

# Access to information held by Children’s Services

## Introduction

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You have a right to see information held in social work records by Children’s Services departments both about you and your family. You also have the right to see information about their social work policies, procedures and other written records. The two relevant laws are:

- **The Data Protection Act 1998** which allows people to see information *about themselves* held by Children’s Services.
- **The Freedom of Information Act 2000** which gives people the right to see all types of *other, non-personal* information held by Children’s Services.

This advice sheet summarises the types of information you may ask Children’s Services for and how you can get access to it. It also explains what to do if you do **not** want information about your family released to others. Since this advice sheet is quite long we have divided it up into sections to make it easier to read:

Part 1: Access to **information about you** held by Children’s Services under the Data Protection Act 1998 (page 3)

Part 2: Access to other, **non-personal information** held by Children’s Services under the Freedom of Information Act 2000 (page 7)

Part 3: Where to get further help (page 10)

Please note: **this advice sheet does not address access to adoption records**. For information on this, contact the British Association for Adoption and Fostering (BAAF). (Contact details for BAAF can be found in Part 3 of this advice sheet).

The law in this area is quite complicated so if you find it hard to follow it may be a good idea to ask a friend to go through it with you or talk to FRG advisers on our advice line – contact details are in Part 3 of this advice sheet.

We have included the references for all the legal and practice requirements in endnotes which you can find at the end of the advice sheet. For full details of all the documents referred to in the endnotes, see the references section also at the end of the advice sheet.

**Note: “Social services” are now known as “Children’s Services”. This is how they are referred to throughout this advice sheet.**

Key Terms used in this advice sheet include:

**Data subject:** is the person the information is about.

**Parental responsibility** means the legal right to make decisions about how a child is raised. Those who have parental responsibility include: mothers; fathers who have been married to the mother at any time since the birth of the child or are jointly registered on the birth certificate as the father (after 1.12.03) or have acquired PR by formal agreement with the mother or by court order; anyone who has a residence, special guardianship or adoption order in their favour on the child; guardians; step-parents who have acquired PR by formal agreement or court order. For more information about parental responsibility, see FRG advice sheet [Parental Responsibility](#):

<http://www.frg.org.uk/need-help-or-advice/advice-sheets>

**Subject access request:** this refers to your request to see information held about you

## PART 1: ACCESS TO INFORMATION HELD BY CHILDREN'S SERVICES ABOUT YOU AND YOUR FAMILY

### Can I see Children's Services records about me and my family?

The **Data Protection Act 1998** (DPA) gives every person the general right to see personal information held about themselves by Children's Services in their social work records.

### Who can ask to see information held by Children's Services?

- Anyone can ask to see **information about themselves** which is held by Children's Services. This includes a child with "*sufficient understanding and maturity*".<sup>1</sup> This means that you can ask Children's Services for the information they hold about you. You can either make the request yourself, through a solicitor or through someone else acting on your behalf;
- Parents, and others with parental responsibility, can also ask on behalf of their child if they are too young to ask themselves, or if they are old enough but cannot ask on their own because of a disability.<sup>2</sup>

### What type of information can you ask to see?

In principle, you have a right to see all information held in your social work files about you and your children (unless they are mature enough to ask for the information themselves). You can also ask for a copy of this information. However, Children's Services can refuse to give you information that they hold about you or your child, if they have certain reasons. These are called 'exemptions':<sup>3</sup>

- i) the information was given to the social worker on the basis that:
  - it would not be disclosed to anyone else or
  - if your child has expressly asked that it should not be disclosed to anyone else; or
  - they think that "*serious harm to the mental or physical health.... would be likely*" to happen either to you or someone else if you saw those records; or
- ii) the information identifies other people, unless those people have agreed to the information being disclosed. But note that social workers or other professionals

- cannot rely on this as a reason for you not to see the information, unless you seeing it would be likely to cause them serious harm;<sup>4</sup> or
- iii) giving you the information would prevent social workers from doing their job because it may cause serious harm to someone's physical or mental health or
  - iv) giving you the information would interfere with the prevention or detection of a crime.<sup>5</sup>

## **How do I ask to see information held about me and my children?**

You simply need to write to the Children's Services department which is holding the information about you or your child, either by letter, fax or email, stating clearly what information you want and that you are asking for it under the Data Protection Act (though your request is still valid even if you don't mention the law).

You should provide some ID as you will be asked for it later and it may save time to send it in with your initial request.

It is also a good idea to give any information you have that would help Children's Services to find the records you want (eg date, time and place of the relevant information). Also do say if you want to be sent photocopies, or if you would prefer to receive the data by email or inspect it in person.

If you make your request by letter, it is a good idea to send it by recorded delivery and to keep a copy of any replies you receive in case you need to refer to it later.

## **What happens next?**

Once you make your request to see the information, Children's Services will consider whether there is any reason why they should refuse to give you the information. If they think that any of the exemptions set out on pages 3 and 4 above apply in your case, they may decide not to show you the information.

You may be asked to pay a fee of £10 and provide proof of identification, if you have not already provided it. You should then receive a copy of the information you have

asked for within 40 days unless any of the exemptions listed on page 3-4 apply in which case they should write to you and explain why.

## **What happens if they refuse to give me the information, I think they are holding some back or I don't agree with what is written?**

First of all you should ask Children's Services to explain in writing why they have refused to provide you with the information. If they say they don't have to, you may want to take advice from Family Rights group or a children law solicitor about whether you can challenge this. You may also want to make a formal complaint by writing to the Director of Children's Services and or making a formal complaint using the complaints procedures. For more information see FRG advice sheet on 'Challenging decisions and making complaints:' <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

If you are still not satisfied with the outcome of that, you may:

1. **write to the Information Commissioner**, who may:
  - a) make an assessment about whether the law has been complied with;
  - b) issue enforcement proceedings to make the local authority comply with your request, if necessary<sup>6</sup> and/or recommend that you apply to court, alleging a failure to comply with the law (Data Protection Act);
2. **apply to court**. The court may make an order requiring the local authority to comply with your request under the Data Protection Act and may award compensation if you have suffered damage because the local authority did not give it to you before.<sup>7</sup>

You can write to the Information Commissioner before you go to Court, but you don't have to. Contact details for the Information Commissioner can be found in part 3.

## **What if I don't want other people to find out information about me?**

Even if you don't agree, information held by Children's Services about your family may be shared between professionals for normal social work purposes when Children's Services and other agencies are involved with your child eg: your child's school or GP.<sup>8</sup>

However, sometimes, social workers want to share information they have with **non professionals**, such as other family members, when they are making plans for a child they are involved with. In both of these situations it is good social work practice to

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- discuss any disclosure of information with children, young people and their parents or caregivers, and
- **get your agreement** to the disclosure.

**BUT** if they think that not sharing the information, or asking you to agree first would mean that your child would be “likely to suffer significant harm”, they do not need your agreement to the information being shared.<sup>9</sup>

**Important note:**

If Children’s Services decide to share information about you or your child with someone else without your agreement, they must have good reason. In these circumstances, you should **ask for their reasons** in writing and ask that the decision is made by a manager.

### **What can I do if I think information about me has been or will be shared with someone else unfairly?**

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If you believe that Children’s Services have shared (or want to share) information about you and your family with someone else and that this is unfair, you could

1. **Make a formal complaint** (See FRG advice sheet on ‘Challenging decisions and making complaints:’ <http://www.frg.org.uk/need-help-or-advice/advice-sheets>)
2. **Contact the Information Commissioner** to see whether you may take steps under the Data Protection Act. (See page 5 above)
3. **Contact a solicitor** (Contact details in Part 3 of this advice sheet).

## **PART 2: ACCESS TO OTHER, NON-PERSONAL INFORMATION HELD BY CHILDREN'S SERVICES**

### **Can I see *other records* held by Children's Services that do *not* relate to me or my family?**

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Yes. The **Freedom of Information Act 2000 (FOIA)** gives people the right to see all other types of written information held by Children's Services and other public bodies. This includes, for example, Children's Services' policies on providing help to children 'in need' and their and families or child protection procedures to keep children safe.

Children's Services must publish information about this which explains:

- what type of information they hold,
- how they publish that information and
- whether a charge is made for the information to be given to you under the FOIA.

### **Who can ask for information under the FOIA?**

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Anyone can request information regardless of their age, nationality or location.

### **What type of information must be given to you under the FOIA?**

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Any information held by Children's Services must be given to you under the FOIA unless any of the following exceptions apply:

- the information is available to you elsewhere (for example through a public library or Children's Services website) in which case you should get it from that other source. So before making a request, you should check whether the information you want is already available to you elsewhere;
- if your request is "vexatious", which means it is intended to cause trouble and not because you genuinely want the information; or
- you have made it before, or
- if you have been asked to give more information in order that your request may be met, and you have not responded to this.<sup>10</sup>

Also, there are some other exceptions known as "qualified" and "absolute" exemptions which may mean that they don't have to give you the information you are asking for:<sup>11</sup>

## Qualified Exemptions

These are exemptions which say that they do not have to give you the information if this would stop Children's Services carrying out its normal functions or if there are pending investigations or court proceedings.

If Children's Services tries to rely on a qualified exemption, they may still have to give the information to you if it is in the public interest that you get it. In order to decide this, Children's Services must apply a **public interest test**. This is a test which says that '*the public interest in the information being disclosed must be weighed against the public interest in maintaining confidentiality.*' So, even though the type of information you want falls into one of these categories, you can still argue that the public's right to know outweighs the interest in non-disclosure.

## Absolute Exemptions

These include situations where other laws say the information cannot be disclosed under the FOIA, for example:

- information about an individual may never be provided under the FOIA. For this type of information, you must make a request under the Data Protection Act (see above);
- personal information about others won't be released under the FOIA if disclosure would breach the Data Protection Act
- information will not be released if this would lead to a breach of confidence, for example where confidentiality was promised to the person who gave the information.<sup>12</sup>

Unlike qualified exemptions, if an absolute exemption applies, information will never be released under the FOIA whatever the public interest in doing so.

**Note:** Several of these exemptions require an in depth understanding of a range of different laws. If Children's Services says that the information you are asking for falls within an exemption, you will need to research the matter carefully and take further advice. For a full list of the exemptions and further information about how they apply, contact the Information Commissioner or the Campaign for Freedom of Information, details in "where can to get further information " at the end of this advice sheet.

## **How do I ask for information under the FOIA?**

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- You should write to your Children's Services department, by letter, fax or email, stating clearly what information you want and that you are asking for it under the FOIA (though your request is still valid even if you don't mention the law).<sup>13</sup>
- You should describe the information you want as specifically as possible. Also it's a good idea to give any information you have that would help Children's Services to find the records you want. Requests that are too vague or sweeping may be denied.
- Children's Services should help you make your request, so you can ask them to help you identify the information you want.
- Tell them if you want copies of the information, or if you would prefer to receive the data by email or to inspect it in person.
- Send your request by recorded delivery and keep a copy of all correspondence.

## **What happens next?**

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You should receive a reply within 20 working days.<sup>14</sup> You may be asked to pay for photocopying or postage. In some circumstances, requests can be refused if extracting the information will be too costly (this is defined as costing the authority the equivalent of two and one half days of work.)<sup>15</sup>

## **What happens if I am refused the information?**

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First, check they have followed the correct procedure when refusing you information. All refusals must:<sup>16</sup>

- be in writing
- state that it is a refusal
- name the exemption used
- give reasons, including explaining why it was decided that the public interest requires withholding the information if a qualified exemption applies
- give details of how you can apply for an internal review of the decision

If after an internal review procedure you are still unhappy with Children's Services' decision, then you may apply to the **Information Commissioner** to review the matter.<sup>17</sup>

At the end of the day, if you are not satisfied by the Commissioner's response, you can go on to challenge the refusal in the **First-Tier Tribunal (Information Rights)**.

See <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/>

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Please also note that Welsh law is often different from English law. If you want specific advice about children in either England or Wales please contact the Family Rights Group advice service 0808 801 0366. © Family Rights Group

## **PART 3: WHERE CAN I GET FURTHER HELP?**

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**British Association for Adoption & Fostering (BAAF)** provides information and advice for everyone concerned with adoption, fostering and child care issues, including on access to adoption records, through its website, extensive list of publications and advice lines.

Head Office Tel: 020 7421 2600

Saffron House, 6-10 Kirby Street, London EC1N 8TS or find details of your local BAAF office via the website: [www.baaf.org.uk](http://www.baaf.org.uk).

**Citizens Advice:** is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local CAB can be found in the telephone directory. There is also advice on line on their website.

Website [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Advice on line Website [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

**Civil Legal Advice:** A free and confidential advice service. It provides information directly to the public on a range of common legal issues and helps people find legal help and information. It can also help you find legal advisors and find out if you are eligible for publicly funded free legal help.

Website: Telephone: 0845 345 4345. Minicom: 0845 609 6677

Monday to Friday, 9am to 8pm; Saturday, 9am to 12:30pm.

CLA 'find a legal advisor service' at

<http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>

**Family Rights Group:** is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children.

- Contact FRG's advice line for specific advice about your case on 0808 801 0366. It is open Monday-Friday 9.30am-3.00pm. You can also email to [advice@frg.org.uk](mailto:advice@frg.org.uk).

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- You can also visit <http://www.frg.org.uk/need-help-or-advice/advice-sheets> where you can download other relevant advice sheets.
- Or join the FRG parents' or family and friends carers' discussion boards.

**Information Commissioner:** The Freedom of Information Act 2000, the Data Protection Act 1998 and useful government guidance can be obtained on the website of the Information Commissioner at [www.ico.gov.uk](http://www.ico.gov.uk). You can also contact the Information Commissioner on:

- Data Protection Help Line Telephone: 0303 123 1113
- Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)

**Specialist child welfare solicitor:**

To find a solicitor who specialises in childcare law, you can contact:

- i) **Solicitors Regulation Authority**, Ipsley Court, Redditch, Worcestershire B98 0TD Telephone: 0870 606 2555 <http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page>;
- ii) **The Law Society of England and Wales**, 113 Chancery Lane, London WC2A 1PL Tel: 020 7242 1222 Minicom: 0870 600 1560 Fax: 020 7831 0344  
E-mail: [info.services@lawsociety.org.uk](mailto:info.services@lawsociety.org.uk) [www.lawsociety.org.uk](http://www.lawsociety.org.uk)  
**You can search their website for details of local solicitors who are members of the Children Panel:**  
<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>
- iii) **Civil Legal Advice** (details above)

**The Campaign for Freedom of Information**

Suite 102, 16 Baldwins Gardens, London, EC1N 7RJ

Tel: 020 7831 7477

Fax: 020 7831 7461

Email: [admin@cfoi.demon.co.uk](mailto:admin@cfoi.demon.co.uk)

[www.cfoi.org.uk](http://www.cfoi.org.uk)

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## References

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<b>CA</b>	Children Act 1989 <a href="http://www.legislation.gov.uk/ukpga/1989/41/contents">http://www.legislation.gov.uk/ukpga/1989/41/contents</a>
<b>DPA</b>	Data Protection Act 1998 <a href="http://www.legislation.gov.uk/ukpga/1998/29/contents">http://www.legislation.gov.uk/ukpga/1998/29/contents</a>
<b>FOIA</b>	Freedom of Information Act 2000 <a href="http://www.legislation.gov.uk/ukpga/2000/36/contents">http://www.legislation.gov.uk/ukpga/2000/36/contents</a>
<b>WT</b>	Working Together to Safeguard Children, 2013 HM Government <a href="https://media.education.gov.uk/assets/files/pdf/w/working_together.pdf">https://media.education.gov.uk/assets/files/pdf/w/working_together.pdf</a>

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<sup>1</sup> *Gillick v. West Norfolk AHA* [1986] AC 112

<sup>2</sup> Paragraph 5(3) Data Protection (Subject Modification)(Health) Order 2000 (2000/413)

<sup>3</sup> Paragraph 5(1) Data Protection (Subject Access Modification) (Social Work) Order (Order 2000/415).

<sup>4</sup> Paragraph 7 Data Protection (Subject Access Modification) (Social Work) Order

2000 (2000/415) and Para 8 Data Protection (Subject Access Modification)(Health) Order 2000 (2000/413)

<sup>5</sup> s.29 DPA

<sup>6</sup> Part V DPA

<sup>7</sup> s.7(9) & s.13 DPA

<sup>8</sup> s.47(9) CA

<sup>9</sup> WT 2013 para 24, page 15

<sup>10</sup> s.14 and s.1(3) FOIA

<sup>11</sup> Part II FOIA lists all the exemptions

<sup>12</sup> See:

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/SEC41\\_CONFIDENCE\\_PUBLIC\\_INTEREST\\_TEST\\_V1.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/SEC41_CONFIDENCE_PUBLIC_INTEREST_TEST_V1.ashx)

<sup>13</sup> s.8 FOIA

<sup>14</sup> s.10 FOIA

<sup>15</sup> s.12 FOIA

<sup>16</sup> s.17 FOIA

<sup>17</sup> s.50 FOIA

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