

## **Subject Access Requests**

### **A guide to reviewing and redacting Children's Social Care Files**

#### **What is subject access?**

Subject access provides a legal right for individuals to request to see or have a copy of the information held by the Council about them.

This includes the Council's opinions about them and the intentions that the service has towards them.

Your role is to review the file to ensure that the individual is given access to their information in a controlled way, considering any harm or distress that could be caused, while ensuring that data relating to others is safeguarded where it needs to be. On receipt of a SAR, we have 40 calendar days to respond.

#### **Who can make a request?**

The request may be submitted by the individual themselves or by somebody (solicitor/family member) acting on their behalf.

It is within the spirit of the Data Protection Act that we are as open and honest with our service users as possible.

At the same time we also have a duty to ensure that we only provide information about the individual (known as the data subject) and not release data about other people without their consent or where it would be unfair to do so.

#### **Subject access and children**

Even if a child is too young to understand the implications of subject access rights, data about them is still their personal data and does not belong, for example, to a parent or guardian.

It is the child who has a right of access to the information held about them, even though in the case of younger children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a subject access request for information held about a child, you should consider whether the child is mature enough to understand their rights.

If you are confident that the child can understand their rights, then you should respond to the child rather than a parent. What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so.

It might be useful to take the following in to account:

- the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;

- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- any views the child or young person has on whether their parents should have access to information about them.

In England there is currently no set age at which a child is deemed to have capacity to understand a request to access their files made on their behalf by a parent/guardian.

In Scotland they use the age of 12 as being around the age a child could understand what it means to access their files and what it would mean to give that information to a parent or guardian.

However, all children are different and some may be competent to understand this process at 10 whilst others may not at 16.

We must be clear that providing access to a child's file is always to be in the child's best interests and not to serve the interests of the parent or guardian. Estranged parents who are trying to establish location or contact with children must do so through the proper court process.

If the data subject lacks capacity due to mental or physical disability, then we need to be sure that the agent has appropriate legal power over their affairs.

### **The file contains other relatives details – what do I do?**

In general, information from or relating to other people (including family members) should not be released to the data subject without first seeking the view/consent of that person.

However we only ask for consent to release information when it is solely about that person and not also about the data subject.

It is your responsibility to contact any private third parties to seek their consent.

We need to distinguish between a relative's personal information and information about that relative that is simultaneously information about the data subject that we wish to release.

E.g. "The child was voluntarily accommodated as mum was unable to cope due to post natal depression" could be edited as follows:

"The child was voluntarily accommodated as mum was unable to cope due to post natal depression"

**Or**

“The child was voluntarily accommodated as mum was unable to cope due to post natal depression”.

In balancing the data subject’s right to know with Mum’s right to privacy, disclosing in line with the second option provides a context that would probably have been shared through life story work without disclosing Mum’s mental health issues.

### **Foster Carers**

Again we need to distinguish between factual information provided by carers in their role as agents for the Council and personal opinions/information they would provide in the same way that a relative might.

E.g. Last night the young person returned home drunk which felt like a slap in the face

We delete the personal view of the foster carer as to how they felt.

Last night the young person returned home drunk which felt like a slap in the face.

If the foster carer subsequently told the young person how they felt, the subsequent statement could be released e.g. ‘I told ... that it felt like a slap in the face’.

### **There are lots of staff names should they all come out?**

No – individuals will routinely know the names of any professionals who have been involved in their care, so the names should stay in. The only exception to this is where disclosing the names would put the staff members at risk of harm.

### **Professional 3rd parties- what can I release?**

Most individuals who are receiving support from Social Care will have a number of professionals working with them and details will be recorded in the care file.

If the professional is stating facts already known to the individual (e.g. within a joint meeting they attended, or letters from medical professionals that they received a copy of) then the information should be provided.

However, where a third party is giving an opinion then this would not normally be released without their consent.

### **An example of this could be**

I met with Miss X today and we discussed how much she was drinking, she confirmed that she is still having around 30 units per week. I have advised her that I will be letting you know about our meeting and the support plans we will be offering - this is fact and known by the individual so should be released without seeking the professional’s consent.

I met Miss X today and although she denied it, I feel that she is still drinking a considerable amount. I just thought you should know – this is an opinion and consent should be sought from the professional.

In such situations the SAR team will contact the professional for their consent to release but please note that if they do not respond or do not consent you still need to consider whether it is reasonable to release the information, particularly if this opinion has in anyway affected how the service has dealt with the person.

### **Information from health professionals**

Where the disclosure of information relating to the individuals mental or physical health is likely to cause them harm, or may cause harm to another person then this should not be provided without the consent of the health professional.

#### **For example**

A service user suffering from depression has a psychotic episode whilst in a treatment centre; during this episode they accused staff members of abusing them and taking pictures. They had to be sedated and restrained as they attempted to harm another patient.

Due to their illness the data subject may have no awareness of such an episode, and indeed those treating them may not provide any detail if, in doing so, it would regress the patients mental state once they regained lucidity.

In such circumstances the SAR will contact the health professional to seek their consent to disclose.

### **Police Information**

The Police should be treated as a professional third party as detailed previously. It is worth being aware that information can be withheld if providing it would prejudice the prevention or detection of a crime or the apprehension of an offender.

So, if there is anything in the file which may indicate that the Police are gathering information on someone with the view to taking action then their consent should still be sought but it is almost certain that this should be redacted.

What if releasing information could stop me providing social care to the individual?

In some instances, it may be that information held for social work purposes can be withheld if releasing it would prejudice the ability to carry out social work: this is because there is a likelihood of serious harm to the individual or another person arising out of the release of the information.

So for example, if there is information within the file which you consider may cause the individual to stop wanting to engage with social services and this could significantly harm them or any relatives within their care then you can consider withholding for those reasons.

However, in withholding information, you must consider what impact that will have – will the service user disengage if they feel you are withholding information? Could you manage the situation differently by working with the individual to understand why actions were taken in that way?

The key is to think whether there is a real quantifiable risk of serious harm in releasing the information.

### **Legal privilege**

Where legal advice is sought from either internal or external legal professionals and this is recorded within the file, this information is subject to legal privilege and should not be disclosed.

However a general discussion with legal advisors that does not involve actively seeking "legal" advice may not warrant this exemption.