

11 April 2019

Dear ,

Request for Information – ATISN 13084

Thank you for your information request, you asked for the following information:

In respect of a named Family Court Advisor (FCA) you asked:

- a) how many complaints have been made against the FCA.
- b) how many complaints are made by mothers claiming the named FCA favours the father and how many by fathers claiming the FCA favours the mother.
- c) how many complaints against the FCA are on the basis of religious discrimination.

You also asked for:

- d) the average number of complaints a typical Cafcass officer has against them.

Section 40 of the Freedom of Information 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”.

We have concluded the information requested in the first part of your request (points a – c above) amounts to 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. We consider the principle being most relevant in this instance as being the first.

The first data protection principle

This states: Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also 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.

Further, the second data protection principle states:

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

Whilst we may hold details of complaints involving the person named in your request, there would be no reasonable expectation this information would be put into the public domain. Thus, we believe release of this information would be both unfair so as to breach the first data protection principle, and also that the publishing of this information in the public domain would be incompatible with the purpose for which the data was originally obtained.

For these reasons, 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.

With regard to the second part of the request concerning the number of complaints received. I provide a link below to the Cafcass Cymru Annual Report 2017-2018, information on complaints can be found at page 13 and Cafcass Cymru staffing numbers are detailed on page 10.

<https://gov.wales/sites/default/files/publications/2018-09/Cafcass-cymru-annual-report-2017-2018.pdf>





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:

Nigel Brown
Chief Executive
Cafcass Cymru
Sarn Mynach
Llandudno Junction
Conwy
LL31 9RZ

Please remember to quote the ATISN reference numbers above.

You also have the right to complain to the Information Commissioner. Normally, however, you should pursue the matter through our internal procedure before you complain to the Information Commissioner.

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.

