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Access to Records

References

CA 1989: Children Act 1989

DPA: Data Protection Act 1998

FOIA: Freedom of Information Act 2000.

WT: Working Together to Safeguard Children, 2006 HM Government

Introduction

In the last few years, several laws have come into force giving individuals important rights to information held by public authorities, including local authorities.

The Data Protection Act 1998 came into force on 1 March 2000. This law allows individuals access to information *about themselves* held by local authorities.

The Freedom of Information Act 2000 (fully in force on 1 January 2005) gives individuals rights to access to all types of *other* information held by local authorities.

This advice sheet:

- summarises the types of information individuals may ask for and the types of information that may be withheld;
- outlines how to make such a request and describes what to do if your request is denied;
- briefly addresses what to do if you do **not** want information about your family released to others; and
- describes two new systems for holding information about children, “ContactPoint” (also known as the “Information Sharing Index”) and the “Integrated Children’s System”.

Throughout this advice sheet, we refer to “local authorities” or “children’s services departments” (which have replaced social services) though the same information applies to other public authorities as well.

References to the relevant laws, government documents and other information are listed in the narrow column to the right.

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A: Your right to access information about you which is held by the local authority

I would like to see Children’s Services records about me and my family

THE DATA PROTECTION ACT 1998 gives all individuals the general right to access personal data about themselves held in social work records. The person is called the “data subject” and the request for information is called a “subject access request”.

Who can make a request?

Requests can be made by anyone, including a child with “sufficient understanding and intelligence to understand what is proposed”. You can make a request yourself, or through a solicitor or through someone else acting on your behalf.

*Gillick v. West Norfolk
AHA [1986] AC 112*

Parents, or others who are legally able to act on behalf of a child, can make the request on behalf of a child who is too young to exercise his or her own rights to information, or on behalf of a child who cannot act on his or her own because of a disability.

*Paragraph 5(3) Data
Protection (Subject
Modification)(Health)
Order 2000
(2000/413)*

Once a request is made, the application will be assessed to make certain that it is in the child’s best interests to proceed. Information will not be provided if the information was provided by the child in the expectation that it would not be disclosed to a parent or if the child has expressly indicated it should not be disclosed.

Children’s Services departments may refuse to allow an applicant to see some records if “serious harm to the mental or physical health.... would be likely” to occur to that person or someone else if that person saw those records.

*Paragraph 5(1) Data
Protection (Subject
Access Modification)
(Social Work) Order
(Order 2000/415).*

What type of information can be requested?

In principle, individuals have a right to a copy of all information contained in their social work files. There are, however, some important exceptions, summarised below:

- Information that identifies other people, unless the identified people have agreed to disclosure of the information. This is unlikely to apply to social workers or

*Paragraph 7 Data
Protection (Subject
Access Modification)
(Social Work) Order
2000 (2000/415) and*

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other professionals identified in connection with work in their professional capacity, unless disclosure would cause them serious harm;

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

- If the disclosure of the information would prejudice the carrying out of social work because serious harm to the physical or mental health of the data subject (i.e.: the person about whom the information is held) or any other person would be likely to be caused;
- If the request is made on behalf of someone else and that person has asked for the information not to be disclosed or they gave the information on the assumption that it wouldn't be disclosed;
- The release of the information would interfere with the prevention or detection of crime.

s 29 DPA

How do I make a request?

You simply need to write to your Children's Services department in the local authority 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 identification as you will be asked for it later and it may save time to send it with the initial request.

It's a good idea to give any information you have that would help the local authority to locate the records you want. Say if you want to be sent photocopies, or you would prefer to receive the data by email or inspect it in person.

It's also good idea to send your request by recorded delivery and to keep a copy of all correspondence.

What happens next?

You should receive a reply to your request within 40 days. 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 requested.

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What happens if:

- my request for information was denied
- I am not satisfied that I have received everything
- I disagree with information contained in my records

s. 14 DPA

Information
Commissioner leaflet
"DPA: Incorrect
Information – what
can I do?"
www.informationcommissioner.gov.uk/eventual.aspx?id=89

You should at first take up your complaint with the local authority itself, writing to the Director of Children's Services. If you are still not satisfied, you may:

1. apply to court. The court may make an order requiring compliance with the DPA and may award compensation if you have suffered damage because the authority did not comply.

2. write to the Information Commissioner, who may:

DPA s.7(9) and 13

- i. make an assessment as to whether the DPA has been complied with
- ii. issue enforcement proceedings if necessary
- iii. recommend that you apply to court alleging a failure to comply with the DPA.

s.42 DPA

You can write to the Information Commissioner before you go to Court, but you don't have to.

What if I *do not* want people to see my family's records?

Information held by Children's Services about your family may be shared for normal social work purposes with professionals throughout Children's Services as well as other professionals such as those at your child's school or GP's office.

CA 1989 s 47 (9)

It is good social work practice to discuss the disclosure of information with children, young people and their parents or caregivers, and to obtain consent to the disclosure.

However, where this would place the child at "risk of significant harm", consent to disclosure is not necessary.

WT 5.4

What do I do if I think my records have been released unfairly?

If you believe that Children's Services have unfairly released records about your family, you can

1. File a complaint (see Advice Sheet 18)

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2. Contact the Information Commissioner to see whether you may take steps under the Data Protection Act (see below for contact details)
3. Contact a solicitor.

B: Your right to access other (non-personal) information held by the local authority

I would like to see Children's Services records that do *not* relate to me or my family

THE FREEDOM OF INFORMATION ACT 2000 gives a general right of access to all types of recorded information held by public authorities. The law also requires public authorities to maintain a publication scheme which explains what type of information they hold, how they publish that information and whether a charge is made for the information.

(Note that there is an *absolute exemption* preventing the release of information about an individual under the FOIA. For this type of information, you must make a request under the DPA, discussed above).

Who can make a request?

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

What type of information can be requested?

Any information held by a local authority is eligible for release. However, there are a number of important exceptions, summarised below.

Before making a request, you should check whether the information you want is already available to you. If it is, the local authority does not need to deal with your request as a request under the FOIA.

What type of information can be withheld?

Information can be refused if the request is "vexatious" or repeated, 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.

s.14 and s.1(3) FOIA

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Exemptions

In addition, the law contains 23 “exemptions”. Some of these are “qualified”, which means the information may still be released even if it falls within one of these categories, and some of these are “absolute” which means there will be no release of the information.

Part II FOIA lists all the exemptions

Several of these exemptions require an in depth understanding of a range of different laws. If the information you seek falls within such an exemption, you will need to research the matter carefully. For a full list of the exemptions and further information about their application, see “where can I get further help” at the end of this advice sheet.

Qualified Exemptions

Some of the qualified exemptions cover information concerning law enforcement, or where disclosure would be likely to prejudice the frankness of internal discussions or the effective conduct of public affairs. There is also a qualified exemption concerning investigations and proceedings conducted by public authorities.

These qualified exemptions are subject to a public interest test i.e.: the public interest in the disclosure must be weighted against the public interest in maintaining confidentiality. So, just because 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

The absolute exemptions cover, for example, situations where other laws would prohibit disclosure. So, personal information about others won’t be released if disclosure would breach the DPA. Similarly, an absolute exemption applies to information where its disclosure would be a breach of confidence.

There is also an absolute exemption covering requests about information concerning the person who is making the request, because these requests should be made under the DPA (see above).

How do I make a request?

Simply 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).

s.8 FOIA

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Describe the information you want as specifically as possible. Requests that are too vague or sweeping may be denied. Local authorities are required to provide reasonable assistance to people making requests, so ask for help in identifying what type of information is held.

It's a good idea to give any information you have that would help the local authority to locate the records you want. Say if you want to be sent photocopies, or if you would prefer to receive the data by email or inspect it in person. It's also good to send your request by recorded delivery and to keep a copy of all correspondence.

What happens next?

You should receive a reply within 20 days. 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.)

s. 10 FOIA

s.12 FOIA

What happens if I am refused the information?

First, make sure that the refusal is properly drafted. All refusals must:

s. 17 FOIA

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

If after following the internal review procedure you are still unhappy with the local authority's decision, then you may apply to the **Information Commissioner** to review the matter. Ultimately, in exceptional cases, you may be able to challenge the refusal to disclose in court.

s. 50 FOIA

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C: Where might information about my child be held?

1. CONTACTPOINT

What is ContactPoint?

ContactPoint is a national database which the government plans to set up in the near future to hold information about:

*s12 Children Act
2004*

- every child in the country such as their name, address, date of birth and a unique identifying number.
- any person with parental responsibility or caring for the child;
- the child's school and GP;
- basic details of any other relevant services;
- information about the existence of any cause for concern about the child; and
- contact details of professionals in contact with a child so other professionals can share information where the child needs services or where there are child protection concerns.

ContactPoint will hold information on all children up to age 18 and those with special needs up to age 25.

ContactPoint will not hold assessments or any specific case information.

What is the purpose of ContactPoint?

The purpose of ContactPoint is to make the coordination of services easier by providing a quick and accurate way to find out information about all children in England.

Who is allowed access?

Access to ContactPoint will only be allowed to authorised users such as those working in health, education, social care, youth offending and some voluntary organisations.

A duty of confidentiality exists in relation to case specific information held on ContactPoint. This means that although a practitioner may be contacted by an agency because they have

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recorded on the database that they have information to share about a child, they may only share that information if they have the consent of a person with parental responsibility for the child, or the child themselves where they have sufficient maturity and understanding to give such consent. The exception to this is where there are child protection concerns legally sufficient to override consent.

Is my consent needed for the inclusion of information about my family?

Where the information relates to a child under the age of 18, consent to information being included is generally not required.

Specific consent is required to record details relating to “sensitive” services (defined as sexual, mental health and substance abuse). However, this can be overridden where there are child protection concerns.

In addition, although information can generally be recorded without consent, it is good practice for agencies to discuss with you any information they propose to record about your child. Also, they will still need your consent to share any *other* information they have about your child with another agency unless there are child protection concerns to justify overriding the need for your consent.

Do I have the right to see the information held about my family?

The Data Protection Act applies to information contained in ContactPoint, so children and parents acting on their child’s behalf can see the data held on them and request incorrect data be corrected or removed. (See above). The specific procedures that will govern such requests have not yet been put in place.

2. THE INTEGRATED CHILDREN’S SYSTEM (ICS)

The Integrated Children’s System is a single electronic system for recording of assessment, planning, intervention and review of children in need (those for whom a statutory assessment is undertaken, as well as looked after children and children subject to child protection procedures) and their families. It will have replaced all paper files in local authorities by April 2008. It is intended to standardise records kept about children involved with

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local authority children's services and procedures for accessing these records are expected to be similar to existing procedures.

It is separate from ContactPoint and will not be linked. The Data Protection Act applies to any information collected or stored pursuant to the ICS.

Where can I get further help?

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.informationcommissioner.gov.uk. You can also contact the Information Commissioner on:
Data Protection Help Line
Telephone: 01625 545 745
Email: mail@ico.gsi.gov.uk

You can also get information and advice from:

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
www.cfoi.org.uk

For more information on ContactPoint, go to www.everychildmatters.gov.uk/deliveringservices/contactpoint/

For more information on ICS, go to www.everychildmatters.gov.uk/ics

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