

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2016

Public Authority: Children and Family Court
Advisory Support Service

Address: 3rd Floor
21 Bloomsbury Street
London WC1B 3HF

Decision (including any steps ordered)

1. The complainant has requested information from the Children and Family Court Advisory Support Service ('Cafcass') regarding the number of Family Court cases where it has been recommended that the children involved should spend more time with their father rather than their mother. He has also requested that Cafcass should clarify how its compliance to anti-discrimination law in such cases has so far been monitored. Cafcass has applied section 12 to the first part of this request and has provided the complainant with information which explains how it monitors its casework. It has referred the complainant to its policies and its Equality and Diversity Strategy.
2. The Commissioner is satisfied that Cafcass is correct to apply section 12 to the first part of this request. The Commissioner also considers that on the balance of probabilities, Cafcass does not hold the specific gender monitoring data required by the complainant. Its response to this part of the request is therefore in accordance with section 1(1)(a) and (b) of the FOIA. There are no further steps to be taken.

Request and response

3. On 4 June 2016 the complainant asked Cafcass for the following information:

'The number of cases in which Cafcass has been involved in the last years (ideally in the last few years but any data will do) and in how many of these cases the Cafcass Officer/Family Court Adviser recommended for the child/children in question to spend more time with their father rather than their mother; and

In how many cases the recommendation was for the child to spend an equal amount of time with their respective parents.'

4. The complainant received a response on 6 June 2016 and Cafcass informed him that:
 - The number of private law cases received by Cafcass per month can be seen on its website.
 - It does not collect information on individual recommendations within reports centrally. In order to provide a response, each case file would need to be checked individually. As Cafcass handles tens of thousands of cases annually, the cost of compliance would exceed the appropriate limit which for Cafcass is £450.
 - Cafcass explained that to provide the information requested would therefore exceed the FOIA cost limit of 18 hours. It therefore refused the request under section 12 of the FOIA.

5. On 12 June 2016 the complainant explained he was not satisfied with this response and he submitted a new request:
 - 1) *'Starting from 1 January 2005, how many cases have been considered within Cafcass stated limit of £450.00/18 hours;*

 - 2) *In how many of the cases considered within the limit of £450.00/18 hours the Cafcass Family Court Adviser recommended for the child/children in question to*
 - a) *spend more time with their father rather than their mother,*
 - b) *spend more time with their mother rather than their father,*
 - c) *spend an equal amount of time with their respective parents;*

 - 3) *In how many cases considered within the limit of £450.00/18 hours a Shared Residence Order was either considered or already in place, and what was the advice by the Cafcass Family Court Adviser to the Court in relation to the child/children spending time to their respective fathers/mothers as in point 2 above'.*

- 4) The complainant also asked Cafcass to clarify how its compliance to anti-discrimination law has so far been monitored, specifically in relation to the sex of the parent and the Family Court Advisers' recommendations to the court.
6. On 14 June 2016 Cafcass responded to this request. It noted that the request was related to its previous response. It confirmed it wished to apply section 12 to part one to three of the request.
7. Cafcass explained that individual recommendations are held within court reports, which cannot be centrally reported on. It explained that in order to obtain each recommendation, each report would need to be read. It explained that it handles tens of thousands of cases annually and that the cost of compliance would exceed the appropriate limit for responding to information requests under the FOIA.
8. Cafcass addressed each of the above four questions. It referred the complainant to its Equality and Diversity Strategy and explained how it monitors its casework. However the complainant remained dissatisfied with this response.

Scope of the case

9. The complainant contacted the Commissioner on 22 June 2016 to complain about the way his request for information had been handled. He does not accept Cafcass is correct to apply section 12 to part one to three of his request. With respect to the fourth point, he has argued that it is in the public interest to ascertain whether Cafcass is complying with anti-discrimination law. He considers its practices lack accountability.
10. The Commissioner considers this case is concerned with whether Cafcass:
 - is correct to apply section 12 of the FOIA to the above requests numbered one to three; and
 - is correct when it informs the complainant that it does not hold any further information with respect to his final request (which has been numbered as request four).

Reasons for decision

Section 12 – the cost of compliance

11. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations.)
12. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
13. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
14. Cafcass has confirmed that it holds information falling within the scope of the request. However, it has estimated that the cost of complying with parts one to three of the request would exceed the appropriate limit of £450 or 18 hours.
15. Cafcass has explained that individual recommendations are held within court reports, which cannot be centrally reported on. It explained that in order to obtain each recommendation, each report would need to be read and it handles tens of thousands of cases annually. The Commissioner is therefore satisfied that the cost of compliance in responding to the whole request would exceed the appropriate limit.
16. With respect to the first three questions, Cafcass has explained that no specific cases were looked at in responding to the original request. It considers that it is under no obligation to work up to the appropriate limit if completing a response to a request is likely to exceed the limit.

17. As Cafcass has explained, under section 12, a public authority is under no obligation to start the work required to locate and extract the relevant information if it considers that section 12 is engaged. If it considers that section 12 applies, it does not have to take any steps with respect to the information requested.
18. Therefore, although the complainant has reduced points one to three of his second request to the limit of 18 hours, Cafcass is under no obligation to do this work. It is under no obligation to work up to the 18 hours specified.

Conclusion: questions one to three

19. In view of the above the Commissioner is satisfied that Cafcass was correct to apply section 12 of the FOIA to the initial request and that it has therefore responded to questions one to three of the second request in accordance with its obligations under section 12 of the FOIA.

Section 1 – information not held

20. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
21. In scenarios where there is some dispute about the information held by a public authority and information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
22. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or whether any information was held at the time of the request).

The complainant's position

23. The complainant has argued that it is in the public interest to ascertain whether Cafcass is complying with anti-discrimination law and that he considers their practices lack accountability.
24. He has argued that in stating non-discriminatory practice is a core value of the social work profession, Cafcass does not answer the question but is using "empty words" to avoid providing the information requested.

25. The complainant considers that Cafcass must have the data to support its claim that it complies with anti-discrimination law in relation to the sex of the parent and the Family Court Advisers' recommendations to the Court.
26. He has argued that if Cafcass monitors its recommendations to the Court as part of its own procedures and quality assurance checking, he wishes to have access to this information.
27. The complainant therefore requires confirmation with statistical data from the original sources that the Family Court Advisers are not discriminating in relation to the sex of the parent in their recommendations to the Court.
28. The complainant has argued that anti-discrimination law is in place to prevent discrimination and abuses. He has argued that if a considerable statistical majority shows that Family Court Advisers' recommendations to the Court favour for example the mothers, he considers it is unquestionable that the fathers have been discriminated against because of their sex/gender.

Cafcass's position

29. Cafcass has explained that non-discriminatory practice is a core value of the social work profession and that all Cafcass practitioners are qualified social workers registered with the Health and Care Professions Council (HCPC). It has referred the complainant to:
 - The HCPC *Standards of Proficiency: Social Workers in England* (sections 5- 6)
 - The British Association of Social Workers' *Code of Ethics for Social Work* (pages 9, 13, 14)
30. Cafcass has explained that the focus for its practitioners is the needs of individual children, and any recommendations are based on professional judgement of how best to promote and safeguard the child's welfare.
31. It has explained that when considering how much time a child should spend with each parent, Cafcass's recommendation to the court will be based on what the Cafcass officer assesses is in the child's best interests in that specific case.
32. It has explained that this will be different in every case, as every case is individual and depends on many factors including, but not limited to, the child's age, personality, stage of development, relationship with the parents, as well as the relationship between parents.

33. In accordance with Government policy, Cafcass has explained it supports children maintaining a meaningful relationship with both parents, where it is safe and in the best interests of the child to do so.
34. Cafcass has explained its recommendations to court are monitored as part of the quality assurance and monitoring procedures for every report. It has explained that every Cafcass report which is filed with the court is subject to a quality assurance check. The National Improvement Service performs regular case audits on a service area, team and individual level.
35. Cafcass has referred the complainant to its Supervision Policy for general information on how Cafcass practitioners' work is monitored. It has explained it monitors performance through routine performance management processes, including structured Performance and Learning Review (PLR) meetings between the manager and the individual, management observation of practice, and from feedback from service users and other relevant stakeholders.
36. However Cafcass has confirmed to the Commissioner that it does not hold any data which demonstrates it has performed any monitoring of the outcome of court cases with respect to the recommendations of the courts and the gender of the parents concerned. This is with respect to the amount of time it is recommended the parents spend with their children.
37. Cafcass has confirmed that in accordance with its Equality and Diversity Strategy, it complies fully with the Equality Act 2010. It has referred the complainant to section 2 of its policy which relates to its practice.
38. Cafcass has therefore explained it does not discriminate in respect of any personal characteristics of service users, whether parents, relatives or other interested parties.
39. It has explained that in view of the number of such characteristics, and of such other factors as the relationships among the parties and the relationships of the parties with the children, and the children's ages, personalities and stages of development, it is not possible to keep data on case outcomes by reference to any one personal characteristic such as gender.
40. For these reasons, Cafcass has confirmed it therefore does not keep any data by reference to individual characteristics of service users.
41. Cafcass has explained that auditing is carried out by the National Improvement Service and it has also referred the complainant to its Supervision Policy regarding the monitoring of its practitioners' work.

42. It has further explained to the Commissioner that it strives to take account of the views of as wide a range of interest groups as possible and is committed to active review, and where necessary improvement, of its practices.
43. In relation to men's rights, Cafcass has explained to the Commissioner that it engages with Men's Aid, Families need Fathers and Mankind Initiative (although they all stress that they are not gender specific in their work). In the last 12 months Cafcass has confirmed it has been in regular communication with all three organisations by email, telephone and through meetings.
44. Senior managers have attended seminars run by them and the Chief Executive Anthony Douglas personally involves himself with this work, such is the importance placed upon it. Cafcass has explained it is at pains to keep such organisations in touch with policy developments. There was for instance extensive consultation with many organisations including some of the above prior to the revision of the Cafcass complaints procedure.

Conclusion: question four

45. The Commissioner considers that Cafcass has addressed part four of the request in some detail. It has explained that the monitoring of its recommendations to court is undertaken as part of its own procedures and quality assurance checking. It has referred the complainant to its policies and its Equality and Diversity Strategy.
46. However Cafcass has confirmed to the Commissioner that it does not hold any data which demonstrates it has performed any monitoring of the outcome of court cases with respect to the recommendations of the courts and the gender of the parents concerned.
47. The Commissioner therefore considers that on the balance of probabilities, Cafcass does not hold the gender monitoring information specifically required by the complainant. The Commissioner is satisfied that the complainant has been provided with a comprehensive response to his fourth question but that Cafcass does not hold the requested further data which provides statistical evidence of its compliance with anti-discrimination legislation.

Right of appeal

48. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Rachael Cragg
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