

Consultation

CoramBAAF response to Information Commissioner's Office consultation on Data (Use and Access) Act 2025 amendments

October 2025

Children's social care files, and private or non-agency adoption records

Consultation details

There is a new requirement for all organisations to have a process in place for handling '[data protection complaints](#)' under the Data (Use and Access) Act 2025 (DUAA).

By June 2026, organisations must have a process in place to handle data protection complaints. A complaint can come from anyone who is unhappy with how an organisation has handled their personal information. Our guidance sets out the new requirements and informs organisations of what they must, should and could do to comply.

CoramBAAF

Coram BAAF is the UK's leading membership organisation for professionals working across adoption, fostering and kinship care. We provide information, best practice guidance, advice, training and resources to support our members and influence policy to improve outcomes for children and young people. Our corporate members in England, Wales, Scotland and Northern Ireland represent 94% of all local authorities as well as regional adoption agencies, health and social care trusts, independent fostering providers and voluntary adoption agencies, and cover 88% of all children and family social workers. Our 650+ individual and associate members - comprising lawyers, health professionals, educational institutions, therapeutic and family support services, and more - reflect the multidisciplinary nature of our work.

We are making this submission because we believe that enabling supportive and facilitated access to records is relevant to any child or young person where the state has intervened in their care or made decisions affecting their familial relationships.



Children's social care files

Children's social care files are maintained by children's services to document the care and support provided to children and their families. This includes services provided to children in need, those on child protection plans, looked-after children, children subject to a care order, those in foster care, children's homes, or supported accommodation. These files typically include information about the child's family background, health, education, and any interventions or services provided by social care agencies. They also document key decisions made by children's services, including court orders, care plans, pathway plans, and statutory reviews of the child's case. The files are confidential and can be accessed by the child or adult they belong to (or someone acting on their behalf). Access may be subject to restrictions to protect the child's or adult's welfare, or to safeguard the privacy rights of third parties. However, there is discretion to disclose information that is already accessible and/or relevant to a person's understanding of their circumstances.

Care experienced children and adults often rely on the data subject access request [DSAR] process to find out information from the local authority care records about their life in care and decisions made about them; a bewildering and for many ultimately a negative journey. The adverse impact on their wellbeing is profound. Too often personal data is redacted in a risk adverse and unnecessarily restrictive way, resulting in an incomprehensible account of their formative years in the care of the local authority. Care leavers making a DSAR are usually wanting to make 'narrative sense' of often 'fragmented memories' of events in their childhood. Local authorities may not support either the individual making the request or allocate specialist trauma-informed staff to respond to and deal with the application. Too often, these requests are dealt with as a routine data governance matter. There is a high level of dissatisfaction with outcomes. Many care leavers may not have the support or ability to pursue a complaint. The right to refer the issue to the ICO has been for care leavers an important resource. This new duty on the local authority is an opportunity for the ICO to encourage data controllers in local authorities to provide a complaints procedure which is adapted to meet the rights and needs of care experienced children and adults.

Private or non-agency adoption records

This part of the submission covers records made by a local authority in non-agency adoption cases. Private or non-agency adoption records are not exempt from the Data Protection Act 2018 [Schedule 4, paragraph 3]. Non agency adoptions are those where the local authority [acting as an adoption agency] has not placed the child for adoption. Local authorities will hold records created as part of their duty to the court to interview applicants for non-agency adoption orders.

The majority of non-agency adoptions are step-parent adoptions. Historically, there was a high number of these applications until the implementation of the Children Act 1989, primarily as a means of securing legitimacy for a child, given the social stigma previously associated with 'illegitimacy'. However, non-agency adoptions may also arise in other circumstances and are increasingly being used in a wider range of contexts. For example, adoption may be sought to secure a child's immigration status, or where a relative or connected person, such as a kinship carer, seeks to adopt a child who has been living with them to provide long-term security and legal permanence. Non-agency adoptions may also be sought by a foster carer who has been caring for a child, following a surrogacy arrangement where there is no



biological relationship, or following an overseas adoption where the adoption is not recognised in the UK.

Persons adopted in such circumstances may be seeking information to make ‘narrative sense’ of the reasons why they were adopted and events both before and after their adoption. They may also be seeking information about a parent or other siblings, or family history including health information. This information may be key to an individual’s ability to make sense of their life history, particularly where the adoption was arranged outside the formal agency process. In agency adoptions, there is a statutory right under section 60 of the Adoption and Children Act 2002 for an adopted person aged 18 or over to receive information enabling them to obtain a certified copy of their birth record (unless the court orders otherwise), as well as access to specified information disclosed to adopters by the agency.

Non-agency adoptions are not subject to the restrictions on, or discretion to, disclose information under the Adoption Agencies Regulations 1983 or 2005. Any information held by an adoption agency or local authority may be disclosed on application as a DSAR, unless it is information the disclosure of which is restricted by Court Rules, in which case application must be made to the relevant court for permission to disclose the information. The child is not usually a party to the application so seeking information from court records is unlikely to provide much information to a now adopted adult. To obtain any information from these records, the individual the subject of the non-agency adoption order, will be required to use the DSAR process. There is limited data about how local authorities respond to such requests both currently and in the past. Local authorities are likely to have different retention policies for such records. Some had assumed until recently that these adoptions were exempted from the past and current data protection legislation and have applied adoption records retention requirements.

Similar to care experienced children and adults they are seeking information and may find that data governance officers have limited understanding of their circumstances and why they are seeking information. Like care leavers the individual is usually seeking information to make ‘narrative sense’ of often ‘fragmented memories’ of events in their childhood. If the local authority data controller takes an approach which is narrow and ‘procedural’ the result is likely to be that little information is shared. These are not straightforward DSARs and the individual may need support and a trauma-informed approach to decision-making about what information to share about third parties who may now be deceased. This new duty on the local authority to provide a complaints procedure is an opportunity for the ICO to encourage data controllers in local authorities to provide a procedure which is adapted to meet the rights and needs of adults affected by adoption about whom the local authority may hold records.

Key concerns

There is no requirement in s103 for the complaints procedure to have an independent element. Referral to the ICO provided a degree of independent review. For persons with experience growing up in local authority care, or having had social service’s involvement in their lives, they may have limited trust in the local authority’s capacity to provide information from the records in a transparent and comprehensive



way. If the process has no independent scrutiny but is essentially an ‘internal’ review of a decision made by the data controller, the outcome is unlikely to advance the interests and rights of the data subject. The loss or narrowing of the opportunity to refer as of right a complaint to the ICO directly is a significant backward step, particularly for this unique group of applicants.

There is no legal duty on the LA to ensure that the person bringing a complaint has support, including an advocate or supporter if they wish to do so. This obviously has resource implications but, in our view, it is essential to address the power imbalance between the applicant and the local authority which holds records about their life. Regulations made under s103 should explicitly require that complainants be offered access to an independent advocate, for this group of applicants, in line with the principles underpinning section 26 of the Children Act 1989, the Children Act 1989 Representations Procedure (England) Regulations 2006, and relevant statutory guidance.

Many practitioners who have supported persons to access information from non-agency adoption records and children’s social care files, and those with lived experience, consider that the focus of current data protection legislation is not sufficiently attuned to manage this type of request. Across the sector there is a strong view that there needs to be a dedicated and ‘fit for purpose’ process to manage information sharing. The ICO and the Department for Education should consider developing a statutory Code of Practice on Access to Care Records, drawing together obligations under the DPA 2018, UK GDPR, the Children Act 1989, the Equality Act 2010, and other relevant legislation.

To meet the high standards which the ICO should expect from local authority data controllers, the complaints process must be adapted to meet the unique needs of this group of data subjects. The design and approach of the process must be informed by principles of transparency, trauma-informed and person-centred approaches, co-ownership of information about one’s life and history, and a right to independent advocacy, and other support, if the complainant wishes to access these. Available support for this group, should be made clear; for example, in the care leaver local offer, SEND offer or kinship offer (if this is legislated as proposed by the Children’s Wellbeing and Schools Bill).

The 3-stage process which is required to manage complaints arising under the Children Act 1989 is a sound model. The process must have an independent element. The process must provide the right to a second review with an investigator and independent oversight from an Independent Person who has the knowledge and skills to ensure that the key issues are addressed fairly. The complainant should be able to use an advocate or friend throughout the process. It is essential that regulations regarding the s103 process create timelines and a structure to meet the needs of individual complainants.

The unfettered right to refer to the ICO must remain intact given what appears currently to be a lack of independent element in the s103 complaints process. If the local authorities improved on their current practice when responding to a DSAR and ensured a skilled and informed service attuned to the rights and needs of this group of complainants, the volume of complaints arising and also referred to the ICO is likely to be reduced.

Currently there is no requirement on the local authority to keep disaggregated data about the number of DSARs arising from care experienced child, adults, and non-agency/private adoptions and there is often no systematic tracking of compliance with DPA requirements. It is essential that data about complaints and outcomes are kept and reported on externally to the ICO to ensure standards, training and service compliance. Currently there is considerable disparity between the performance of local



authorities. The ICO should require local authorities to collect and submit anonymised annual statistics on DSAR requests from persons seeking information and a record of outcomes to a complaint. A recommendation should be made to Ofsted that, when inspecting the quality of services for care leavers, one measure of quality should be how access to care records is managed and the outcomes.