

# FREEDOM OF INFORMATION POLICY

## Policy Statement

The main feature of the Freedom of Information Act 2000 is the general right of access to non-personal recorded information held by public authorities, subject to certain conditions and exemptions. This policy enables Cafcass to create a climate of openness and dialogue with all of its stakeholders.

<b>Owner:</b>	Corporate Governance Jasvinder Jassal	<b>Issued</b>	October 2006
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## 1. Introduction

The Freedom of Information Act 2000 (the Act) came into force on 1 January 2005. It gives everyone the right to request official non-personal information held by public authorities. The Act establishes a general right of access to all types of recorded information held by public authorities, including Non-Departmental Public Bodies and sets out exemptions from that right.

The procedure for making a Freedom of Information request is set out in section 10.

Cafcass staff members who receive written requests for information under Freedom of Information (and the Act does not specifically have to be mentioned in the request) must forward these on to Miss Jasvinder Jassal at:

Cafcass National Office,  
6<sup>th</sup> Floor, Sanctuary Buildings  
Great Smith Street. London  
SW1P 3BT

Tel: 0844 353 3317      Fax: 0844 353 3351

If a member of the public makes a verbal request for information, she/he should be advised to make that request for information in writing and send it to Jasvinder Jassal at National office.

## 2. Features of the Freedom of Information Act

- An applicant can request any non-personal information held by Cafcass at the time of the request, irrespective of its date.
- All official information is covered by the Act, irrespective of classification or format. Unless an exemption applies, requests can apply to all information. Emails, voicemail messages, video recordings, personal notebooks, CCTV footage, file notes and paper and electronic files can all be disclosed.
- Information can be requested for any purpose and all requests are treated as equal in terms of their significance.
- The Act extends and formalises the non-statutory Code of Practice on Access to Government Information which has been in place since 1994.
- The Act provides for a time limit for dealing with a request for information - requests must normally be dealt with within **20 working days**. In some circumstances, for instance if Cafcass is considering whether the public interest test applies or if significant search or collation of material is required, the 20 working day time limit could be extended.

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- The Act also provides for an appeal mechanism whereby the applicant may apply to the Information Commissioner for a decision as to whether the public authority dealt with a specified request in accordance with the provisions of the Act.

### 3 The Public Interest Test

The Act provides that, in the case of qualified exemptions, a public authority has to decide:

- Whether the public interest in maintaining the exclusion of the duty to confirm or deny that information is held outweighs the public interest in disclosing whether the public authority holds the information; and/or
- Whether the public interest in withholding information outweighs the public interest in communicating it.

Where the public interest test is relevant, Cafcass will apply it separately to each piece of potentially exempt information.

Where Cafcass reasonably requires further information from the applicant/ another public authority/third party to locate the information requested and it has informed the applicant of this, the 20 working day period will commence the day after Cafcass receives the requested information.

### 4. Consultation with third parties

Cafcass may consult with a third party if the views of that third party may assist Cafcass to determine whether an exemption under the Act applies to the information requested, or where the views of the third party may assist Cafcass to determine where the public interest lies under section 2 of the Act.

### 5. Access Regimes

#### How does the Data Protection Act 1998 differ from the Freedom of Information Act 2000?

**There are three related information rights:**

**The Freedom of Information Act 2000** covers right of access to and request for non-personal data. Freedom of Information is concerned with factual and analytical information and the reasoning behind decisions and policies.

**The Data Protection Act 1998** covers right of access to and request for personal data.

More information on the Data Protection Act can be found at [www.ico.gov.uk](http://www.ico.gov.uk)

More information on how to make a Subject Access Request for personal information can be obtained from the applicant's local Cafcass office.

**Environmental Information Regulations** deal specifically with information relating to any decisions, activities and policy formulation that may have an impact on the environment. Environmental information is exempt information under section 39 of the Freedom of Information Act 2000.

### **The interface between the Freedom of Information Act 2000 and the Data Protection Act 1998**

#### **Section 40 – personal information**

Under Section 40 (7) of the Act, the term ‘personal data’ has the same meaning in section 1(1) of the Data Protection Act. Personal information is exempt under the Freedom of Information Act and the processing of personal data will continue to be regulated by the Data Protection Act. (Refer to the separate note on the Cafcass website and intranet regarding the impact of the Freedom of Information Act on Data Protection).

Any application for access to personal information of which the applicant is the subject will be classed as an application under the section 7 of the Data Protection Act and the applicant will be advised to this effect.

## **6. The Cafcass Publication Scheme**

Under the Freedom of Information Act 2000, all public authorities are obliged to adopt and maintain a Publication Scheme specifying:

- the **classes of information** that they publish or intend to publish; and
- **how** the information is or will be published.

**The Classes of Information covered in the Cafcass Publication Scheme include: Cafcass: The Organisation | Cafcass Board | Cafcass Strategy | Finance | Communications | Human Resources | Operations**

The Cafcass Publication Scheme can be found on the Cafcass website, the address of which is [http://www.cafcass.gov.uk/system\\_page/freedom\\_of\\_information.aspx](http://www.cafcass.gov.uk/system_page/freedom_of_information.aspx)

Alternatively, Applicants can request a copy of the Cafcass Publication Scheme by contacting Cafcass either via the Cafcass website [webenquiries@cafcass.gov.uk](mailto:webenquiries@cafcass.gov.uk) or by writing to:

6<sup>th</sup> Floor, Sanctuary Buildings  
Great Smith Street. London  
SW1P 3BT

In some instances, documents made available under this Publication Scheme will have gaps in the text. This is because the information which has been omitted falls within an exemption. Where this is the case, the document will be clearly marked to show where the information has been removed and the exemption used.

Cafcass intend to update the publication scheme on a yearly basis.

## 7 Fees

Applicants are not required to pay an application fee when making an application to Cafcass under the Act, however, Cafcass reserves the right to refuse to respond to a request for information if it exceeds the value of £450 to process in terms of staff time (2.5 days) and disbursements.

## 8 How information will be provided

Soft copies (emailed information) and hard copies (paper documentation) of information requested under the Scheme are available **free of charge**. Where applicants have access to internet facilities, and the information they are seeking is on the Cafcass website, they will be directed to the Cafcass website at [www.cafcass.gov.uk](http://www.cafcass.gov.uk).

If applicants do not have access to internet facilities, information requested will be posted to their contact address.

Under section 14 of the Act, Cafcass is not expected to respond to applicants whose requests are vexatious. A request will be considered to be vexatious if it was instituted without sufficient grounds especially so as to cause annoyance. Cafcass also does not have to comply with repeated or substantially similar requests from the same person other than at reasonable intervals.

## 9. Advice and assistance

Under section 16 of the Act, Cafcass has a duty, so far as it is reasonable to do so, to give advice and assistance to people who have made a request or are considering making one.

## 10. How to make a general Freedom of Information request & what to do if a Cafcass staff member receives a request for information under the Freedom of Information Act

Applicants are required to put a request in **writing** – in the form of a letter/email/facsimile, supplying their name and address and an address for correspondence and describing the information requested. Requests need not refer to/quote Freedom of Information legislation. Applicants should address their requests to Jasvinder Jassal, Cafcass<sup>6</sup><sup>th</sup> Floor, Sanctuary Buildings, Great Smith Street. London. SW1P 3BT.

The Cafcass staff member dealing with the request may contact the applicant to clarify the terms/scope of the request and to give advice and assistance as needed.

1. The applicant will normally receive a response within **20 working days** from the date upon which the written request is received by Cafcass **unless** the Cafcass staff member dealing with the request needs to consult with other public authorities and/or third parties in order to reach a decision as to whether the requested information can be released. An applicant will be notified to this effect and his/her permission will be sought before Cafcass contacts another public authority.
2. Applications under the Act (or any request that a staff member believes could be a Freedom of Information request) received at a local/regional office must be forwarded to Jasvinder Jassal at the National office.

## 11. Exemptions

Cafcass will not withhold information, unless:

- an exemption to disclosure applies or
- the information sought is not held or
- the request is considered vexatious or
- the request is repeated

Even if a document cannot be released in its entirety, Cafcass will endeavour to release what it is able to in as an intelligible a format as possible.

There are 23 exemptions in total (although section 40 is both an absolute and a qualified exemption, included in both classes of exemption, and hence, counted twice). Seven of the exemptions are absolute, the remainder are subject to the public interest test.

### Absolute exemptions

An absolute exemption will apply to the following information:

- Information accessible to the enquirer by other means (section 21)
- Information dealing with security matters (section 23)
- Court Records (sections 30 and 32)
- Parliamentary Privilege (section 34)
- Personal Information of which The applicant is the data subject (section 40)
- Information provided in confidence (section 41)

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- Information in relation to which disclosure would constitute a breach of a statutory prohibition or an incompatibility with any European Community obligation or contempt of court (section 44)

Information accessible by other means, court records, personal data, provided in confidence and prohibited data all have an absolute exemption from the requirement to disclose. Qualified Exemptions

A qualified exemption is one in relation to which, even if an exemption applies, there is a duty to consider the public interest in disclosing information.

Qualified exemptions include:

- Information intended for future publication (section 22)
- National Security (section 24)
- Defence (section 26)
- International Relations (section 27)
- Relations within the UK (section 28)
- The economy (section 29)
- Investigations and proceedings conducted by public authorities (section 30)
- Law enforcement (section 31)
- Audit functions (section 33)
- Formulation of Government Policy (section 35)
- Prejudice to the effective conduct of public affairs (section 36)
- Communications with the Queen and Honours (section 37)
- Health and Safety (section 38)
- Environmental information (section 39)
- Personal information in relation to which The applicant is **not** the data subject (section 40)
- Legal Professional Privilege (section 42)
- Commercial interests (section 43)

## 12. Request Refusals

Where Cafcass considers the request to be vexatious or repeated, it will give the applicant a notice setting out the reasons for the refusal.

When any written request is refused – including those made by Parliament, the media and members of the public, Cafcass will:

- confirm/deny the existence of the material requested – unless the exemption is an absolute exemption or in cases of qualified exemptions, confirming or denying would itself disclose exempted information
- cite the relevant exemption
- If Cafcass believes that the public interest test applies, the reasons for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosure will be cited.

The refusal notice will contain particulars relating to:

- the internal review procedure and
- the applicant's right under section 50 of the Act to apply to the Commissioner for a decision notice.

Cafcass reserves the right to refuse to respond to a request for information if it exceeds the value of £450 to process in terms of staff time (2.5 days) and disbursements.

## 13. Internal Review Procedure

If an applicant is unhappy with the way in which his/her request has been handled or is dissatisfied with the decision made regarding disclosure or non-disclosure of information or is of the opinion that Cafcass is not compliant with its Publication Scheme, she/he is able to ask that the matter is reviewed internally.

A Senior Officer who was not party to the original decision on whether to release the information will conduct the internal review. The internal reviewer will review the manner in which the application was dealt with and is empowered to either uphold or overturn the original decision.

The applicant will be notified as to the outcome within a reasonable timescale. Cafcass aim to deal with internal reviews within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days of receiving the complaint. If it becomes clear at any stage of the internal review that Cafcass will not be able to meet the deadline set, the applicant will be fully informed.

## 14. The Information Commissioner

If the applicant remains dissatisfied with the decision made as a result of the internal review procedure, s/he can, under section 50 of the Act, complain to the Information Commissioner by writing to the Information Commissioner's office at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF ([www.ico.gov.uk](http://www.ico.gov.uk)) to apply for a decision as to whether the request has been dealt with in accordance with the requirements of Part 1 of the Act.

A **decision notice** will be served if the Commissioner decides that Cafcass has failed to:

- communicate information;
- confirm or deny where required to do so by section 1 (1);
- comply with requirements of section 11 (which refers to the manner of communication in response to a request for information) or
- comply with any of the requirements of section 17 (which refers to the refusal of a request for information)

The decision notice will specify the steps, which must be taken by Cafcass to comply with the requirement and the timescale for compliance.

The Commissioner can serve an **Information Notice** on Cafcass requiring Cafcass to provide specified information to him (unless legal professional privilege applies).

If the Commissioner is satisfied that Cafcass has failed to comply with any of the requirements under Part 1 of the Act, he may serve an **Enforcement Notice** on Cafcass, requiring Cafcass to take particular steps within a specified time to comply with those requirements.

All public authorities may appeal to the Information Tribunal against decision notices and information and enforcement notices.

## 15. Retention Schedule

The following is a table indicating the retention and disposal schedule for Freedom of Information records:

TYPE/SUBTYPE OF RECORD	MINIMUM RETENTION PERIOD	DERIVATION	FINAL ACTION
Freedom of Information requests	3 years after full disclosure; 10 years if information is redacted or the information requested is not disclosed	National archives	Destroy under confidential conditions