

30 November 2017

Dear ,

Request for Information – ATISN 11690

I refer to your request for information received on 4 November, you asked for:

1. A breakdown, month by month, of monthly case numbers for 2016 and 2017 where the totals match those supplied within your answer of 4131 cases in 2016 and 3633 cases in 2017.
2. A copy of the "specifically designed CC-CAWAC training course" that you mention in your response to question 2 of my request. I would also be really grateful if you would confirm who developed this training for you and when it was last revised.

I provide the following information in response to part 1 of your request:

Year	Cases by month												Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2016	257	397	378	300	380	415	298	376	307	358	424	241	4131
2017	365	341	385	306	354	421	387	400	334	340	-	-	3633

I provide some information in response to part 2 of your request, this information is enclosed at Annex B.

Part of the training course information you have requested includes the Cafcass Cymru Child and Adolescent Welfare Checklist (CC-CAWAC) tool and questionnaires. Following due consideration, it has been decided this information is exempt from disclosure under section 36(2)(c) of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are set out in full at Annex A to this letter.

The training course information also contains example court reports, I have decided this information is exempt from disclosure under section 40(2) (Personal data) of the Act.

Section 40(2) of the FOI Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

I have concluded that, in this instance, the information requested contains third party personal data. Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. I consider the principle being most relevant in this instance as being the first.

It is important to note that, any personal interest of the requester notwithstanding, releases under the FOI Act are made ‘to the world’. That being the case, I consider the information requested clearly falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully; and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

The starting point is to consider whether it would be fair to the data subject to disclose their personal data.... If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it



would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

I believe the data subject would have no expectation that this information would be made public. Thus, I believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests

If you are dissatisfied with the 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, Interim Chief Executive,
Cafcass Cymru,
Sarn Mynach
Llandudno Junction,
Conwy
LL31 9RZ

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
Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.gsi.gov.uk

Yours sincerely

Annex A

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
Cafcass Cymru Child and Adolescent Welfare Checklist (CC-CAWAC) tool and questionnaires which form part of the CC-CAWAC training course documentation.	Section 36(2)(c) -prejudice to the effective conduct of public affairs.

This Annex sets out the reasons for the engagement of section 36 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

The engagement of section 36 (prejudice to the effective conduct of public affairs) of the Freedom of Information Act

The scope of the Section 36 exemption is potentially wide ranging and, in order to safeguard against possible abuse of its use by a public authority, the Freedom of Information Act (FOIA) introduces a two-stage process when its use is being considered. Stage 1 is to ascertain whether the basic conditions for triggering the application of the exemption apply. This is the role of the 'qualified person' and section 36 of the FOIA states that in relation to the Welsh Government, the qualified person means the Welsh Ministers or the Counsel General. If, after considering the information, the qualified person forms the reasonable opinion that the specified adverse effects will not (or will not be likely to) arise from disclosure, then the information cannot be withheld under Section 36.

If the qualified person decides that the information would, or would be likely to, have the specified adverse effect(s), then Stage 2 can commence.

In this case, the First Minister has decided that the following inhibiting effects are sufficient to trigger the use of section 36(2)(c) of the FOIA.

The Welsh Government believes the CC-CAWAC tool and questionnaires should be exempt from disclosure. The use of CC-CAWAC relies on ensuring its integrity. There is the potential that children could be "coached" and/or highly influenced if copies of the tool and questionnaires become freely available. This could potentially harm individual children in that their true wishes and feelings as to key aspects of their lives being considered by the court could be skewed. Further, release would

also be likely to prejudice confidence in the CC-CAWAC and undermine its value as an objective and evidence-based assessment tool within Cafcass Cymru but also amongst service users and the family court.

Section 36(2)(c) FOIA – prejudice or would likely otherwise to prejudice the effective conduct of public affairs.

Section 36 is a public interest tested exemption. This means that in order to withhold information under it, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

Public Interest Test

Factors favouring release of the information

The Welsh Government acknowledges the general public interest in openness and transparency that release would engender. Also, as the use of the CC-CAWAC is intended to complement other assessment information and to assist but not replace practitioner judgements, release of the individual questionnaires, together with the scoring information (for those quantitative based questionnaires), would allow service users and others to better understand how individual scores are arrived at and how this may be used to help inform an analysis of a child's situation.

In order to better understand how an individual child is experiencing a situation where inter-parental conflict may be an issue, the CC-CAWAC incorporates a number of quantitative and qualitative based questionnaires. Cafcass Cymru is assured that the majority of these questionnaires are validated and for example the Strengths & Difficulties Questionnaire (Goodman, 1997) has been endorsed by the Department of Health in England and Welsh Government. By releasing the questionnaires this may help provide service users and others with improved assurance as to the detail of the questions asked and the validated nature of each.

Factors favouring withholding the information

The use of CC-CAWAC relies on ensuring its integrity. In the context of litigation and court where separated parents are in dispute over child arrangements, there is the potential that children could be “coached” and/or highly influenced if copies of the tool and questionnaires become freely available. This could potentially prejudice the reliability of a practitioner's assessment and analysis of a child's situation and could skew the child's true wishes and feelings as to a particular proposal that is being considered by the court. Further, release would also be likely to prejudice



confidence in the CC-CAWAC and undermine its value as an objective and evidence-based assessment tool within Cafcass Cymru but also amongst children, service users and the family court.

Balance of public interest test

On balance whilst there would be benefits to releasing the CC-CAWAC tool and questionnaires in terms of improved transparency and scrutiny, the significant detriments that could potentially flow, not least in undermining the integrity and value of the CC-CAWAC and placing children in an increasingly difficult situation, suggest that such a release would be likely to prejudice the effective conduct of public affairs and this would not be in the public interest.

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