

3 September 2024

Dear

Request for Information - ATISN 20835

Thank you for your information request received on 7 August 2024. You asked for:

- 1. the frequency / average in which a named Cafcass Cymru Family Court Advisor makes a shared care arrangement; and*
- 2. the same request in respect of all Cafcass Cymru Family Court Advisors.*

Before proceeding to respond to your request, it is important to clarify that it is the court that makes the decision, not the Cafcass Cymru Family Court Advisor. The main duty of a Family Court Advisor is to ensure their intervention is centred on the rights, welfare and best interests of the child. Any recommendations made to court are based on these principles.

Your request has therefore been processed on the understanding you require a breakdown of **recommendations** made by the named Cafcass Cymru Family Court Advisor / all Cafcass Cymru Family Court Advisors.

With regard to part one of your request in respect of the individual FCA, we have concluded the information requested 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 you may have a legitimate interest in wishing to acquire information in respect of the named Cafcass Cymru officer. However, for the reasons set out at points 2 and 3 below, we do not believe it is necessary or legal to place this personal information in the public domain.

2. Is disclosure necessary?

We recognise there is a wider public interest in knowing individuals are suitably qualified and experienced to carry out their roles but we do not believe disclosure of recommendations made by individual officers is necessary. Such information if disclosed to the general public could have wider repercussions regarding the work undertaken on other cases by those officers.

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 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.

Consequently 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. Whilst we may hold those details 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 intended.

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.

With regard to part 2 of your request, whilst Cafcass Cymru may hold information that falls within the description of this part of your request, we can only retrieve this information by examining individual case files. In order to identify and locate the information, we estimate it will cost more than the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate limit and Fees) Regulations 2004 to answer your request. The appropriate limit specified for central government is £600. This represents the estimated cost of it taking over 24 hours of time to determine whether we hold the information and to thereafter locate, retrieve and extract it.

Normally, I would undertake a sample check of cases to evidence the time it would take to locate, retrieve and extract the information. However, I have undertaken similar sample checks in the past and these have averaged 4 minutes per case. The information you have requested is less accessible and I am therefore satisfied retrieving this would take longer than 4 minutes.

In 2023, Cafcass Cymru filed over 8,000 reports. To provide the information in respect of 2023 alone, would take an estimated 533 hours. This is based on it taking a nominal 4 minutes per file, to locate, retrieve and extract the information (8,000 files x 4 minutes = 32,000 minutes/60 = 533 hours).

If you are dissatisfied with our 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
cafcasscymru@gov.wales

Please remember to quote the ATISN reference number 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

Telephone: 0303 123 1113

Website: www.ico.org.uk

Yours sincerely