



Subject Access Requests Policy

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1. Roles and Responsibilities

Cafcass is a designated Data Controller and has a responsibility for ensuring that staff comply with the GDPR and other data protection legislation.

The Head of Legal is responsible for liaising with the Information Commissioner.

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:

- responding to SARs;
- providing administrative support for responding to SARs;
- logging SAR requests on the SAR log and ECMS and putting the SAR documents together.
- Carrying out appeals;

Operational Service Managers are responsible for:

- providing the CST with all requested case data and additional information to enable the CST to complete the SAR process;
- maintaining data systems within their offices which meet Cafcass requirements;
- ensuring that practitioners, support staff and self-employed contractors (Cafcass Associates) are aware that information may be disclosed by Cafcass to individuals; and
- ensuring that all data processed by Cafcass Associates on behalf of Cafcass are processed in accordance with Cafcass policies, and returned to Cafcass as soon as possible after the Associate completes work on a case.

2. The Scope of the Policy

- 2.1 The policy complies with the EU 2016/679 General Data Protection Regulation (GDPR) and other Data Protection legislation and applies to all requests for “information” (defined below) referred to as “SARs” (subject access requests) received by Cafcass. The policy requires compliance with the [Principles for Processing Personal Data](#). It does not apply to requests for personal data which are made to Cafcass by its employees, former employees or by Cafcass Associates; such requests must be logged by CST and forwarded to HR. An officer in the relevant HR department will undertake the SAR according to the procedures in this policy, and upon its completion will inform CST who will log this.

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 identified:
- from the data; or
 - from the data and other information that a data controller possesses or is likely to possess

- 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 GDPR 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.
- 2.6 All such information processed by Cafcass is covered by the GDPR, regardless of what form it takes, e.g. electronically recorded or handwritten.

3. The Validity Requirements

- 3.1 For a request to be valid, the following requirements must be met.
- 1) A SAR can be made request verbally or in writing. This means individuals can make a SAR via email, post, over the telephone or in person.
 - 2) The applicant must supply 2 proofs 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.
 - 3) Any further information that is reasonably required to assist Cafcass in locating information relevant to the SAR.

The above are all covered in template letter 1.

SARs by an agent

- 3.2 Cafcass is obliged to comply with a SAR made by an agent on behalf of an individual where there is sufficient evidence that the individual has authorised the agent to make the request, such as written consent. 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.

What does an applicant receive?

- 3.3 Applicants will receive a permanent copy of their information¹, unless they agree otherwise. The copy provided must be legible, so may need to be typed if handwritten records are hard to read, and anything obscure must be explained (e.g. technical terms or acronyms).
- 3.4 There are other requirements in the GDPR (e.g. an applicant must be told why Cafcass is processing the data, and where it comes from). Those requirements are covered by the template letter 4.
- 3.5 Cafcass' default response for SARs is to send responses to individuals via secure email (Egress) to a verified email address, unless a different format for the response is requested.

4. Timeframe for Responding

- 4.1 The GDPR requires that the full response must be sent to the applicant promptly, but in any event within 30 calendar days from the date on which the full request was made. NB. this means 30 calendar days after the applicant has complied with [The Validity Requirements](#).
- 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 Steps

- 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 applicant.
- 5.2 Cafcass should consider carefully before disclosing third party information, including names and addresses of other service users and staff, contact telephone numbers and email addresses. The following steps must be taken.

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

- 5.3 See if it is possible to remove the third party's information/identity from the page, leaving the applicant's information intelligible. If so, the applicant's information can be disclosed without the third party information.

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

- 5.4 If removing the third party's information would make the applicant's information unintelligible, Cafcass is not obliged to disclose it 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: Is it reasonable in all the circumstances to disclose without consent of the third party?

¹ Unless an exemption applies

5.5 The factors for Cafcass to consider when determining whether it is reasonable to disclose third party information without consent are the following:

- 1) *Is any duty of confidentiality owed to the third party?* This may apply for example if information was provided by the police, who asked for it to be kept confidential.
- 2) *Have any steps been taken to seek the third party's consent?*
- 3) *Is the third party capable of consenting (e.g. too young)?*
- 4) *Has the third party expressly refused?*

5.6 In addition, consideration should be given to any other factors which may make it unreasonable to disclose without consent. 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 those data.

Step 4: Should the third party's consent be sought?

5.7 Consent should not be sought if there is good reason to believe that the third party would be unlikely to consent, because the relationship between the two individuals is acrimonious or the information was given in confidence, 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.

5.8 If seeking consent, use template letter 3.

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

5.9 If consent is refused and it is not reasonable to disclose the information, we still require disclosure of as much of the information as can be communicated without revealing the third party's identity. This may be done either by omitting names or other identifying details or by otherwise anonymising the information. Staff must be aware that one of the [exemptions](#) in section 10 may apply.

5.10 At times it will be difficult for Cafcass to determine on its own whether one of the steps above apply. 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.

6. Children's Information Steps

Requests from children

6.1 Children who have capacity to make their own SAR have the same rights as an adult. A child who has reached the age of 12 is generally presumed to have such capacity, though this presumption may be rebutted by the CST after discussion with the Operational Service Manager². If in doubt, seek advice from Cafcass Legal.

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.'

Requests made on behalf of children

- 6.2 If a request for disclosure of a child's information is received from an adult, the following issues must be considered:
- 1) Does the child have capacity? If the child has capacity, the adult should be informed that Cafcass will only respond if the child makes a SAR, and template letter 2 is sent.
 - 2) If the child lacks capacity, does the adult making the request have parental responsibility? If not, the request must be refused and template letter 2 is sent.
 - 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 these adults with parental responsibility are in conflict with one another in court proceedings. Again, if this applies template letter 2 is sent.

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 from the individual that Cafcass has already complied with. This exemption will not apply if a reasonable interval has elapsed between the two requests and further information has been processed since the first request. Before withholding information on this ground, advice should be sought from Cafcass Legal.
- 7.2 Where Cafcass does not comply with a SAR on these grounds, the reason for refusal must be explained to the individual within 30 calendar days. They must be 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 orally (via telephone or in person), the member of staff who received the request must treat it as a formal SAR. They must email the Customer Services Team (CST) and inform them that the individual had made a SAR. Guidance on recognising a SAR is available on the Cafcass intranet.
 - 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 at customerfeedback@cafcass.gov.uk.
- 8.2 Steps to be taken by CST
- On receipt of a written 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 ECMS (for case participants) or SharePoint (for non case participants). Give each request an ID number which is to be used in all correspondence on the template letters.
- 4) Create a new file (called the 'SAR file') to file anything that needs to be kept for the record. The first item to include on the file is the checklist in Annex 1. It is very important to include a note of all decisions made in relation to the SAR, particularly whether all information has been included or not and for what reasons. The SAR file should be kept secure by the CST.
- 5) Send the applicant an acknowledgment within 7 calendar days from the date on which the request was received: template letter 1.
- 6) Along with the Service Manager, and if relevant, the FCA who worked on the case, identify and secure all information which may be relevant to the SAR. Obtain the relevant file(s), either by accessing on ECF/ECMS or by obtaining the hard copy file from the local office or archive. If the proceedings are still ongoing, the local office should be asked to send a copy of the file to CST.
- 7) If a complaint has previously been made CST should check ECMS/RFL reporting to assess whether any relevant information is held there.
- 8) Consider whether any of the relevant information fits an exemption and if so, note the exemption on the SAR file together with an explanation of why it applies.
- 9) If the applicant's information is linked to third party information, apply the Third Party Information Steps. If it is questionable whether certain information should be disclosed:
 - (a) Check with the relevant Service Manager in the first instance; and
 - (b) If it is still questionable, seek advice from Cafcass Legal
- 10) The response must be sent within the Timeframe for Responding. Before the time limit has expired, consider any replies from third parties or Cafcass National Office, then make a final decision on information to be disclosed. Record your decision in writing for the file. This can be achieved by following the checklist at Annex 1.
- 11) Before the response is sent it must be reviewed by a Customer Services Manager.
- 12) Arrange electronic versions of data to be disclosed, or if requested, send via hard copy.
- 13) Send template letter 4 together with the disclosable information. The response must be securely packaged, particularly for addresses abroad. Emails must be sent via Egress secure mail. 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 Secure DX.
- 14) A full copy of all disclosed information must be kept on the SAR file for future reference.

8.3 Copies of all responses to SARs must be placed on the SAR file. SAR files can be destroyed 2 years after the date of response to the request.

9. **Appeals**

- 9.1 An individual who remains dissatisfied with the response to a SAR may appeal in writing to the CST.
- 9.2 CST should acknowledge the appeal within 5 calendar days of receipt by sending template letter 5.
- 9.3 The CST member conducting the review will:
- 1) Access the relevant SAR documents, this will be in the form of a hard copy case file from CST or otherwise accessing an electronic file on ECF/ECMS.
 - 2) Review all material on the file and decide whether the initial Cafcass response should be revised. If it should be revised, the CST member will inform the original reviewer of any revisions to the SAR who will in turn action the decision, i.e. the disclosure of additional documents to the service user.
 - 3) Respond to the applicant with Cafcass' appeal decision within 20 calendar days of receiving the appeal, sending template letter 6. 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.
 - 4) Return the SAR File, containing a copy of the response, to CST.

10. Exemptions and exceptions

- 10.1 In certain limited circumstances information may be withheld from an applicant on the grounds that it is exempt. If an exemption applies, a description of the information and the reason for withholding it must be noted on the SAR file.

Information in adoption and HFEA proceedings

- 10.2 Records processed by or on behalf of Cafcass (including reports) in relation to adoption proceedings or an application for a parental order under the Human Fertilisation and Embryology Act (HFEA) may be not disclosed.

Health information

- 10.3 Information relating to the physical or mental health or condition of the applicant is health information, whether or not the information is contained in a medical report.
- 10.4 Health information may be exempt from SARs if disclosure would be likely to cause serious harm to the physical or mental health or condition of the applicant or any other person (including a member of staff).
- 10.5 It is important to note that CST 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 applicant.
- 10.6 Advice should be sought from Cafcass Legal before deciding to apply this exemption.

Social work

- 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 by reason of the fact that it may cause serious harm to the applicant 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 social work by reason of the fact it may cause serious harm to the applicant or any other person (including a member of staff)* would be covered. This exemption is potentially wide ranging but must be considered on a case-by-case basis and it is expected that it will be applied only very infrequently. Advice should be sought from Cafcass Legal by the CST before deciding that it can be applied.

Crime and taxation

- 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 Association of Chief Police Officers (ACPO) protocol. 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 any risk is identified and the applicant would not already have a copy of the information, the agency that generated it should be consulted immediately about whether they consider this exemption applies.

Educational records

- 10.12 Information contained in an educational record is 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 information consists of information as to whether the child is being or has been abused, or may be at risk of child abuse.
- 10.13 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. Advice should be sought from Cafcass Legal before applying this exemption.

Legal professional privilege

- 10.14 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt. 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 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.

10.15 The Cafcass record keeping policy ensures that all legal advice is contained in a clearly marked section of the case file. Information kept here should not be disclosed.

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