

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2016

Public Authority: Children and Family Court Advisory Support Service

Address: Third Floor
21 Bloomsbury Street
London
WC1B 3HF

Decision (including any steps ordered)

1. The complainant has requested from the Children and Family Court Advisory Support Service ('Cafcass') information relating to the costs of a particular court case hearing.
2. The Commissioner's decision is that Cafcass does not hold any information that falls within the request. Therefore, he does not require Cafcass to take any steps.

Request and response

3. On 3 October 2015 the complainant wrote to Cafcass and requested information in the following terms:

"In respect of the final hearing discussed at Court yesterday & which is projected to happen soon, I make a Freedom of Information Act request.

I wish to know the approximate projected cost to the public purse of this matter from today to the end of a three day hearing.

This to include solicitor costs, administrative costs & costs in Court and judicial time to HMCTS (where these are known to you)."

4. On 20 October 2015 Cafcass responded. It stated that it does not hold the information requested. On the same day the complainant requested an internal review.

5. On 27 October 2015 Cafcass wrote to the complainant and maintained its position that it does not hold the information requested.

Scope of the case

6. The complainant contacted the Commissioner on 27 October 2015 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of the case is to determine whether Cafcass holds information falling within the scope of the request.

Reasons for decision

Section 1 – information not held

8. 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.
9. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
10. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request). Without evidence to suggest that Cafcass holds further information, this argument cannot carry weight.

Cafcass' position

11. Cafcass confirmed to the complainant in its initial response and in its internal review outcome that none of the requested information is held. It suggested to the complainant to request any court costs from HMCTS and it referred him to the Legal Aid Agency regarding any solicitor costs. Cafcass informed him that its staff, are paid annually and therefore no information is held on specific costs for involvement in the hearing in question.

12. Cafcass reported that for solicitor costs, a search was made by requesting the status of the solicitor from the Family Court Advisor and Cafcass Legal. They confirmed that the case involved a Rule 16.4 appointment and that the solicitor was being funded by legal aid which meant that Cafcass did not have sight of any solicitor costs. It added that as Cafcass was not responsible for funding solicitor costs, there was no reason that it would see or even keep a record of solicitor costs.
13. Cafcass stated that no searches were made for court time costs or judicial time costs as there is no reason for the information to be seen by anyone working for Cafcass. Therefore, the information would not be known or held. It said that it is not responsible for determining or paying these costs, and so there is no reason that it would see or even keep a record of court or judicial costs.
14. Cafcass said that no searches were made for administrative costs, it does not incur any administrative costs and it stated that no records of these costs are held. It explained that if Family Court Advisor time was considered to be part of this, no searches would be required because this information is not held. As previously explained the relevant practitioner is employed by Cafcass and therefore paid on an annual basis with no specific costs associated with case preparation or court attendance time.
15. Cafcass reported that the majority of the requested information does not relate to matters that it is responsible for. It clarified its role and explained that Cafcass is responsible for advising the court on the child's best interests within family court proceedings. It said that matters of court costs, including administrative, judicial or solicitor costs, are not the responsibility of Cafcass.
16. Cafcass provided further details on the specific information requested:

Administrative costs, costs in court and judicial time

The court appoints a Family Court Advisor from Cafcass to work in relevant cases. It is therefore one of many participants within a family court case which is arranged by the court. Cafcass reiterated that it is not responsible for determining or paying costs of court administration or judicial time and that it does not hold this information. Cafcass suggested HMTS may hold it.

Cafcass Costs

The work of a Cafcass practitioner in preparing for and attending a court hearing, is not recorded or charged on a time basis (unless they are a self-employed contractor, which was not the case in this instance). Employed Cafcass practitioners are paid an annual salary, they have

numerous different cases which require different amounts of input, last for different lengths of time and involve different amounts of time attending court. Therefore, information on how much it would cost for the involvement of Cafcass in one specific case or hearing is not held.

Solicitor costs

In some cases, Rule 16.4 appointments are made. This is where the child is made a party to proceedings and their views are represented by a Cafcass Family Court Advisor (a 'guardian'). A guardian is obliged by the Family Procedure Rules 2010 to instruct a solicitor to represent the child in the proceedings. The solicitor will be funded by legal aid. Cafcass is not responsible for funding solicitor costs for children involved in Rule 16.4 cases. In this case the solicitor for the child was funded by legal aid and Cafcass did not have sight of these costs. This is because any invoice would have been passed directly from the solicitor to the Legal Aid Agency. This would apply in all case involving legal aid funding and Cafcass does not hold this information. The Legal Aid Agency may hold this information as they are responsible for paying those costs.

17. Cafcass reiterated that the majority of the requested information does not relate to matters that it is responsible for. It therefore considers that it does not hold the information requested.

The complainant's position

18. The complainant considers it to be possible for Cafcass themselves to know the cost (or to be able to work out the same) for their adviser in the case, who was also the Guardian in the complainant's case. He is of the view that Cafcass holds this information (covered by the administrative costs aspect) and that it is in its remit to provide it.
19. The complainant had specifically requested that this matter is progressed to a formal resolution as he considers the information should have been provided.

The Commissioner's position

20. The Commissioner has considered whether Cafcass had any reason or motive to conceal the requested information but she has not seen any evidence of this. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept Cafcass' position that it does not hold information relevant to this request.
21. The Commissioner notes the complainant's concern that the information requested should be held by Cafcass. However, the Commissioner

acknowledges that there can be a difference between what a complainant believes should be held and what is actually held

22. On the balance of probabilities, the Commissioner has decided that the evidence submitted by Cafcass suggests that it does not hold information falling within the scope of the request.

Right of appeal

23. 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

24. 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.
25. 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
Group Manager
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Wycliffe House
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Wilmslow
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SK9 5AF