual that is similar or identical to a request by that same individual that the data controller has already complied with, unless a reasonable interval has elapsed between the two requests and data has been processed subsequent to the first request. **Seek advice from the IA&DH Officer or Cafcass Legal Services** if you have reason to withhold data on these grounds.

## 2 Cafcass Procedure for Responding to Subject Access Requests and Related Procedures

### Procedure for Service Managers to follow in responding to subject access requests

This Chapter sets out the procedure and additional guidance<sup>8</sup> that Service Managers are responsible for following when responding to a SAR. [Annex 3](#) sets out the procedure in summary by way of diagrammatical form. [Annex 4](#) is a procedural checklist for Service Managers, Family Court Advisers (FCAs) and others involved, to use and keep on file when responding to a SAR. All template letters can be found in [Annex 2](#).

Advice can be sought from The IA&DH Officer and Cafcass Legal Services. Any request for advice to must be made within 20 days of receipt of a valid SAR.

#### Stage 1 Initial Consideration

- 2.1 On receipt of a [written](#) SAR the Service Manager should create a new file (called the 'Data Protection Act file') for the SAR to file papers that need to be kept for the record. The first item to include on the file is the checklist in [Annex 4](#). It is very important to include a note of all decisions made in relation to the SAR, particularly whether all data have been included or not and for what reasons. The file should be kept secure by the Service Manager of the local Cafcass office which is dealing with the applicant.
- 2.2 Within 7 calendar days of receiving a written SAR:
- Identify whether the request is from a member of staff or another individual. If the former, it should be forwarded immediately to the responsible Cafcass human resources advisor for processing;
  - If the request is from a child, assess whether the child has capacity to make their own SAR (see paragraph 1.29). If they do not, send a letter to the child based on the template letter 3. If they do, move to the next step (paragraph 2.3);
  - If the SAR is by a parent on behalf of their child, assess whether the child has capacity to make their own SAR and whether or not the SAR is being made in the benefit of the child (see paragraph 1.29-1.32), and:
    - If the child has capacity or the SAR is assessed not to be to the child's benefit, send template letter 3 to the applicant declining their request
    - If the child does not have capacity, the SAR has been judged to be in the best interests of the child and if the applicant is the parent who has primary care

<sup>8</sup> Please note that the procedure is set out in normal text and guidance is set out in *italicised text*.

status, send an acknowledgement to the applicant based on the template letter 1 and move to the next step (paragraph 2.3).

- If the child does not have capacity, the SAR has been judged to be in the best interests of the child and the applicant is not the parent who has primary care status, send an acknowledgement to the applicant based on template letter 1 and a letter based on template letter 2 to the parent with primary care responsibility. Now move to the next step (paragraph 2.3).

2.3 Where the SAR is to be processed further confirm that the applicant has provided:

- **A £10 fee.** *As permitted by the Act Cafcass requires payment of this fee before processing a SAR. This can be waived in exceptional circumstances.<sup>9</sup> Cheques should be made payable to 'Cafcass' and offices receiving this money should complete a MR1 (a miscellaneous receipts form found on the Cafcass intranet under 'Forms' and 'Finance'), attach the cheque and send it to Finance. Payments can be coded as 160660 (Subject Access Requests Income). If you have any further queries regarding the treatment of the fee payment, consult with Cafcass Finance;*
- **Proof of identity**, where this is not within the personal knowledge of the relevant Cafcass officer<sup>10</sup>. *This should be at least 2 items including a photocopy of the relevant page of a passport or driving licence (that which has a photo and signature), and a further item that clearly shows the applicant's address (for example, a recent utility bill). Before releasing personal data, a Service Manager must be satisfied that the person making the SAR is who they say they are, and that identities are not mistaken;*
- Any further information that is reasonably required to assist Cafcass in locating personal data relevant to the SAR;

2.4 If the items in paragraph 2.3 have been provided, or are not necessary, send an acknowledgement letter to the applicant based on template letter 1 and go to Stage 2 of the procedure;

If the items in paragraph 2.3 have not been provided send a letter to the applicant based on the template letter 1 (for a request by an adult for their own data) or template letters 2 as necessary (template letter 2 in the case of a request on behalf of a child or when the parent making the request is not the parent with primary care responsibility).

**AT THIS POINT LOG THE SAR** on the Request Feedback Log (RFL) section of CMS – use the Request ID number on each piece of correspondence as indicated on the template letters

<sup>9</sup> These may include applications from children, or adults claiming benefits.

<sup>10</sup> In some circumstances the applicant may be well known to the Cafcass officer involved and the officer may wish to waive the need for identification. However, the officer still must satisfy themselves that they have the applicant's correct address for the purposes of disclosing data.

## Stage 2 Collating the Relevant Data

- 2.5 Data relevant to the SAR should be identified immediately after Stage 1 by following these steps:
- Obtain the relevant manual file(s), and check for relevant personal data that may be held electronically. *All relevant personal data should be held within the local office that has responsibility for the proceedings that an applicant has been involved in.*
  - If a complaint has already been made the Service Manager should [check the Request Feedback Log to assess](#) whether any relevant personal data are held there;
  - Along with the FCA who worked on the case, identify and secure all personal data which may be relevant to the SAR;
  - Consider whether any of the relevant personal data fall within one or more of the categories listed in Chapter 3 and make a note for the file of any relevant personal data that should not be released because one of the circumstances in Chapter 3 applies, and the particular reason or reasons for not disclosing them;
  - If the relevant data also contain data of another individual consider whether it is reasonable to disclose the data of the other individual without their consent (paragraph 1.22):
  - If it is not reasonable to disclose without consent, consider whether you can protect the identity of the other individual, and still provide personal data that the applicant is entitled to, by concealing the identity of the other individual in those data (paragraph 1.19 to 1.25).
  - If it is not possible to protect the identity of the other individual, consider whether it is appropriate to seek the consent of another individual (see paragraph 1.25). If it is appropriate to seek the consent of the other individual, send a letter to this individual (template letter 4). If you receive no response to the letter of consent, contact the individual once more and if still no response is received do not disclose the data (that is, act as if consent is not given).
- 2.6 If it is appropriate to consult another agency or if it is appropriate to consult or obtain an opinion from a medical professional (paragraph 1.26) send a letter based on template letter 4. If it is appropriate to obtain leave of the court to disclose data **seek advice from Cafcass Legal Services**.
- 2.7 If it is questionable whether certain data should be disclosed:
- Check with the relevant - Head of Service in the first instance; and
  - If it is still questionable, **seek advice from the IA&DH Officer or the Cafcass Legal Services**.

### Stage 3 Responding to the Request

- 2.8 The substantive response must be sent within **40 calendar days** of receipt of a **written request** and the items in paragraph 2.3 (**£10 fee** and **Proof of ID**).
- 2.9 Where relevant consider any replies from individuals, agencies, or Cafcass National Office, and then make a final decision on data to be disclosed and record your decision in writing for the file. This can be achieved by following the checklist on Annex 2.

Photocopy the data to be disclosed.

- 2.10 Write to the applicant, either:
- declining a SAR when the applicant is an adult requesting their own information (based on template letter 2); or
  - declining a SAR on behalf of a child (based on template letter 2); or
  - fulfilling the SAR and providing data (based on the template letter 4).

**!! Take care that all identifying personal data not relating to the data subject is removed from the response. This includes, but is not exhaustive of, names, addresses of staff and users, contact telephone numbers and email addresses.**

- 2.11 **Copies of all responses to SARs must be placed on the Data Protection Act file.** SAR files can be destroyed after 2 years. Responses must be securely packaged, particularly for transmission to countries where postal services may not be reliable. Envelopes and packages must always be marked with a 'Private and Confidential' stamp. A postal method where the delivery of the response is 'recorded' should be used.

### Procedure for Appeals

- 2.12 Heads of Service are responsible for investigating and responding to any individual who is not satisfied with a response to their SAR, and makes an appeal in writing to have the response reconsidered.
- 2.13 In the event of an appeal the Head of Service should:
- Acknowledge the appeal within 5 calendar days of receipt by sending template letter 5;
  - Obtain the relevant Data Protection Act File from the Service Manager;
  - Review all material on the file against the issues raised by the applicant and this procedure and guidance, and form a view as to whether the initial Cafcass response should be revised. If it should be revised, discuss the proposed revisions with the Service Manager;

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- Respond to the applicant with Cafcass' decision within 40 calendar days of receiving the appeal outlining that Cafcass have carefully considered the issues raised in the appeal, considered the relevant files and has deemed that;

Either:

- Further data are disclosable

Or:

- The original Cafcass response is appropriate and no further data will be disclosed (see template letter 6);
- Return the Data Protection Act File, containing a copy of the response, to the Service Manager.

### **Procedure for ensuring the personal data of members of the public and users of Cafcass services are held by the relevant local offices**

2.13 As responsibility for addressing SARs lies with Service Managers, it is important that the relevant local offices hold all personal data associated with any proceeding or complaint that they process.

2.14 To help ensure that this happens:

- Operational Directors must copy any data they receive from or about a member of the public, or user of Cafcass services, to the relevant local office.
- Heads of Service must copy any data they receive from or about a member of the public, or a user of Cafcass services, to the relevant local office;
- Cafcass National Office must copy any data received from or about a member of the public, or user of Cafcass services, to the relevant local office (if it can be easily identified from the data) or the relevant operational area (if not);

The relevant Service Manager is responsible for ensuring that the data are stored on the appropriate manual file (for example, the appropriate case file, complaint file or Data Protection Act file).

## 3 Exemptions

### Overview

- 3.1 It is important for Cafcass to ensure that individuals who make a SAR are given the data they are entitled to under the Act. It is equally important that data are not inadvertently or inappropriately disclosed by Cafcass
- 3.2 Part IV of the Act sets out various exemptions to the requirement in the Act to disclose personal data. Note that all exemptions will be strictly applied and in accordance with the Act<sup>11</sup> and supporting regulations. Two categories of exemption may apply to personal data processed by Cafcass:
- **Category A:** Principal Exemptions. These exemptions relate to all records (including reports) processed by Cafcass.
  - **Category B:** Exemptions that may apply in rare circumstances in all proceedings apart from adoption and Human Fertilisation and Embryology Authority (HFEA) proceedings (see paragraphs 3.5 below).

If personal data are exempt from subject access disclosure under the Data Protection Act, [there is generally no requirement for Cafcass to inform an individual that such data exist, that they are exempt, or which exemption applies](#). The only exemption to this rule is if a social work exemption applies, in which case it has been agreed between Cafcass and its sponsorship department that Cafcass will inform the applicant that the social work exemption has been applied.

There are some other circumstances where data that are requested in a SAR should not be disclosed. A full note should be made of the reasons why an exemption has been applied on the Data Protection Act file.

- 3.3 If personal data are not to be disclosed because one of the circumstances referred to above (3.1) applies, a description of the data and the reason for withholding must be documented for possible future internal reference and held on the relevant Data Protection Act file. With the exception of the social work exemption, there is no need to communicate the reasons for withholding data to an applicant. If dissatisfied, an applicant can ask the Information Commissioner to assess the basis of Cafcass' response, or apply to the court for a review of our response. [This is why it is important that the reasons for withholding or disclosing data are documented](#).
- 3.4 When it is necessary, consult another agency or obtain an opinion from a medical professional (paragraph 3.6 use template letter 3), or obtain leave of the court to disclose data (paragraph 3.13).

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<sup>11</sup> See section 27(5) "Except as provided by this Part, the subject information provisions shall have effect notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding, of information."

## Exemptions in the Act that may be relevant to Cafcass in responding to SARs

### Category A: Principal exemptions

#### *All data in adoption and HFEA proceedings*

3.5 Any records processed by or on behalf of Cafcass (including reports) in relation to adoption proceedings, or an application for a parental order under the HFEA, are automatically exempt from subject access requirements and should never be disclosed.

#### *Health data*

3.6 Personal data relating to the physical or mental health or condition of the data subject is health data, whether or not the data is contained in a medical report.

3.7 Health data may be exempt from SARs if disclosure would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person (including a member of staff).

3.8 It is important to note that the Service Manager does not make a decision about whether the disclosure would cause serious harm to the physical or mental health or condition of the data subject or any other person. The Service Manager must consult 'the appropriate health professional', and it is for the health professional to reach a decision on the question of whether harm would be likely. 'The appropriate health professional' means the health professional who is currently, or was most recently, responsible for the clinical care of the data subject.

3.9 For example, if a report has been received from an independent psychiatrist about the applicant and there is concern that to release it to them would cause harm to their mental health, then Cafcass must consult either the applicant's GP, or if they are under the care of a hospital, the responsible psychiatrist at that hospital. If that professional is not able to express a view, for instance because they have not recently seen the applicant, then Cafcass must consult an independent health professional.

#### *Social Work Exemption*

3.10 Any data processed by Cafcass in the course of its functions under the relevant sections of the Criminal Justice and Court Services Act 2000, or by practitioners, whether in the role of Children's Guardian, Family Court Reporter or Guardian ad Litem are regarded as social work data under the Act. Such data may not be disclosed if the disclosure would prejudice carrying out social work by reason of the fact it may cause serious harm to the data subject or any other person (including a member of staff).

3.11 This exemption is potentially wide ranging but must be considered on a case-by-case basis. Situations where this exemption may apply include:

- Where a SAR is made during proceedings where the issues in the case mean that disclosure might prejudice the Children's Guardian's enquiry by causing serious harm (physical or emotional) to the data subject or another person including staff;

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- Where a residence or contact order has been made and during the proceedings facts came to light to indicate that the child is at risk from a parent/parents and:
  - A SAR is subsequently made by the parent/parents on behalf of their child for data of the child; and
  - A case can be made that disclosing the child's data might result in harm to the child or another party because it would prejudice the child's welfare.

Note: The social work exemption is not a blanket one and it is unlikely to ever apply to all data on a file. Only those data that *would prejudice the carrying out social work by reason of the fact it may cause serious harm to the data subject or any other person (including a member of staff)* would be covered.

- 3.12 It will generally only be appropriate to withhold data because one of the situations in 3.11 applies where a potential risk can be evidenced (for example, there is evidence of past violence or threats of violence, emotional abuse, harassment, or self harm). In some cases it may be necessary for Cafcass to consult a relevant agency, such as a social worker or local authority, before assessing whether the exemption applies.

Note: The 'carrying out of social work' exemption does not apply to health data or education records.

### **Category B: Other exemptions that may apply in rare circumstances**

#### *Crime and taxation*

- 3.13 If Cafcass has obtained a criminal record or other data from the police, the Crown Prosecution Service (CPS) or the Probation Service, Cafcass must not disclose these data if disclosure would prejudice the functions of the police, CPS or Probation Service in relation to the prevention or detection of crime or apprehension and prosecution of offenders.
- 3.14 This exemption is likely to apply in rare cases only as the above agencies are unlikely to release data to Cafcass if there is a risk of prejudice in carrying out these functions. However where any risk is identified and the data are not data that the applicant would already have a copy of, the agency that generated such data should be consulted immediately about whether they consider this exemption applies. If an officer of Cafcass has contacted the police in connection with a perceived risk posed by the applicant, data arising from this may be exempt, but **advice should be sought**.

#### *Educational records*

- 3.15 Personal data contained in an educational record are exempt from SARs where:
- disclosure is likely to cause serious harm to the physical or mental health or condition of the child or any other person, or
  - the personal data consists of information as to whether the child is being or has been abused, or may be at risk of child abuse.
- 3.16 In practice this exemption is only likely to be used in rare cases as in most instances where it could apply, the social work exemption will probably be applicable.

**Other circumstances where data should not be disclosed**

*Legal professional privilege*

- 3.17 Data are exempt from SARs if they consist of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. All communications between solicitor and client are exempt from SARs. This means for instance:
- (i) if a Cafcass practitioner requests legal advice from Cafcass Legal Services, both the request and the advice are confidential and should not be disclosed; and
  - (ii) all advice and requests for legal advice passing between a Children's Guardian or Guardian ad Litem and their solicitor or the child's solicitor in proceedings are also confidential and should not be disclosed. **If in doubt, seek advice from Cafcass Legal Services.**

*A request for the data of another individual*

- 3.18 An individual's right of subject access only exists in respect of their own data. The only exception arises where a person with parental responsibility requests data on behalf of a child who lacks capacity to make their own request, and that request is assessed as being in the benefit of the child. A request for the data of another individual is not a valid SAR and the request should be declined.

*Where data that are relevant to a SAR (that is, the personal data of the applicant) also contain the personal data of another individual*

- 3.19 Such data should not be released unless it has been suitably anonymised, the other individual has consented to their release, or it is reasonable in all circumstances to release the data without the consent of the other individual (refer to paragraphs 1.19-1.23)
- 3.20 Any decisions and consultation with the staff in relation to the application of exemptions should be documented on the Data Protection Act file.**

## **Annex 1: The eight principles that Cafcass needs to comply with for processing to be lawful under the Data Protection Act 1998<sup>12</sup>**

### **Data Protection Act 1998, Schedule 1**

#### **PART 1 THE PRINCIPLES**

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purpose, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be process in accordance with the rights of the data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or lawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

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<sup>12</sup> Refer to the Act for detail of Schedule 2 and Schedule 3 provisions. The Act can be accessed at [www.hmsso.gov.uk](http://www.hmsso.gov.uk).

## Annex 2: Subject Access Request Checklist

### Data Protection Act 1998: Responding to a Subject Access Request (SAR). Checklist for Service Managers and FCAs

This checklist must be kept with the Data Protection Act File. It provides guidance to Service Managers, FCAs and others involved in responding to SARs. This checklist does not provide a full summary – refer to the Procedure and Guidance, particularly the flow diagrams in Annex 4, for information on all the steps.

	Action	Initial	Date
1	Establish a 'Data Protection Act' file for the Subject Access Request (SAR).		
2	Acknowledge the SAR in writing (either accept or decline) and, as required, request further information, proof of identity and/or payment.		
3	As required, acknowledge the receipt of further information, proof of identity and/or payment.		
4	Record the start date of the SAR (this will either be the date of receipt in 2 or 3 above).		
5	Place SAR on RFL and use RFL number on file		
6	Locate all the relevant file(s).		
7	Sift through the file(s) and categorise the data.		
8	Identify all data that fall under the Data Protection Act exemptions.		
9	Identify any data that contain the data of another individual (third party data). If such data is present, decide whether or not the third party data can be concealed. If this is not possible, seek the consent of the third party. Remove all identifying personal data not relating to the data subject (e.g. names, addresses of staff or users, telephone numbers, email addresses etc).		
10	Identify data that originate with another agency (e.g. a medical professional, local authority etc). If such data is present, seek the consent of the agency.		
11	Identify and query any data that raises concerns (such as risk of harm) if disclosed.		
12	Photocopy data to be disclosed.		
	<b>Final check before sending the response</b>		
13	Ensure all data exempted is removed from the final response. Record this on the Data Protection Act file (the data that has been exempted and the reasons for exemption must be included on the file).		
14	Ensure all identifying personal information not relating to the data subject is removed from the response (names, addresses, contact telephone numbers, email addresses etc).		
15	The service manager must make a final check on the response before sending the data to the applicant		
16	Send a letter to the applicant informing them the request has been fulfilled and attach the data or make arrangements for the collection of data. This letter must be signed out by the service manager and copied to the Head of Service.		
	Record the completion date of the SAR and update RFL		

Please note that the steps above do not necessarily run consecutively – in some cases the steps should run simultaneously (e.g. step 5 can run simultaneously with steps 2 & 3).

## Annex 3: Template Letters

The following template letters comprise this annex:

<u>Template letter 1</u> : Acknowledgment of your subject access request & request for further items	<a href="#">p. 27</a>
<u>Template letter 2</u> : Declining your subject access request/ on behalf of you or your child;	<a href="#">p. 28</a>
<u>Template letter 3</u> : Seeking consent to disclose data for subject access request – Professional, Agency or Third Party;	<a href="#">p. 29</a>
<u>Template letter 4</u> : Response to your subject access request enclosed;	<a href="#">p. 31</a>
<u>Template letter 5</u> : Acknowledgement of your appeal re: your subject access request;	<a href="#">p. 33</a>
<u>Template letter 6</u> : Response to your appeal re: your subject access request.	<a href="#">p. 34</a>

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## Template letter 1: Acknowledgment of your subject access request & request for further items



Insert office address  
And contact number  
{insert the name of the applicant}

{Insert address}  
{Insert Reference number from RFL}  
  
{Insert date}

### ACKNOWLEDGMENT OF YOUR SUBJECT ACCESS REQUEST AND REQUEST FOR FURTHER ITEMS

Dear {insert the name of the applicant}

I acknowledge receipt of your letter of {insert date}, received in this office on {insert date} enclosing {insert those that apply: your proof of identity, £10 payment and further details to aid us in locating information} for your subject access request and or on behalf of your child.

This letter serves to acknowledge that your request was received on {insert date}, and I will be dealing with your questions under the terms of the Data Protection Act 1998.

Your reference number is {insert reference which is Issue ID from RFL},

Under the Act, Cafcass is required to process your request within 40 calendar days from receipt of your request. You will receive a response on or before {calculate 40 calendar days}.  
[and/Or]

I acknowledge receipt of your letter of {insert date}, optional text for satisfying the SAR requirement To process this request I should be grateful if you could provide us with proof of your identity and/or address. A photocopy of the relevant page of your passport or driving licence and a recent utility bill (for example, electricity, water, gas) would be acceptable. Please let me know if this causes any difficulties. We are unable to progress this request until we have received suitable proof of identity.

We charge the recommended £10 fee for processing this request and should be grateful if you could make your cheque or postal order payable to 'Cafcass'. If you would like to pay in another way then please contact our office and we can make alternative payment arrangements. We can waive this fee in exceptional circumstances. Please tell us why you should not pay this fee. We will let you know whether the reason given is acceptable. Otherwise we can only proceed with this request once we have received this fee.

If you have any questions about your subject access request, please do not hesitate to contact me quoting the reference number above.

Yours sincerely,

{insert name}  
{insert position}

## Template letter 2: Declining your subject access request



Insert office address  
And contact number

{insert the name of the applicant}  
{Insert address}  
{Insert Reference number from RFL}  
  
{Insert date}

### DECLINING YOUR SUBJECT ACCESS REQUEST ON BEHALF OF [YOU/YOUR CHILD]

Dear {insert the name of the applicant}

Cafcass {insert office name} is declining your subject access request of {insert date that the request began to be processed, i.e. the date at which all necessary information was received}.

#### [DECLINING APPLICANT REQUEST to Third Party data]

Cafcass is declining your request because you have requested the information of another individual who has the capacity to make their own subject access request.

#### [DECLINING a request for SON/DAUGHTER's data]

Cafcass has declined your request on behalf of your {insert son/daughter etc} under the Data Protection Act 1998 as we consider that {insert EITHER of the options below}  
your {insert son/daughter etc} has the capacity to make their own subject access request  
{OR insert}  
you do not have parental responsibility for {insert son/daughters name} so we are unable to provide the information.  
{OR insert}  
It is not in your son/daughter's best interest for us to comply with your request.

Please note that under the terms of the Data Protection Act 1998 you may appeal to the Information Commissioner's Office against my decision.

**Post**  
Information Commissioner's Office  
Wycliffe House, Water Lane, Wilmslow, Cheshire  
SK9 5AF

**Fax**  
01625 524 510

Yours sincerely,

{insert name}  
{insert position}

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## Template letter 3: Seeking consent to disclose data for subject access request – Agency, Professional (including health records) or Third Party



Insert office address  
And contact number

{insert name of person }  
{Insert address}  
{Insert Reference number from RFL}

{Insert date}

### SEEKING CONSENT TO DISCLOSE DATA FOR SUBJECT ACCESS REQUEST

Dear {insert name of person at agency/name of professional or Third Party}

The Data Protection Act 1998 gives individuals the right to find out whether, and, if so, what personal data organisations hold about them.

Cafcass has received a subject access request under the Data Protection Act from {insert the name of the applicant}.

In the process of responding to this request, Cafcass has identified personal data provided by you. We will only disclose such third party documents/correspondence with your written consent.

I should be grateful if you could read the enclosed material and indicate whether or not you consent to its disclosure by (calculate 10 working days).

If we do not hear from you by (insert calculated date) we will not disclose the information.

Your assistance in this matter is greatly appreciated.

Yours sincerely,

{insert name}  
{insert position}

Enclosures: Consent Form



**CONSENT FORM FOR THE DISCLOSURE OF AGENCY/PROFESSIONAL (INCLUDING HEALTH RECORDS) OR THIRD PARTY DATA**

{insert name }  
{Insert address }  
{Insert Reference number from RFL}  
{Insert date}

**DATA PROTECTION ACT 1998 SUBJECT ACCESS REQUEST: {insert the name of the applicant}**

{amend as required}

The following lists the document(s) about {insert the name of the applicant} that refer to you in some way. These documents have been identified in the process of responding to a subject data access request under the Data Protection Act 1998.

	Date	Description of Document or Information
1		
2		

I consent/do not consent to these being disclosed (delete as appropriate)

Signed:

Date:

Please sign and date the form, and return to the Cafcass Office.

## Template letter 4: Response to your subject access request enclosed



Insert office address  
And contact number

{insert the name of the applicant}  
{Insert address}  
{Insert Reference number from RFL}  
{Insert date}

### RESPONSE TO YOUR SUBJECT ACCESS REQUEST

Dear {insert the name of the applicant}

Cafcass has now processed your subject access request of {insert date that the request began to be processed}

We are providing you with a copy of all data to which we believe you are entitled under the Data Protection Act 1998. Data are held for the purpose of Cafcass' functions in family court proceedings.

{insert EITHER}

Please find a photocopy of the data enclosed with this letter, including an itemised list of the data being disclosed and any recipients to whom it has been disclosed.

{OR insert}

Please find attached to this letter an itemised list of the data being disclosed and any recipients to whom it has been disclosed. Due to the amount of data involved, we would appreciate it if you could collect the data from this office at the above address on {insert a day and time if necessary}.

If you are dissatisfied with the decisions made in relation to your request, you may ask for an internal review to be undertaken by the Head of Service [insert name]. You are also free to contact the Information Commissioner's office ([www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk))

#### Post

Information Commissioner's Office  
Wycliffe House, Water Lane, Wilmslow, Cheshire  
SK9 5AF

#### Fax

01625 524 510

Yours sincerely,

{insert name}  
{insert position}

**DATA PROTECTION ACT 1998 SUBJECT ACCESS REQUEST:**  
**{insert the name of the applicant and reference number from RFL}**

The following is an itemised list of data being disclosed to {insert the name of the applicant} in response to a subject access request under the Data Protection Act 1998.

Number	Date	Description of Data	Recipient of data if disclosed.
1			Eg Court & Parties
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

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## Template letter 5: Acknowledgement of your appeal re your subject access request



Insert office address  
And contact number

{insert name of person making appeal}  
{Insert address}  
{Insert Reference number from RFL}

{Insert date}

### ACKNOWLEDGEMENT OF YOUR REQUEST FOR A SUBJECT ACCESS REQUEST REVIEW

Dear {insert name of person making appeal}

I acknowledge receipt of your letter dated {insert date}, received at this office on {insert date}. You have stated that you are dissatisfied with the response you have received regarding your subject access request and require a review. {Insert further details as necessary outlining the complaint/request for review}

I will contact the relevant Cafcass office and will review your request and your subject access request file.

Cafcass will notify you as to the final decision made regarding your review within 20 working days from receipt of your request. You will receive a response on or before {calculate 20 working days}.

Yours sincerely,

{insert name}  
Head of Service

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## Template letter 6: Response to your appeal re your subject access request



Insert office address  
And contact number

{insert name of person making appeal}

{Insert address}

{Insert Reference number from RFL}

{Insert date}

### RESPONSE TO YOUR REQUEST FOR A SUBJECT ACCESS REQUEST REVIEW

Dear {insert name of person making appeal}

Further to my letter of {date on letter 5} I have now reviewed the handling of your subject access request.

[EITHER]

I have identified further data to which you are entitled. Please find a photocopy of these data attached with this letter, including an itemised list of the data being disclosed.

[OR]

I consider that the Cafcass service manager has fully complied with your request.

Under the terms of the Data Protection Act 1998 you may appeal to the Information Commissioner against my decision.

**Post**  
Information Commissioner's Office  
Wycliffe House, Water Lane, Wilmslow, Cheshire  
SK9 5AF

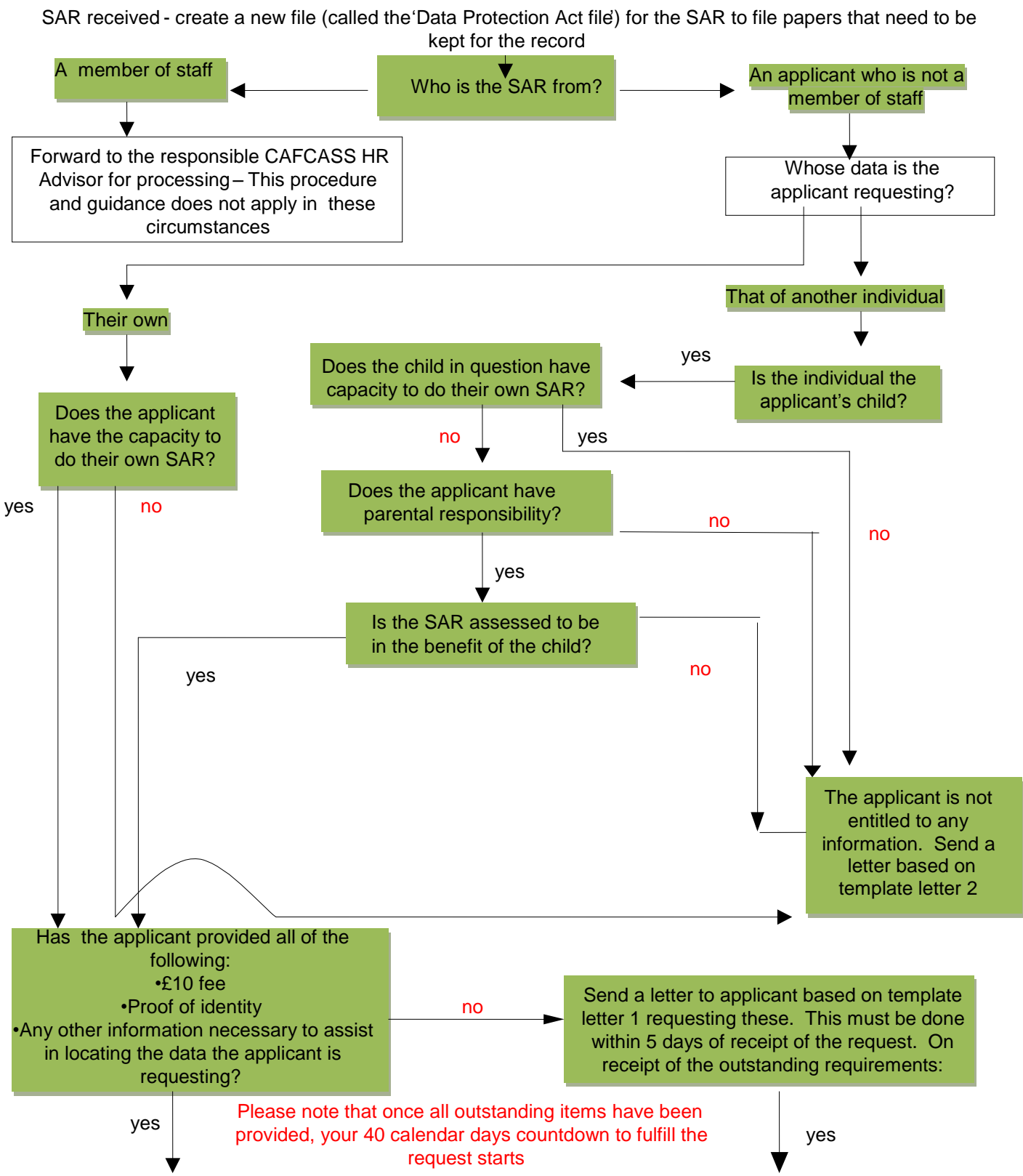
**Fax**  
01625 524 510

Yours sincerely,

{insert name}  
Head of Service

## Annex 4: Flow diagrams detailing stages 1 and 2 of the procedure and the procedure for appeals

### Stage 1: Initial Consideration

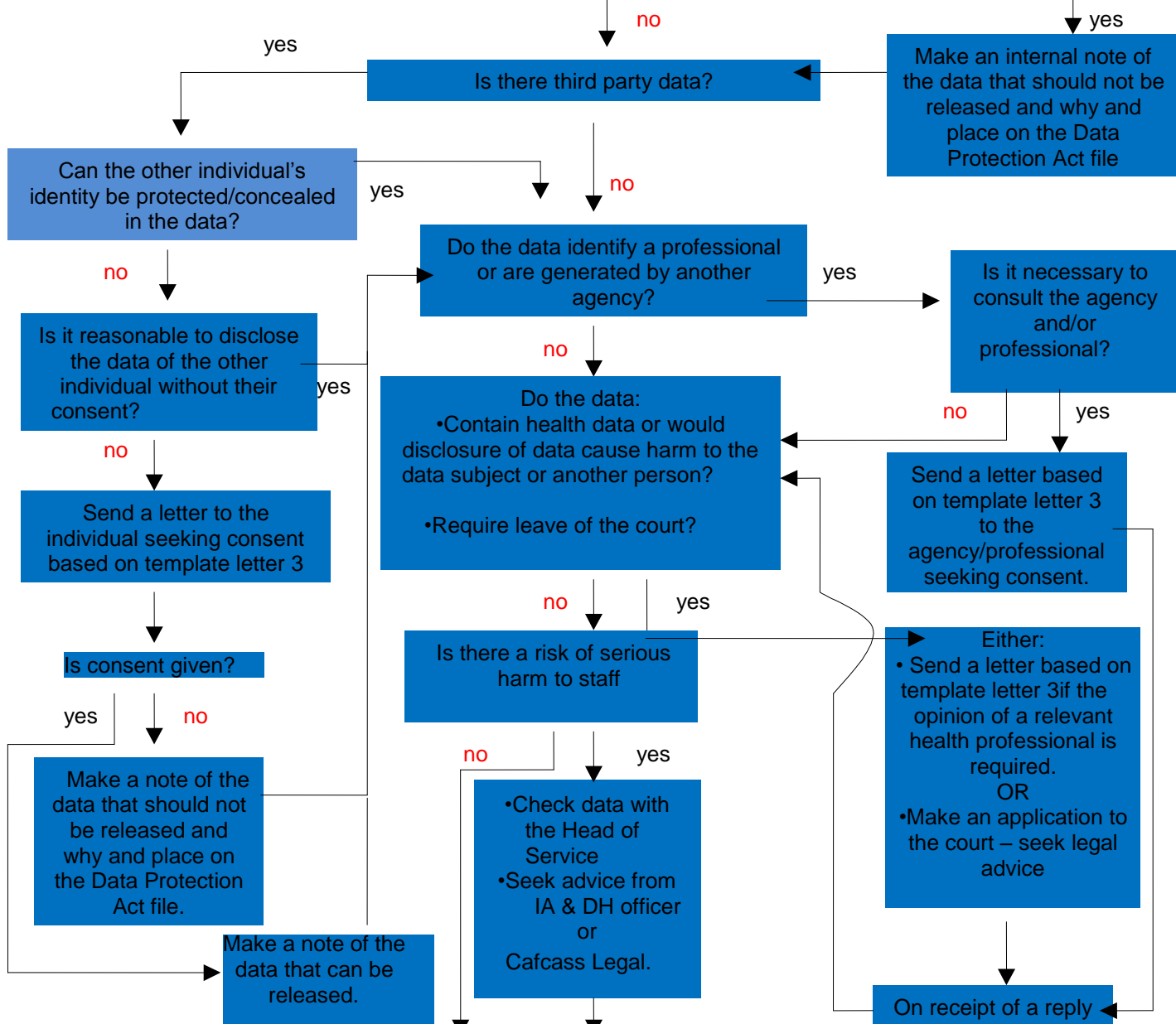


**Stage 2: Collating Relevant Information**

Collect relevant information from:  
 •Relevant manual file(s)  
 •Personal data that may be held electronically  
 •Complaint file if applicable  
 and consult with the relevant practitioner

Conduct a preliminary sifting of the file or files to identify categories of data

Do any of the data fall within the categories of exemptions set out in Section 3?



Undertake a final check of the data with the Head of Service to make sure the names and contact details of third parties have not been inadvertently disclosed, and provide the information to the applicant by sending a letter based on template letter 4.

**Stage 3: Procedure for Appeals**

Appeal received in writing

A 20 working day countdown to fulfill the request starts now

Forward the appeal to the relevant Head of Service to:

- Send an acknowledgement letter based on template letter 6 to the appeal applicant. This must be done within 5 days of receipt of the appeal.
- Obtain the Data Protection Act file pertaining to the particular subject access request the applicant is appealing.

Review all material on the file against issues raised by the applicant and the Procedure and Guidance.

Are there data that should have been disclosed that were not disclosed?

yes

no

Revise the applicant's subject access request according to stages 1 and 2. Send a letter to the applicant based on template letter 5 advising the applicant of the changes and enclosing the new data.

Send a letter to the applicant based on template letter 6 advising that Cafcass considers the original response is appropriate and there is nothing further to add.

Return the Data Protection Act file containing a copy of the response to the Service Manager

## Annex 5: Glossary

Appropriate Health Professional	The health professional who is currently, or was most recently responsible for the clinical care of the data subject.
Cafcass	In this Procedure & Guidance this term is used to mean all Cafcass staff.
Capacity	The sufficient maturity and ability to understand the implications of making a request. In accordance with guidance from the Information Commissioner, a child who has reached the age of 12 is generally presumed to have such capacity.
Contractor	See Data Processor.
Data	Data which is being processed, is recorded with the intention of being processed, is recorded as part of a relevant filing system (or with the intention that it should form part of a system), or is part of an accessible record.
Data Controller	Refers to the Information Assurance & Data Handling Officer, for the purpose of data registration.
data controller	All employees of Cafcass are data controllers. A data controller determines the purpose and manner for which data will be processed.
Data Processor	Data processor specifically includes self-employed contractors, meaning any person who processes data on behalf of Cafcass.
Data Protection Act file	This is the file that is generated at the beginning of a SAR, which holds all information relating to a SAR.
Data Subject	The person whom the data is about.
Educational Record	<p>For England and Wales is defined as any record of information which:</p> <ul style="list-style-type: none"><li>• is processed by or on behalf of the governing body or a teacher at EITHER a local education authority maintained school (i.e. not Private School) or a school for pupils with special educational needs;</li><li>• relates to a current or previous pupil at the said school; and originated or was obtained from:</li><li>• an employee of the local education authority;</li><li>• a teacher or other employee as a “special needs school” not maintained by the local education authority</li></ul> <p>• the relevant pupil or their “parent” (including persons with parental responsibility and / or has care of the child in question; but is not information processed by a teacher for the teacher’s private use.</p>

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Health data	Personal data relating to the physical or mental health or condition of a data subject
HFEA	Human Fertilisation and Embryology Authority
Information Commissioner	The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. He is the last avenue for applicants who are dissatisfied with the way Cafcass has responded to their SAR.
Personal Data	Data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of (or is likely to be) the data controller. It includes any expression of opinion about the individual and any indication of the intentions of the data controller and any other person in respect to the individual.
Processing	In relation to information or data, processing means obtaining, recording or holding the information or data or carrying out any operation(s) on the information or data. Operations include: organising, adapting or altering the data; retrieval, consultation or use of the data; disclosing the data; and destruction of the data.
Sensitive Personal Data	Means personal data consisting of data as to: <ul style="list-style-type: none"><li>• The racial or ethnic origin of the data subject;</li><li>• His/her political opinions;</li><li>• His/her religious beliefs or other beliefs in similar nature;</li><li>• Whether he/she is a member of a trade union;</li><li>• His/her physical or mental health or condition;</li><li>• His/her sexual life;</li><li>• The commission or alleged commission by him/her of any offence; or</li><li>• Any proceeding for any offence committed or alleged to have been committed by him/her, the disposal of such proceedings or the sentence of any court in such proceedings.</li></ul>
Social Work Data	Data produced by practitioners in their roles of children's guardian, family court reporter or guardian ad litem, and by Cafcass in the course of fulfilling its functions under the Criminal Justice and Court Services Act 2000
Third Party	Third party means any person other than the data subject; and it includes any person who provided the information, if it was not provided by the data subject.
Third Party Data	Data about a third party.

## Annex 6: Frequently asked questions

- Q1 **What information should I consider when I receive a SAR?**  
The majority of data held by Cafcass should be considered and service users should be clearly identified from the data we hold.
- Q2 **What sensitive personal data does Cafcass hold?**  
There can be a number of pieces including allegations of criminal offences (which may/may not result in proceedings) statements from medical specialists, psychiatrists, diversity information and notes from service user interviews. See paragraph 1.7 for the categories of sensitive personal data as defined by the DPA.
- Q3 **What do I do if an applicant telephones and asks to see their record?**  
Individuals can only exercise their rights to subject access by making a **written** SAR. Ask the person to write either electronically or by letter to the appropriate Service Manager. Also refer to paragraph 2.3 regarding the fee and ID.
- Q4 **What do I do if some notes are written by the practitioner in her shorthand and they are not legible?**  
The information must be provided to the applicant in an intelligible format. If the shorthand is difficult to read the notes should be typed up for the applicant.
- Q5 **An applicant has contacted the office in writing asking for his personal data, but his case is not held here what do I do?**  
The applicant will have provided his full name and address and possibly at this stage, proof of ID. Using this information you can look on the Case Management System to locate the applicant's local office. This is where the majority of the case information will be held. You should then forward the SAR to the office Service Manager to process. If you are still unable to identify the local office you must write to the applicant asking him for the details of the office which dealt with his/her case.
- Q6a **Which of these are third party data?**
- Notes from an interview with applicant in which he discusses his wife, sons and mother.
  - Notes from an interview with applicant's wife in which she discusses the applicant
  - Notes from interviews with applicant's sons in which they talk about their father.
  - A letter from the police outlining the results of the agency check done on both the applicant and his wife.
  - A letter from an independent person who reviewed the applicant's complaint.
- All of the above fall in to the category of third party data because they 'name or otherwise identify another person'.
- Q6b **From the above list the letter from the police and letter from the independent person reviewing the applicant's file have data which are distinct. How do I omit this distinct data?**  
The distinct data can be photocopied with the applicant's information blanked out.
- Q6c **From above interviews examples above, what do I do if the third party personal data are not distinct from the applicants?**  
If the data in the notes are not amenable to omission as described in Q6b you must consider each of the interview notes to determine whether or not they can be disclosed and if consent is required to do this.

## Not Protectively Marked

- Q7 [How do I get the consent to disclose third parties' information?](#)  
The Service manager must write to the third party using template letter 3 enclosing a copy of the data which requires consent. A self addressed envelope can be provided for a speedy response.
- Q8 [On a case file I have notes from a phone call from a social services' department social worker. I believe if I disclose the notes the social worker will not be put at risk and I do not owe her a duty of confidentiality. What should I do disclose or not disclose?](#)  
You have considered the data and it is clear you must disclose the data. It would be good practice to consult the social worker to make him/her aware of the situation, before disclosure.
- Q9 [An applicant has made a SAR on behalf of his child who is 12 years old. Does the child have capacity to make his own request?](#)  
Guidance from the Information Commissioner's Office, a child who has reached the age of 12 is generally presumed to have capacity. Capacity will be individual to each child, for clarity you should seek guidance from the practitioner to gauge if this child has capacity.
- Q10 [I have a GP's statement about an applicant's mental health and a report from an independent psychiatrist. I think this information may cause harm to the applicant if the data within them were disclosed to her. I also think the information may be exempt. What do I do?](#)  
Such data may have already been disclosed during proceedings. If not you should write to the health professional in this case the GP (template letter 3) to seek his/her opinion on whether or not his/her statement **AND** the report prepared by the independent psychiatrist is likely to cause harm.  
You should also write to the independent psychiatrist (template letter 3) to consult and let him know about the release of his report. However, note that the independent psychiatrist will not provide an opinion as to whether or not the report is likely to cause harm as a consequence of its disclosure – this job falls solely to the applicant's GP as he/she is currently responsible for the applicant's clinical care.
- Q11 [Can I disclose allegations of a criminal offence?](#)  
No – Cafcass must not disclose data if disclosure would prejudice the functions of the police, Crown Prosecution Service or Probation Service in relation to the prevention or detection of crime. Cafcass have a Protocol with the police which states that no information provided directly by them will be disclosed outside of Cafcass.
- Q12 [Can I disclose legal advice from a lawyer to the applicant?](#)  
No – data are exempt from SARs if they consist of information in respect of which a claim of legal professional privilege could be maintained in legal proceedings.
- Q13 [I am a Service Manager and have concerns about the risk posed to one of my practitioners by a SAR applicant. What should I do?](#)  
Discuss the relevant SAR data with the practitioner. It would be wise to check thoroughly that any personal data belonging to the practitioner is deleted before full disclosure of the SAR is made.  
In extreme situations where disclosure may result in a potentially serious risk of harm to the practitioner you should discuss it with your Head of Service and determine whether it is reasonable to consider the social work exemption. You must inform the Operational Director and log any decisions on the DPA file.
- Q14 [How long do I keep the SAR File for?](#)  
Please see 2.11.