



Subject Access Requests Policy

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1. **Roles and Responsibilities**

As a Data Controller, Cafcass has a responsibility for ensuring compliance with the UK Data Protection Act 2018 (DPA), which is the UK's implementation of the General Data Protection Regulation (GDPR)

The Data Protection Officer (DPO) informs and advises Cafcass, its employees, and any associated processors about their obligations to comply with the UK data protection legal framework. They monitor compliance with data protection laws, including managing internal data protection activities, and are the first point of contact for the Information Commissioner and for individuals whose data is processed.

The Chief Executive and Operational Director(s) have overall responsibility for service delivery.

The Customer Services Team (CST) based in the National Business Centre are responsible for processing Subject Access Requests which involves:

- Responding to Subject Access Requests (SAR)
- Providing administrative support for responding to SARs
- Logging SARs on our Child and Families Information System
- Collating, reviewing, and preparing documents for disclosure
- Carrying out SAR reviews

Operational Service Managers are responsible for:

- Providing the CST with information to enable them to complete SARs
- Ensuring that practitioners, support staff and self-employed contractors (Cafcass Associates) are aware that any information held on the case file may be disclosed by Cafcass to individuals.

2. **The Scope of the Policy**

2.1 The policy supports Cafcass compliance to the processing of requests for personal data. Requests received from its employees, former employees or by Cafcass Associates are managed by HR.

2.3 All other SAR requests are to be processed by the CST.

Information covered by this policy

2.2 "Information" in this policy means personal data. [Personal data](#) is all data relating to a living individual who can be directly or indirectly identified:

- From the data; or from other information that Cafcass processes

2.3 Information includes any expression of opinion about that individual and any indication of the intentions of Cafcass or any other person in respect of that individual.

2.4 Sensitive personal data must be treated with special caution. This is defined by the DPA as special category data and includes information that relates to:

- a. Race or ethnic origin

- b. Religious beliefs
- c. Political opinions
- d. Membership of a trade union
- e. Physical or mental health or condition
- f. Genetic and biometric information
- g. Sexual life or sexual orientation

2.5 Criminal offence data must also be treated with special caution. This includes information that relates to:

- a. The commission or alleged commission of any offence
- b. 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

3. The Validity Requirements

3.1 For a request to be valid, the following requirements must be met.

- 1) A SAR can be made verbally or in writing. This means individuals can make a SAR via email, post, over social media, over the telephone or in person.
- 2) A right of access request must be accompanied by 2 separate documents to establish a proof of identity: (1) ID with a photo and signature e.g. passport, and (2) ID with a name and address, e.g. a recent utility bill. However, if there is evidence that Cafcass has previously corresponded with the individual making the request and the contact details are unchanged and previously verified then Cafcass is able to exercise discretion when requesting proof of identity.
- 3) Cafcass may request further information from the individual to progress the SAR.

SARs by an agent

3.2 Where the request comes from a solicitor who is acting for the person making the request, a notice of acting or written consent is required. The identification for the individual will still be required. Cafcass is obliged to respond to a SAR made on behalf of the person making the request provided there is clear evidence that they have given consent for the third party to act for them. Any request received on behalf on an individual must be sent to the data subject only to avoid any breach of the Family Procedure Rules. If there is any reason that information cannot be provided to the data subject, then advice should be sought from Cafcass' DPO.

What does the individual receive?

3.3 The individual will receive a permanent copy of their information¹, unless they agree otherwise. The copy provided must be legible, so may need to be typed by the Customer Services Officer (CSO) if handwritten records are hard to read, and anything obscure must be explained (e.g. technical terms or acronyms). The CSO may need to seek support from practice staff.

¹ Unless an exemption applies

- 3.4 There are additional requirements in the DPA (e.g. the data subject must be told why Cafcass is processing the data, and where it comes from). For more information see Cafcass' Privacy Notice.
- 3.5 Cafcass' default response for SARs is to send responses digitally to individuals via secure encrypted email to a verified email address, unless a different format for the response is requested.

4. Timeframe for responding

- 4.1 Cafcass are required to provide a full response promptly, but in any event within 'one calendar month' of receipt of a valid request. The deadline should be calculated from the day a request is received (whether it is a working day or not) until the corresponding calendar date in the next month. If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month. If the corresponding calendar date in the next month fall on a non-working day (weekend or bank holiday), the date of disclosure will fall on the next working day. NB The timeframe begins after the individual has complied with the validity requirements.

For example:

Date SAR received	Deadline for completion
Wednesday 2nd September 2020	Friday 2nd October 2020
Wednesday 25th November 2020	Tuesday 29th December 2021
Wednesday 31st March 2021	Friday 30th April 2021
Sunday 4th April 2021	Tuesday 4th May 2021

- 4.2 Cafcass may extend the timeframe for responding by a further two months where requests are complex or numerous. If this is the case, the individual must be informed of this within one month of the receipt of the request and be informed why the extension is necessary.

5. Third Party Information

- 5.1 Third party information means information about another individual or professional, including information which identifies that individual as being the source of information sought by the individual.
- 5.2 Cafcass will give careful consideration before disclosing third party information. The following steps must be taken.

Step 1: Where third party information is distinct from another person's data

If possible, to remove (redact) the third party's information/identity or any information which would identify them, if so, the data subject's information can be disclosed without the third party information.

Step 2: Where third party information relevant to a SAR is not distinct from another person's data

If removing the third party's information would make the individual's information unintelligible, Cafcass is not obliged to disclose this information unless:

- 1) It is reasonable in all circumstances to comply with the request without the consent of the third party; or
- 2) The third-party consents to the disclosure.

Step 3: Should third party's consent be sought?

Consent should not be sought if there is good reason to believe that the third party would be unlikely to consent. Other considerations are to be taken in circumstances where the relationship between the parties is acrimonious, requesting consent would put either party at risk, or if contacting the third party would require disproportionate effort (e.g. because they have moved and Cafcass does not have the new address). Clearly, this will not apply if the third party is a professional.

Step 4: Is it reasonable in all circumstances to disclose without consent of the third party?

When determining whether it is reasonable to disclose third party information without consent the following must be considered:

- 1) Is a duty of confidentiality owed to the third party? Have any steps been taken to seek the third party's consent?
- 2) Is the third party capable of consenting (e.g. too young)?
- 3) Has the third party expressly refused?

In addition, consideration should be given to any other factors which may make it unreasonable to disclose. For example, would the disclosure place the third party at risk? *NB. The possibility that a local authority social worker may have to deal with a complaint about information they provided to Cafcass is not a reason not to disclose data.*

Step 5: If consent is refused and it is not reasonable to disclose

If consent is refused or it is deemed not reasonable to disclose the information, we are still required to disclose as much of the information as can be communicated without breaching the third party's rights. For information that cannot be disclosed Cafcass will reference exemptions.

6. Children's Information Steps

Requests from children

- 6.1 Children have the same rights as adults but may not have the capacity to understand / apply their right. A child who has reached the age of 12² is generally presumed to have such capacity, though this presumption may be rebutted by the CST after discussion with the appointed Family Court Adviser (FCA). If in doubt, seek advice from Cafcass' DPO.

² This is in line with the [ICO's guidance on the right of access](#), which states that 'In Scotland, a person aged 12 years or over is presumed to be of sufficient age and maturity to be able to exercise their right of access, unless the contrary is shown. This presumption does not apply in England, where competence is assessed depending upon the level of understanding of the child, but it does indicate an approach that will be reasonable in many cases.'

6.2 Cafcass will follow the ICO's guidance when processing requests from children.

Requests made on behalf of children

6.3 If a request for children's information is received from an adult, the following must be considered:

- 1) Does the child have capacity to make their own request? If the child is deemed to have capacity due to their age or following discussions with the FCA, the requesting adult should be informed that Cafcass owes the child(ren's) individual rights to privacy and as such will only disclose information that does not breach those rights.
- 2) If the child lacks capacity, does the adult making the request have parental responsibility? If not, the request must be refused and the adult informed.
- 3) If the child lacks capacity and the adult making the request does have parental responsibility, the request may still be declined if Cafcass assesses that disclosure would not be in the interests of the child. This may arise, for example, where the adults with parental responsibility are in conflict with one another in court proceedings or any disclosure could present a risk to the child.

7. Repeated SARs

7.1 Cafcass is not obliged to comply with a SAR from an individual if the request is similar or identical to a request that Cafcass has already complied with. A reasonable interval needs to have elapsed between the two requests and further or new information needs to have been processed since the previous request. Before refusing to process a request, advice should be sought from Cafcass' DPO.

Cafcass have not defined 'a reasonable interval' as this depends on the particular circumstances of the case. In considering whether a reasonable period of time has elapsed Cafcass will take into account the nature of the requested data and any new processing that has occurred. As we cannot predict further processing occurring, we will assess any future request for SARs on a case by case basis.

7.2 Where Cafcass does not comply with a SAR, the reason for refusal must be provided to the individual within 30 calendar days. They must also be informed of their right to complain to the supervisory authority (the Information Commissioner's Office) and to a judicial remedy.

8. Steps to Take When a Request is Received

8.1 Action for the local office:

- 1) If a request is made verbally (via telephone or in person), the member of staff who receives the request must treat it as a formal SAR and alert the CST customerfeedback@cafcass.gov.uk the same day. Guidance on recognising a SAR is available on [Cafcass Connect](#).
- 2) If a SAR is received by email it must be forwarded the same day; if it is a hard copy letter it must be date stamped, then scanned and sent the same day to CST.

8.2 Steps to be taken by CST

On receipt of a SAR, CST must:

- 1) Check whether the request meets the [Validity Requirements](#). If not, missing items must be requested.
- 2) Once it is confirmed that the request meets the validity requirements, if it relates to a child's information take the [Child's Information Steps](#).
- 3) If the SAR is to proceed, log the request on Cafcass' Feedback Section. Give each request an ID number which is to be used in all correspondence.
- 4) Send the individual an acknowledgment response within 5 working days from the date on which the request was received.
- 5) CST needs to inform the current and any previous FCAs of the received SAR and ask for confirmation that all case related information has been uploaded to the case file(s) before a copy of the information is saved to the SAR working file.
- 6) CST to contact Governance to determine if information relating to the data subject has been processed.
- 7) If a complaint has previously been made, CST should check reporting systems to assess whether any relevant information is held there.
- 8) The allocated CSO reviews all the available information in preparation for disclosure. The CSO may need to consider whether [exemptions](#) are applicable and if so, note the exemption on the SAR file together with an explanation of why it applies. Exemptions will be marked using a symbols system and a key will be provided within the SAR response letter.
- 9) If the data subject's information is linked to third party information, consider the [Third Party Information Steps](#).
- 10) The response must be sent within the [Timeframe for Responding](#). Before the time limit has expired, consider any replies from third parties, then make a final decision on information to be disclosed. Record your decision on the SAR contact log. This can be achieved by following the checklist on the SAR contact log.
- 11) The response must be securely packaged, particularly for addresses abroad. Emails must be sent via Cafcass secure email encryption facility. Envelopes and packages must always be marked 'Private and Confidential' and 'addressee only'. A postal method where the delivery of the response is 'recorded' should be used such as Royal Mail Signed For.
- 12) A full copy of the original, disclosed, and withheld information must be kept on the SAR file for future reference. SAR files must be destroyed 2 years after the date of last correspondence.

9. SAR Review

- 9.1 An individual may ask for a review of the decision in writing to the CST for a SAR review to be carried out.
- 9.2 CST should acknowledge the request within 5 working days of receipt.
- 9.3 The CSO conducting the review will:

- 1) Review all material on the file and assess if the individual rights of access were lawfully complied with.
- 2) Respond to the individual with Cafcass' decision within 20 working days of receiving the request. The letter will state that either (1) further information is disclosable; or (2) that the original response was appropriate and that no further data is disclosable.
- 3) Save a copy of the outcome of the SAR review.

9.4 If the individual is dissatisfied with the outcome of their SAR review, they may raise their concerns with the DPO.

10. Exemptions and exceptions

10.1 In certain limited circumstances it may not be suitable to disclose information to a data subject on the grounds that it has been assessed some information is exempt from the individual's rights of access. If an exemption applies, a description of the information and the reason for withholding the information must be noted on the SAR file and shared in the response letter.

Information in adoption and HFEA proceedings

10.2 Records processed by or on behalf of Cafcass (including reports) in relation to adoption proceedings or applications for a parental order under the Human Fertilisation and Embryology Act (HFEA) is exempt from disclosure (DPA Schedule 4).

Health information (DPA Schedule 3)

10.3 Information relating to the physical or mental health or condition of the individual is health information; whether the information is contained in a medical report or not.

10.4 Health information may be exempt from disclosure if the 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).

10.5 It is important to note that the CSO does not decide whether the disclosure would cause serious harm; that decision is for the appropriate health professional. 'The appropriate health professional' is the health professional who is currently, or was most recently, responsible for the clinical care of the data subject.

10.6 Advice should be sought from Cafcass' DPO before deciding to apply this exemption.

Social work (DPA Schedule 3)

10.7 Any information processed by Cafcass or its practitioners in family proceedings is regarded as social work data. Such information may not be disclosed if the disclosure would prejudice the carrying out of social work or it may cause serious harm to the data subject or any other person (including a member of staff).

10.8 The social work exemption is not a blanket one and it is unlikely ever to apply to all information on a file. Only the information that would prejudice the carrying out of social work or cause serious harm to the individual or any other person (including a member of staff) would be covered. This exemption must be considered on a case-by-case basis and it is expected that it will be applied infrequently. Guidance from the FCA and the DPO must be sought.

Crime and taxation (DPA Schedule 2)

- 10.9 If Cafcass has obtained a criminal record or other information from the police, the Crown Prosecution Service (CPS) or the Probation Service, Cafcass must not disclose this information 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.
- 10.10 Cafcass are bound by the terms of the National Police Chiefs Council (NPCC). Police information will only be used for the purposes of, and preparation for, the current proceedings. Cafcass are not permitted to give a copy of police documentation to any of the parties or their legal representatives.
- 10.11 This exemption is likely to apply in rare cases only as the above agencies are unlikely to release information to Cafcass if there is a risk of prejudice in carrying out these functions. However, where a risk is identified and the individual would not already have a copy of the information, the agency that generated the information should be consulted to assess if the information is disclosable or the individual should be referred to the relevant authority.

Legal professional privilege (DPA Schedule 2, Part 4)

- 10.14 This exemption applies to information for which a claim to legal professional privilege could be maintained in legal proceedings. This means for instance:
- (i) If a Cafcass practitioner requests legal advice from Cafcass Legal, both the request and the advice are confidential and should not be disclosed; and
 - (ii) All advice and requests for legal advice passing in communication between a Children's Guardian and their solicitor or the child's solicitor are also confidential and should not be disclosed. If in doubt, seek advice from Cafcass Legal.

NB The Cafcass case recording policy ensures that all legal advice is contained in a clearly marked section of the case file.

Protection of rights of others (3rd parties) (DPA Schedule 2, Part 3)

- 10.15 Information which relates to identifiable third parties may be exempt from disclosure. This is subject to:
- (i) Assessment of consent from third parties, and
 - (ii) Whether it is appropriate to comply with the request without the third parties' consent.
- 10.16 The CSO will engage with the appropriate qualified practitioner to assess the appropriateness of disclosure.

Management Forecasting (DPA Schedule 2, Part 4)

- 10.17 Personal data which is processed for the purposes of management forecasting or planning relating to a business or other activity that would prejudice the conduct of a business may be exempt from disclosure.
- 10.18 This exemption is most likely to apply to personal data contained in internal communications where Cafcass' processes, policies or activities are discussed in relation to operational need.

Owned by	Melanie Carew, Head of Legal Services
Approved by	Audrey Olden, Data Protection Officer
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Amended	Updated policy regarding Data Protection Officer's responsibilities for SARs. Update to exemptions, repeated SARs, Consent, SARs by agents, reflection on UK DPA post Brexit.
Next Review	March 2022