

## Cafcass Freedom of Information Policy

### Overview of Policy

The main principle of the Freedom of Information Act 2000 is the general public's right to know about the activities of public authorities, unless there is a good reason for them not to. Cafcass has a statutory duty under the Act to provide non-personal recorded information to the public through an approved publication scheme and in response to specific requests. This policy contributes to government transparency and enables Cafcass to create a climate of openness and dialogue with all of its stakeholders.

### 1 Introduction

- 1.1 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 extends and formalises the non-statutory Code of Practice on Access to Government Information which has been in place since 1994.
- 1.2 Disclosure of information should be the default position and information should only be withheld when there is a good reason and it is permitted by the Act.
- 1.3 When information is disclosed to applicants, it is as if it were being released to the world at large.
- 1.4 The procedure for making a Freedom of Information request is set out in Section 10 of the Act: the request does not need to specifically mention the Act but it must be requested in writing.
- 1.5 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 to the Governance team at [governance@cafcass.gov.uk](mailto:governance@cafcass.gov.uk) or Cafcass National Office, 3<sup>rd</sup> Floor, 21 Bloomsbury Street, London, WC1B 3HF.
- 1.6 If the applicant makes a verbal request, they should be advised to make that request for information in writing and send it to the Governance team at the above contact details.
- 1.7 The Act also obliges public authorities to publish information through a publication scheme to ensure certain classes of information are routinely available.

### 2 Freedom of Information Requests

#### 2.1 Receiving a request

- 2.1.1 An applicant can request any non-personal information held by Cafcass at the time of the request, irrespective of its date, classification or format. Unless an exemption applies, requests can apply to all information held by Cafcass.

- 2.1.2 Information can be requested for any purpose and all requests are treated as equal in terms of their significance.
- 2.1.3 The Cafcass Governance team who deal with the request may contact the applicant to clarify the terms/scope of the request and to give advice and assistance as needed. Where requests are not clear, Cafcass has a duty under Section 16 of the Act, 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.
- 2.1.4 Applicants are not required to pay an application fee when making an application to Cafcass under the Act. However, under Section 12 of the Act, Cafcass reserves the right to refuse to respond to a request for information if the costs of providing it exceeds the value of £450 to process in terms of staff time (2.5 days) and disbursements.

## 2.2 Request responses

- 2.2.1 Requests must normally be dealt with within 20 working days. In some circumstances this can be extended, for instance if Cafcass is considering whether the public interest test applies or 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. Where clarification of the request is needed from the applicant, the 20 working days begins once this clarification is received.
- 2.2.2 Information is provided in soft copy (via email), although if requested it can be provided in hard copy (paper documentation).
- 2.2.3 Cafcass will disclose information, unless:
- the information sought is not held; or
  - an [exemption to disclosure](#) applies (there are 23 exemptions in total, including seven absolute exemptions and sixteen qualified exemptions subject to the public interest test. Where the public interest test is relevant, Cafcass will apply it separately to each piece of potentially exempt information to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosure ); or
  - the request is considered vexatious (requests instituted without sufficient grounds especially so as to cause annoyance); or
  - the request is substantially similar to previous requests from the same person other than at reasonable intervals.
- 2.2.4 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.

2.2.5 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.

2.2.6 When any request is refused 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;
- cite, if applicable, the reasons for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosure.

### 2.3 Complaints regarding responses

2.3.1 An internal review can be requested 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.

- A Senior Officer who was not party to the original decision on whether to release the information will review the manner in which the application was dealt and will either uphold or overturn the original decision.
- 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 and the applicant will be informed.

2.3.2 The Act provides for an appeal mechanism under Section 50 whereby the applicant may apply to the Information Commissioner for a decision as to whether the public authority dealt with a specific request in accordance with the provisions of the Act. This can be done via [casework@ico.org.uk](mailto:casework@ico.org.uk) or Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

- 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 her (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, she may serve an Enforcement Notice on Cafcass, requiring Cafcass to take particular steps within a specified time to comply with those requirements.

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

### **3 Related Information Rights**

3.1 There are related statutes which establish information rights: the Freedom of Information Act 2000 and the Data Protection Act 1998.

3.2 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.

3.3 The Data Protection Act 1998 covers right of access to personal data.

- Under Section 40 (7) of the Freedom of Information 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.
- Information on how to make a Subject Access Request for personal information held by Cafcass can be seen in our [Subject Access Request Policy](#) or [leaflet](#). Any FOI application for access to personal information of which the applicant is the subject will be classed as an application under Section 7 of the Data Protection Act and the applicant will be advised to this effect.
- Requests for personal data concerning employees of Cafcass will generally be exempt under Section 40.
- More information on the Data Protection Act can be found at [www.ico.org.uk](http://www.ico.org.uk).

### **4 The Cafcass Publication Scheme**

4.1 Under the Act, 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.

4.2 The classes of information covered in the Cafcass Publication Scheme include:

- Who we are and what we do;
- What we spend and how we spend it;
- What our priorities are and how we are doing;
- How we make decisions;
- Our policies and procedures;
- Lists and registers;
- The services we offer.

4.3 There may be some datasets held which Cafcass is satisfied that it is not appropriate to publish.

- 4.4 The Cafcass Publication Scheme can be found on the Cafcass website here. Alternatively, applicants can request a copy by contacting Cafcass either via the Cafcass website [webenquiries@cafcass.gov.uk](mailto:webenquiries@cafcass.gov.uk) or by writing to Cafcass National Office, 3rd Floor, 21 Bloomsbury Street, London, WC1B 3HF.
- 4.5 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.
- 4.6 Cafcass intend to update the publication scheme on a yearly basis.

## 5 Retention Schedule

- 5.1 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 was not disclosed.	ECMS and SharePoint team site	Destroy under confidential conditions

<b>Owned by</b>	Melanie Carew, Head of Legal Services
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