

17 November 2016

Dear ,

ATISN 10873

I refer to your letter of 16 October addressed to the Welsh Assembly Government and requesting information relating to your daughter.

I have considered your request under the terms of the FOI Act and have decided the information requested is exempt from disclosure under section 40(2) (Personal data) of the Act.

Section 40(2) of the FOI Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates 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 come into the possession of, the data controller.

I have concluded that, in this instance, the information requested contains third party personal data. Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. I consider the principle being most relevant in this instance as being the first.

It is important to note that, any personal interest of the requester notwithstanding, releases under the FOI Act are made ‘to the world’. That being the case, I consider the information requested clearly falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below. If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

"The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA" (paragraph 63).

In this instance, I believe the data subject would have no expectation that this information would be made public. Thus, I believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

If you are dissatisfied with the handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to:

Matthew Pinnell
Deputy Chief Executive
CAFCASS Cymru
Sarn Mynach
Llandudno Junction
Conwy
LL31 9RZ

You also have the right to complain to the Information Commissioner. However, please note the Commissioner will not normally investigate a complaint until it has been through our own internal review process. The Information Commissioner can be contacted at:

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

Yours sincerely

Rydym yn croesawu gohebiaeth Gymraeg. Cewch ateb Cymraeg i bob gohebiaeth Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome correspondence in Welsh. Correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not involve any delay.