

14 February 2020

Dear ,

Request for Information – ATISN 13712

I refer to your information request received on 17 January.

You asked for:

1. The education, qualifications & training held by the two Cafcass Cymru Officers named in your request.
2. The safeguarding assessment undertaken by these officers before obtaining the authority to interview minors unsupervised.
3. An electronic copy of the Children's Impact Report written by the named Cafcass Cymru officer in your request.
4. Details of what a Family Based Order consists of.
5. Details of what legal requirements there are for me to comply with a court order.

I should point out that the Freedom of Information Act (FoIA) is a vehicle for the public to ask for information held by public authorities to be placed into the public arena for the World to access and use. That is the requested information is not just provided to the person making the request but that the information has to be made freely available to everyone else. When considering whether or not information should be released in response to a FoIA request we are required to consider the potential effects of making the requested information freely available to the World. As such, any decision to withhold is not a decision on whether or not the requester should not have access to the information but rather that the information should not be made freely available to anybody and everybody.

For this reason, I have processed point 3 of your request as a general enquiry rather than through the FoIA process.

The response to your request is set out below.

1. *The education, qualifications & training held by the two Cafcass Cymru Officers named in your request.*

I have decided the information requested at point 1 amounts to third party personal data and is exempt from disclosure under section 40(2) of the Freedom of Information Act, 2000 (FOIA), as set out below.

When considering whether or not the exemption applies, I have to consider the effect of disclosure in response to a FOIA request. That is, the information is released to the world not just the person making the request. As such, it is the effects of that wider disclosure which needs to be considered.

Freedom of Information Act 2000: Section 40(2)

Section 40(2), of the FOIA, together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 2018 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden

by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

The Welsh Government recognises there is a legitimate interest in members of the public being assured that an individual employed as a Cafcass Cymru FCA is qualified to do that job.

2. Is disclosure necessary?

The information provided below sets out the qualifications and experience necessary to be employed as a FCA. This information is in the public domain and applies to all FCAs. We are satisfied access to this information demonstrates to the public that all FCAs are suitably qualified to undertake their role and we do not therefore consider it necessary to disclose information relating to specific individuals.

We ensure that all FCAs are suitably qualified and competent to undertake their role. To take up appointment, FCAs need to hold a Diploma in Social Work (or Social Care Wales recognised equivalent) and a minimum of 3 years post qualifying experience of working with children and their families. They also need to demonstrate that they are registered with Social Care Wales.

In order to maintain their registration with Social Care Wales, FCAs are required, within the period of registration, to complete either 90 hours or 15 days of study, training, courses, seminars, reading, teaching or other activities which could

reasonably be expected to advance the professional development of the social worker or social care worker or contribute to the development of the profession as a whole.

It is the responsibility of the individual FCA to ensure that this requirement is met and Social Care Wales regulates the process.

<https://socialcare.wales/landing-page/code-of-professional-practice-and-guidance>

All Cafcass Cymru Family Court Advisers (FCAs) have a minimum of three years' direct experience of working with children and their families before they are employed by Cafcass Cymru. They will have significant experience of working with issues such as breakdown in relationships, adults behaving in a controlling and abusive manner and working to reunite families and restore relationships.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

We recognise there is a wider public interest in knowing individuals are suitably qualified and experienced to carry out their roles. We believe the information as set out above provides this assurance.

We believe that the legitimate interest in understanding the relevant qualifications of FCAs is therefore satisfied and there is no reason for disclosing detailed information on any particular individual FCA that would override the interests, fundamental rights and freedoms of the data subject provided by the DPA 2018. Consequentially we believe the rights of the FCA outweigh any wider public interest and disclosure would breach the DPA 2018 and thus the information is exempt from disclosure.

Further, even if release of the information were considered to be lawful, we believe that the 'fair' requirement of the above principle would not be satisfied. This is because the data subject (Family Court Advisor) is not a senior civil servant and she would have no reasonable expectation that her personal information would be put into the public domain. Thus, we believe release of this information into the public domain would be unfair and incompatible with the purpose for which the data was originally obtained.

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

2. *The safeguarding assessment undertaken by these officers before obtaining the authority to interview minors unsupervised.*

We do not hold information meeting the description of this part of the request. As outlined above, all Cafcass Cymru FCAs are suitably qualified and competent to undertake their role, hold a Diploma in Social Work (or Social Care Wales recognised equivalent) and are registered with Social Care Wales. All have a minimum of three years' direct experience of working with children and their families before they are employed by Cafcass Cymru and are subject to an enhanced DBS check which is renewed every 3 years. Due to our statutory functions, when someone makes an application and the court is asking for our involvement then Cafcass Cymru FCAs are legally able to make certain enquiries such as interviewing children.

3. *An electronic copy of the Children's Impact Report written by the named Cafcass Cymru officer in your request.*

As explained above, information released under FOI is released to the world not just the person making the request. As you are entitled to this information through your role in the proceedings, I have responded to this part of your request as general enquiry rather than through the FOI process.

The FoIA S21 exemption would apply "Information reasonably accessible to the requester without making a FoIA request".

Due to the confidential information contained within court reports we send these to parties in hard-copy only, via special delivery postal service - we are therefore unable to provide an electronic link as requested. If you would like to receive a hard copy please let me know and the appropriate arrangements will be made.

4. *Details of what a Family Based Order consists of.*

The following is a link to our Expectation Statement on the Cafcass Cymru website which provides information on Family Assistance Orders which I believe is the details you are requesting at point 4. Please let me know if this is not the case.

<https://gov.wales/sites/default/files/publications/2018-05/cafcass-cymru-family-assistance-order.pdf>

5. *Details of what legal requirements there are for me to comply with a court order.*

Court Orders are documents of the court: they specifically set out the order of the court, the legal requirement to comply and the consequences for not doing so.

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. Please remember to quote the ATISN reference number above.

Requests for an internal review should be addressed to:

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

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

Tel: 01625 545 745
Email: casework@ico.gsi.gov.uk

Yours sincerely
in Welsh will not involve any delay.