

Access to information held by children's services

About this advice sheet

You have a right to see information held in social work records by children's services departments about both you and your children. You also have the right to see information about their social work policies, procedures and other written records. The relevant legislation is:

- **The Data Protection Act 2018 ('DPA')** and the **General Data Protection Regulation ('GDPR')** which is EU legislation and becomes part of UK law from 25 May 2018 under the Data Protection Act 2018. These 2 pieces of legislation read together allow people to see information about themselves held by Children's Services.
- **The Freedom of Information Act 2000 ('FOIA')** 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
- Explains what to do if you do **not** want information about your family released to others
- Is divided up into sections to make it easier to understand.

The references for the different legal and practice requirements mentioned throughout this advice sheet can be found in section 4 below. You may also want to ask a friend, your social worker, or your solicitor to explain anything in the advice sheet that you don't understand.

Important note:

This advice sheet does not address access to adoption records. For information on this, contact CORAM/BAAF. Contact details can be found in section 3 of this advice sheet.

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

Important terms used in this advice sheet include:

- **Data protection legislation** means the Data Protection Act 2018 and the EU General Data Protection Regulation which both apply in the UK and must be read together to understand individual rights under to data protection law
- **Data subject** is the person the information is about.
- **Parental responsibility** means the legal right to make decisions about a child’s care. (For more information on who has parental responsibility see FRG advice sheet on Parental Responsibility: <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>)
- **Subject access request** refers to your request to see information held about you

1. ACCESS TO INFORMATION HELD BY CHILDREN'S SERVICES ABOUT YOU AND YOUR FAMILY

1.1 Can I see children's services records about me and my family?

The **Data Protection Act 2018 and the GDPR** ('the data protection legislation') gives every person the general right to see personal information held about themselves by children's services in their social work records¹.

1.2 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*".²
- 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.³
- If a request is made on behalf of a child, children's services may ask for information about the age of the child to establish whether they should respond directly to the child rather than to you.

1.3 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.
- You can ask for a copy of this information.
- 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':⁴

Exemptions:

- i) Confidential information about your child - the information was given to the social worker, or to someone else (such as a medical professional), by your child on the basis that it would not be disclosed to you ⁵

- ii) Giving you the information would prevent social workers from doing their job because it may cause serious harm to someone's physical or mental health⁶ or
- iii) Giving you the information would interfere with the prevention or detection of a crime⁷.
- iv) The information relates to the abuse of your child and giving you the information would not be in your child's best interests⁸

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

- Write to the children's services department which is holding the information about you or your child, either by letter, fax or email
- You can make your request verbally, in person or over the phone, but it is much easier to track your request and their response if you do it in writing
- Children's services may provide a form that you can fill in to make a subject access request, but again you don't have to use this if you don't want to
- State clearly what information you want and that you are asking for it under the Data Protection Act and/or GDPR (though your request is still valid even if you don't mention the law)
- Provide some ID as you will be asked for it later and it may save time to send it in with your initial request.
- Include any additional information you have that would help children's services to find the records you want (eg date, time and place of the relevant information).
- Specify whether 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
- You do not to pay any fee unless you ask for additional copies of the information

1.5 What happens next?

- When you children's services receive your request they will consider whether:
 - any of the exemptions apply in your case
 - if the request is being made on behalf of a child and whether they should respond to the child directly

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- They need additional time to respond to your request.
- If they think that any of the exemptions apply in your case, they may decide not to show you the information
- You may be asked to provide proof of identification, if you have not already provided it
- Within one month children's services must contact you and provide you with the information you requested, or give their reasons for refusing your request
- In some circumstances, they can request up to 2 more months to deal with your request, but they must give their reasons
- In addition to the information you requested, children's services should also provide you with certain supplementary information:
 - the purposes of processing your data;
 - the categories of personal data they hold;
 - the recipients or categories of recipient they disclose your personal data to;
 - their retention period for storing your personal data or, where this is not possible, their criteria for determining how long they will store it;
 - the existence of your right to request rectification, erasure or restriction or to object to such processing;
 - your right to lodge a complaint with the ICO or another supervisory authority;
 - information about the source of the data, where it was not obtained directly from the individual;
 - the existence of automated decision-making (including profiling); and
 - the safeguards they provide if you transfer personal data to a third country or international organisation.

1.6 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 you are still not satisfied with the outcome of that, you could write to the Information Commissioner, who may:

- a) make an assessment about whether the law has been complied with;

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- b) issue enforcement proceedings to make the local authority comply with your request, if necessary and/or recommend that you apply to court, alleging a failure to comply with the law (Data Protection Act);

Contact details for the Information Commissioner can be found in part 3.

1.7 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.⁹

However, sometimes, social workers want to share information they have with 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

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

BUT if children's services 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.¹⁰

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.

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

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

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- Make a formal complaint (See FRG advice sheet on 'Challenging decisions and making complaints': <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>)
- Contact the Information Commissioner to see whether you may take steps under the data protection legislation, (GDPR/Data Protection act 2018) (see <https://ico.org.uk/concerns/>)
- Contact a solicitor (Contact details in Part 3 of this advice sheet).

2. ACCESS TO OTHER, NON-PERSONAL INFORMATION HELD BY CHILDREN'S SERVICES

2.1 Can I see *other records* held by children's services that do *not* relate to me or my family?

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.

2.2 Who can ask for information under the FOIA?

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

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

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 a previous request for the same information, 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.¹¹

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:¹²

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.¹³

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

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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.

2.4 How do I ask for information under the FOIA?

- 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).¹⁴
- 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.

2.5 What happens next?

You should receive a reply within 20 working days.¹⁵ 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.)¹⁶

2.6 What happens if I am refused the information?

First, check they have followed the correct procedure when refusing you information. All refusals must:¹⁷

- 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.¹⁸

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/>

3. WHERE CAN I GET FURTHER HELP?

Citizens Advice is an independent organisation providing free, confidential and impartial advice. Their goal is to help everyone find a way forward, whatever problem they face. This may be money, benefits, housing or employment problems. You may be facing a crisis, or just considering your options. Online advice is available on the Citizens Advice website. They also have a national phone service called Adviceline. This is available in Wales for people who live or work there and is being rolled out in England:

- For England telephone: 03444 111 444
- For Wales telephone: 03444 77 2020
- TextRelay users should telephone: 03444 111 445
- Website: citizensadvice.org.uk

Civil Legal Advice A free and confidential advice service run on behalf of the government. It provides information directly to the public on a range of common legal issues; helps people find out if they are eligible for free legal advice from a solicitor; and helps them find a solicitor. It can also help you find legal advisors and find out if you are eligible for publicly funded free legal help. Check to see if you're eligible for advice on www.gov.uk/check-legal-aid or apply online:

- Telephone: 0345 345 4345 Mondays to Friday, 9am to 8pm and Saturday 9am to 12.30pm
- Minicom: 0345 609 6677
- Text 'legalaid' and your name to 80010 to ask CLA to call you back. This costs the same as a normal text message.
- Website: gov.uk/civil-legal-advice

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Coram/BAAF provide information about adoption and fostering on their website <https://corambaaf.org.uk/fostering-adoption>

Coram Children's Legal Centre provides independent legal advice to children, parents, carers and professionals. Its Child Law Advice Service provides legal advice and information on areas of child, family and education law. To access this advice and information please visit www.childrenslegalcentre.com and follow the link to the Child Law Advice Service where you will be able to view a range of factsheets and 'how to' guides. Should you have clarifying questions following your visit to their website, their helpline number is available at the end of each factsheet. The helpline is available Monday to Friday 8am to 6pm.

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-3pm.
- You can also visit http://www.frg.org.uk/advice_sheets.html where you can download other relevant advice sheets.
- Join the FRG parents' or family and friends carers' discussion boards.

Information Commissioner provides information about the Data Protection Act, the Freedom of Information Act and the GDPR can be found on the information commissioners website at

<https://ico.org.uk/>

Helpline **0303 123 1113** (local rate – calls to this number cost the same as calls to 01 or 02 numbers).

Information for the public: <https://ico.org.uk/for-the-public/>

Specialist child welfare solicitor:

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

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1. Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD
Telephone: 0870 606 2555 <http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page>;
2. 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 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>
3. Civil Legal Advice (CLA) See details above.
4. Citizens Advice may be able to recommend a local solicitor specialising in child care law. 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
Advice on line Website www.adviceguide.org.uk

4. References

CA	Children Act 1989 http://www.legislation.gov.uk/ukpga/1989/41/contents
DPA	Data Protection Act 2018 https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted
FOIA	Freedom of Information Act 2000 http://www.legislation.gov.uk/ukpga/2000/36/contents
WT	Working Together to Safeguard Children, 2015 HM Government https://www.gov.uk/government/publications/working-together-to-safeguard-children--2

¹ Art 15 GDPR and s45 Data Protection Act 2018

² *Gillick v. West Norfolk AHA* [1986] AC 112

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

⁴ Schedule 3 para 7(2) and para 11 Data Protection Act 2018 .

⁵ Schedule 3 paragraph 10 DPA 2018

⁶ Schedule 3 para 7(2) Data Protection Act 2018

⁷ S45(4) DPA 2018

⁸ Schedule 3 para 21 Data Protection Act 2018

⁹ s.47(9) CA 1989

¹⁰ WT 2013 para 24, page 15

¹¹ s.14 and s.1(3) FOIA

¹² Part II FOIA lists all the exemptions

¹³ 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

¹⁴ s.8 FOIA

¹⁵ s.10 FOIA

¹⁶ s.12 FOIA

¹⁷ s.17 FOIA

¹⁸ s.50 FOIA

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