

# Newcastle upon Tyne Children's Social Care Access to Records Procedure

Date:

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## **Procedural Guidance**

### **1. General**

#### **Introduction**

The Data Protection Act (DPA) 1998 s.7 allows individuals (“subjects”) a general right of access to find out what personal data organisations hold about them in electronic, manual or other form. Personal data means data which relates to a living individual and includes any expression of opinion about the individual

The following document outlines Newcastle Children’s Social Care procedures in respect of subject access requests concerning Children’s Social Care records.

This document should be read in conjunction with the following documents:

- Guidance for Local Authorities
- Newcastle upon Tyne’s City Council Data Protection Policy - <http://www.newcastle.gov.uk/core.nsf/a/dpp?opendocument>
- The Data Protection Act 1998
- Human Rights Act 2000

#### **Basic legislative requirements**

A subject has the right to be given by the data controller a description of –

- the personal data of which that individual is the data subject,
- the purposes for which the data is being or is to be processed, and
- the recipients or classes of recipients to whom the data is or may be disclosed.

A subject also has the right to have communicated to him in an intelligible form:

- the information constituting any personal data (of that individual), and
- any information as to the source of the data

DPA states a subject access request should be completed not more than 40 calendar days from the date the data controller has receipt of all the information necessary to complete the request.

### **2. The Application and Consent**

All formal requests for personal information must be submitted either on the Newcastle City Council Subject Access Request (SAR) form which is preferred, see Appendix 2 or in writing, signed and giving name(s), address, dob (s) and enclosing appropriate Identification. The data controller must be satisfied as to

the identity of the subject (or the subject's agent) before processing the request. The identity and consent of any person giving permission to the applicant will also be checked before processing begins.

### **Requests made on behalf of an adult**

Subject access requests may be made on behalf of an adult (e.g. by an agent or advocate). In such cases, the data controller must satisfy themselves that the subject has authorised the application and that both the agent's identity and that of the subject is verified in the normal way.

### **Requests made in respect of Children**

#### **a) Parents**

Where a request is received from a parent or person with parental responsibility requesting access to their child's file and the child is not of an age to consent and the Authority is satisfied it is in the child's best interest's and the relationship can be verified, disclosure should take place accordingly.

The SAR form outlines the documents required where a request is made by a parent or person with parental responsibility requesting access to their child's file and the child is 12 yrs or over.

**NB:** DPA guidance suggests children of 12 yrs and over are likely to be capable of giving consent and should be consulted. Newcastle Children's Social Care will respect their wishes.

The interests of parents and children may well conflict. A child may not want their parents to see the records and the local authority has a duty to ascertain the wishes of the child in matters which may have an impact on his/her life prior to disclosure, or if the child is too young to give consent and make decisions accordingly.

#### **b) Child**

Where requests are received directly from a child the data controller must be satisfied that the child understands the nature and purpose of the request. If so, the child may exercise the right on the same basis as an adult. However thought should be given as to whether life story work would be a more appropriate course of action.

### **Adults who lack capacity**

Where an adult is incapable of making a request due to mental incapacity, an agent acting under a Lasting Power of Attorney or otherwise appointed by the Court of Protection may make the request on their behalf. Up to date evidence of the above must be provided.

Note: Where the information was provided by the data subject (of whatever age) in the expectation that it would not be disclosed to the person making the request on their behalf, this data should not be disclosed.

### **Requests received from a Solicitor**

Where a request is received directly from a person's legal representative a copy will be sent to Legal Services who will advise accordingly. If a request is received directly by Legal Services they will advise the Social Worker (SW) Children's Records (CR) who will prepare the file if required. Once preparation is complete the SW (CR) will send the access file to Legal Services for onward disclosure.

### **Advice and assistance**

Where a person needs additional assistance to make their request (e.g. has some form of disability), necessary and proportionate assistance should be offered.

### **Fees**

Newcastle Children's Social Care does not currently charge a fee for subject access requests.

## **3. Adoption**

Where a request is received for access to adoption records the Corporate Information Officer (CIO) will forward the form to the SW (CR) admin at the Children's Safeguarding Standards Unit (CSSU) who will check if there are also care records and ensure the request is passed to the Adoption team.

Any request for birth or adoption records should be dealt with by the Adoption Service. If the individual has previously accessed their adoption case record and wants access to their care file, their enquiry will be dealt with by the SW (CR).

Where an individual's file is made up of both care records and adoption records the SW (CR) will prepare the record to the date of placing for adoption. In such circumstances the SW (CR) and Adoption service will liaise on a case by case basis.

For requests for Adoption Records and Adoption Records Counselling, please refer to the Adoption Unit Policies, Procedures and Practice Guidance (chapter 9 Adoption Support Services).

## **4. Process**

On receipt of the completed form or letter the CIO will check ID, log the request electronically, inform the SW (CR) and send a hard copy by internal mail. In the event that the request is not sufficiently clear or the data controller cannot, for whatever reason process the request, the CIO will notify the SW (CR).

In such a case the SW (CR) will contact the applicant to request further information and the 40 days will not begin until sufficient information to enable processing is received.

If there is no response from the applicant within a month a follow up letter will be sent advising the applicant the request will be closed after two weeks if no further contact is received.

### **Third Party information**

This refers to Information recorded which has been provided by or about a non professional individual who is not the subject of the record.

Difficult decisions often arise in relation to whether third party personal data should be disclosed. An over-cautious approach may result in a less meaningful disclosure to the requester, with reduced therapeutic benefit. A lack of caution, on the other hand, may result in unfairness to the third party. Those dealing with requests need to rely on their professional judgment as to what is right in all of the circumstances but they must also be sure that they have DPA justification for processing. In any difficult case, the member of staff must consult with a colleague / line manager. Their decision and the reasons for it should then be recorded. In any case where the member of staff remains in any doubt or needs reassurance, legal advice should be sought.

### **Reports/documents provided by other agencies.**

Standards pro forma letters should be sent to the relevant agency with copies of the document if necessary.

### **Court Documents**

These can be provided to any person who is/was a party to the proceedings. That person cannot go on to disclose these to any other person without leave of the court unless it is for a specific purpose defined by legislation. Any person wishing to do this should seek legal advice. Permission should be sought from Health for Health documents filed with the court, or advice should be sought from Legal services.

### **Open files**

Where a file is open a subject's rights remain the same. The SW (CR) will liaise with the individuals' SW.

## **5. Communication of the information**

### **General**

An applicant has the right to have personal data of which he/she is the data subject communicated to him in an intelligible form and be provided with a permanent copy of that data.

### **Disclosure of files**

Unless a person has expressly stated that they do not wish to do so, all applicants will be offered an appointment with the SW (CR) or other person as agreed by the SW (CR). The subject will be given a permanent copy of their information.

### **Applicants who have relocated**

Where applicants no longer live in the area, the SW (CR) will make decisions regarding the release of the information on a case by case basis after discussion with the applicant and CSSU Team Manager. If appropriate their subject access file should be sent to their home address with management agreement, by special delivery unless requested otherwise, or circumstances dictate otherwise

### **Applicants who do not wish to meet with the SW (CR)**

If the subject does not wish to meet with the SW (CR) or other appropriate person the CSSU Team Manager will be consulted and the access file will be sent, with management agreement to the applicant's home address by Special Delivery unless circumstances dictate otherwise.

### **Post Access**

In all cases the applicant will be offered a follow up visit and/or phone call from the SW (CR) who will subsequently make decisions with the subject about any further contact. Because of the nature of the record some applicants may need further advice or a period of support.

### **Disclosure of abuse**

Where such disclosures occur the SW (CR) will follow Newcastle's Child Protection Policies and also offer the subject advice and support on the options available to them. CSSU manager will be informed as well as legal services/insurance services as necessary. Onward referral to Children or Adult Social Care or other agencies will be made as necessary.

## **6. Closure of the request**

### **Date of closure**

The date of closure will be taken as the date on which the files are disclosed to the applicant or the date of posting to the applicant or where the applicant has deferred the access, the date they were informed the record was ready. The applicant will be asked to sign a disclosure form (appendix 6) a copy of which will be retained on the file.

### **Retention and disposal of records**

Both original and redacted files will be held at CSSU as specified by the SW (CR) and returned to the original location at their discretion. The copy access file will be retained with the original files until the destruction date of the originals as specified by the Authorities' Records Retention policy.

### **Repeated or similar requests**

Such requests will be considered on a case by case basis.

### **Information lost or misplaced by the applicant**

If a client loses information which has been the subject of a request they may apply for an identical copy of that previously provided. Provision of this information is at the discretion of the Authority.

## **7. Confidentiality**

In all cases an assessment of both the information and any duty of confidentiality owed will take place at the time the file is processed.

Information regarded as confidential at the time of writing or submission may not in fact be considered as confidential at the time a request is received to view it.

## **8. Risk of serious harm**

The Data Protection (Subject Access Modification) (Social Work) Order 2000 states the following:

“5. - (1) Personal data to which this Order applies by virtue of paragraph 1 of the Schedule are exempt from the obligations in section 7(1)(b) to (d) of the Act in any case to the extent to which the application of those provisions would be likely to prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental health or condition of the data subject or any other person would be likely to be caused.”

There may be some circumstances where it is the opinion of the SW (CR) or other professional that the subject or another may be harmed by disclosure of certain information contained in the record, even when such facts are presented in the most sensitive manner. It will be the aim of the worker to enable people to come to terms with these facts. However on rare occasions it may be judged necessary to withhold certain information. Any such decision made on the grounds of serious harm should be made in consultation with other relevant professionals/legal services/CSSU manager and the reasons for withholding the information recorded. The subject should be informed unless it would cause harm to do so.

## **9. Summaries**

Where there is so much third party data in a document of which the subject is the focus that processing would render the document meaningless, or where it is impossible to get third party permission, for example historical foster carer reports, then a summary of any relevant information may be prepared. However care must be taken not to alter any of the personal data contained in the original document. Only information which supports or adds to the personal data in order to add context, circumstances or narrative should be summarised.

## **10. Access requests by other agencies**

See appendix 5. All requests should be made in writing on headed paper, giving name, address, dob's of all those about whom files are being requested, the reasons for viewing and signed by a manager or above. In cases where there are no child protection concerns the requester should include evidence of consent from the subject. In all cases a record must be made of any copies taken.

### **Open and recently closed cases**

File viewing will be arranged by the team in which the case file is held; they will also source and give access to any closed files in respect of an open case.

### **Closed case (archived)**

File viewings will be arranged by the SW (CR) at CSSU.

### **Court Documents held on file**

Under the Family Proceeding rule 2010 Rule 12.72 a 'professional acting in the furtherance of the protection of children' can be provided with information regarding court proceedings/documents. However they cannot be provided with a copy. If a copy is required they must apply to the court and the person supervising the viewing must seek advice from legal services. In an emergency where a copy of the actual court document is requested by a 'professional' then legal advice should immediately be sought.

Any other outside person viewing a file where Child Protection is not the primary focus cannot view or be given copies of court documents unless permission is sought from or has been given, by the courts.

### **Request from the Police**

Such requests will always be managed by the Secure Records officer at the CSSU. Refer to Criminal Investigations and Securing files Guidance for SW staff.

### **Request for CAFCAS checks**

Will be initially received by and managed by CSSU Admin staff. See Appendix 5 CAFCASS flow chart

## **11. Complaints and Appeals**

If the individual considers that any part of the information is factually inaccurate the individual should first discuss it with the SW (CR), who will make all efforts to address this issue satisfactorily. If the applicant disputes other aspects of the record such as professional judgement they will be offered the opportunity to provide their own statement which will be added to the file. The SW (CR) will make every effort to facilitate this.

If the applicant remains dissatisfied the SW (CR) will advise them of their rights to make a complaint to the Authority or the Information Commissioner.

More information can be found at

[http://www.ico.gov.uk/complaints/data\\_protection.aspx](http://www.ico.gov.uk/complaints/data_protection.aspx)

Address:

Customer Services Team

The Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

## DRAFT CSC Subject Access Requests

**Application received by Corporate Information Governance section where ID is checked and request recorded on LAGAN system.**

- For all CSC requests, electronic notification sent to CSSU admin and SW Children's Records (CR). Hard copy of form sent to CSSU admin. DPA 40 DAYS begins unless further information is required.
- Adoption requests identified & sent to Adoption Services by SW (CR).
- Where there are both care and adoption records, SW (CR) will prepare the record up to the date of placing for adoption. Liaison between the SW (CR) and Adoption to take place on a case by case basis.
- Where requests for CSC information are received from a solicitor, legal services to be informed and a copy of the application sent to them. Legal Services will advise SW (CR) accordingly.

**Unless further information required, on receipt of application form CSSU admin send acknowledgement letter L3a to Data Subject within 5 working days.**

- Form uploaded onto Total View.
- Request placed on holding list.
- If further information is required in order to locate files, admin to consult with SW (CR) who will take appropriate action.

**CSSU admin undertake file search using all relevant databases within 3 working days.**

- 1) If no information found, admin advise SW CR who will contact the applicant to inform them and offer further advice as appropriate within 5 working days. Application and any actions put on Total View.
- 2) If information found, letter sent to applicant giving contact details and advising that SW will contact them on allocation.
- 3) Admin send out file requests. Paper files are brought to CSSU to be copied or scanned. Electronic records to be printed in cases where Rapid Redact is not appropriate.
- 4) If files are missing CSU admin to inform SW (CR) & undertake missing files procedure.

**Case allocated:**

- 1) L8 letters sent (other agency)
- 2) L7 & L9 letters sent (Police, probation, health) with copies ) as required. Admin to follow up response not received within time scale.
- 3) Permission memo to Legal Services with copies. )
- 4) File prepared including a chronology. Contact made with applicant by SW (CR) as appropriate.
- 5) Full copy made for Data Subject.
- 6) On completion applicant informed and appointment made. If the applicant is unable or unwilling to meet with SW the file will be sent out in the post using special delivery, following discussion with CSSU manager unless circumstances dictate otherwise.
- 7) SW (CR) to arrange Post Access Support as necessary.
- 8) Applicant to be advised of their rights if they dispute the record. Factual changes to be made if necessary or applicant offered the opportunity to write their own account and have this added to the file.
- 9) SW (CR) to deal with any disclosures made under relevant procedures, including informing CSSU manager Legal Services and Insurance Service.

CSSU admin to return files to original location (or files to be destroyed if originals scanned.) Copy access file archived or held electronically if scanned.  
 Care first updated.  
 Case closed on Lagan by CSSU admin.

## Appendix 2

Subject Access request application form:

<http://www.newcastle.gov.uk/core.nsf/a/dpactaccesspersonalinfo?opendocument>

# Appendix 3 Children's Guardians

## CHECKLIST FOR DISCLOSURE OF DOCUMENTS TO CHILDREN'S GUARDIAN

1. Name, dob and current address of child  
.....
2. Current care first reference  
.....
3. Current Social Worker /business address  
.....
4. Current Team Manager  
.....
5. Name, address and TC of Children's Guardian (CG)  
.....
6. Name and TC of CG Solicitor  
.....
7. Name and TC of LA Solicitor  
.....

### PROTOCOL

**Date/initials**

1. On being allocated the case the SW will make enquires as to whereabouts of information and files on the family and ensure this information is placed with the current file. To check with:
  - Records Centre                      - Care First Recording
  - Previous Social Workers        - Other Local Authorities
  - Legal Section (if previous proceedings)
2. On receipt of the court order appointing the CG the LA solicitor will fax a copy within 7 days to the allocated SW
3. SW adds name, contact details of CG and CG's solicitor to invitation lists for appropriate conferences and meetings
4. SW contacts CG within 7 days to introduce him/herself and if possible arranges a date and time for the CG to view the files
5. CG to make a verbal or written request to the SW to view files giving at least 7 days notice
6. SW confirms to CG the date, time and venue – verbal or in writing
7. SW ensures files are ready to be viewed.
  - Remove correspondence with Legal Section
  - Ensure electronic information is printed off and on the file
8. SW meets CG and confirms ID. CG to view files in privacy.
9. CG is entitled to copy any document on file.
 

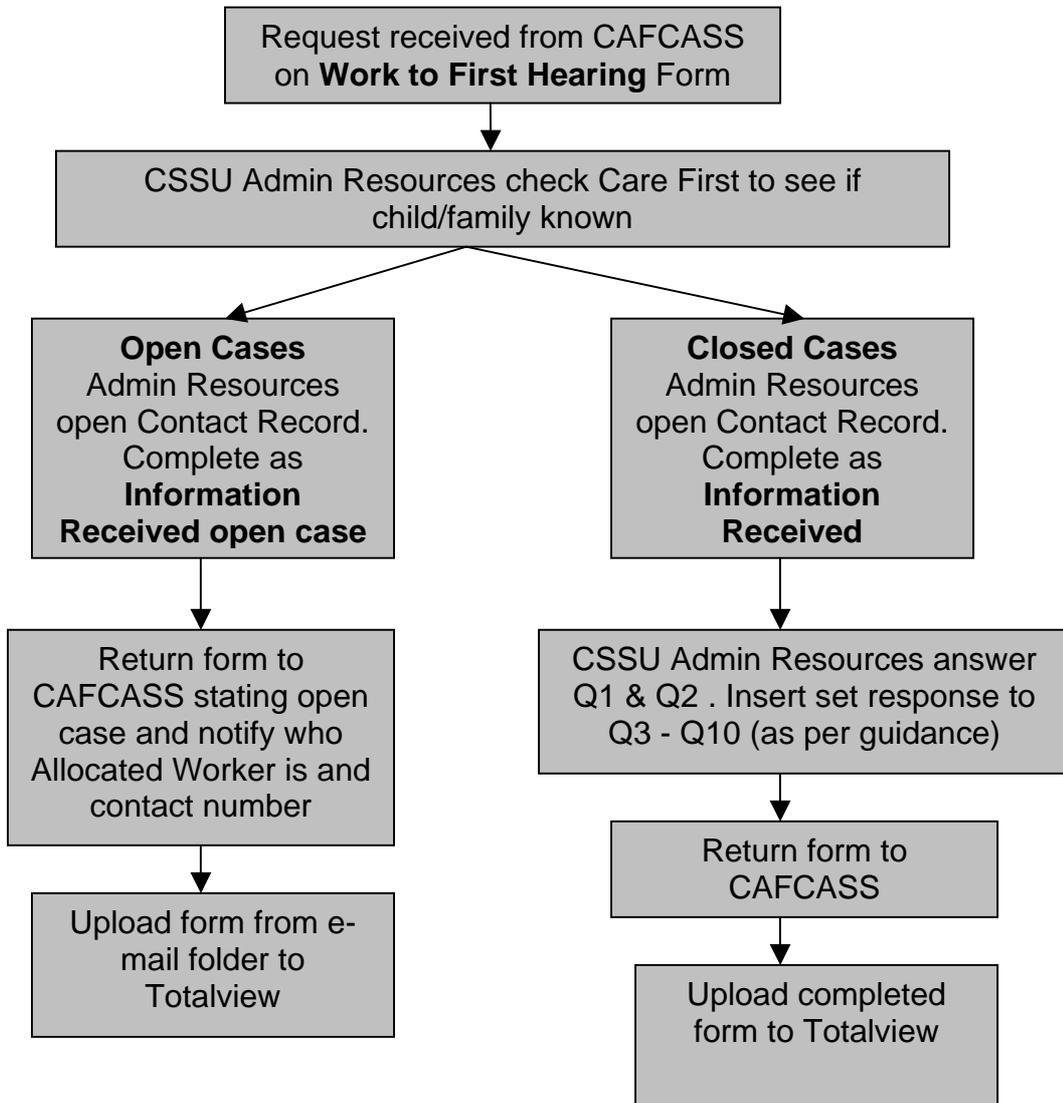
Name of Document Copied	File Reference
.....	.....
.....	.....
10. Confirmation that CG accessed appropriate files on .....
11. Approval to view form completed and kept on file.....

Signed/date.....Children's Guardian  
Signed/date .....Social Worker

C:\Documents and Settings\14709\Local Settings\Temporary Internet Files\OLK15\CGprotocolfinaljune08.doc

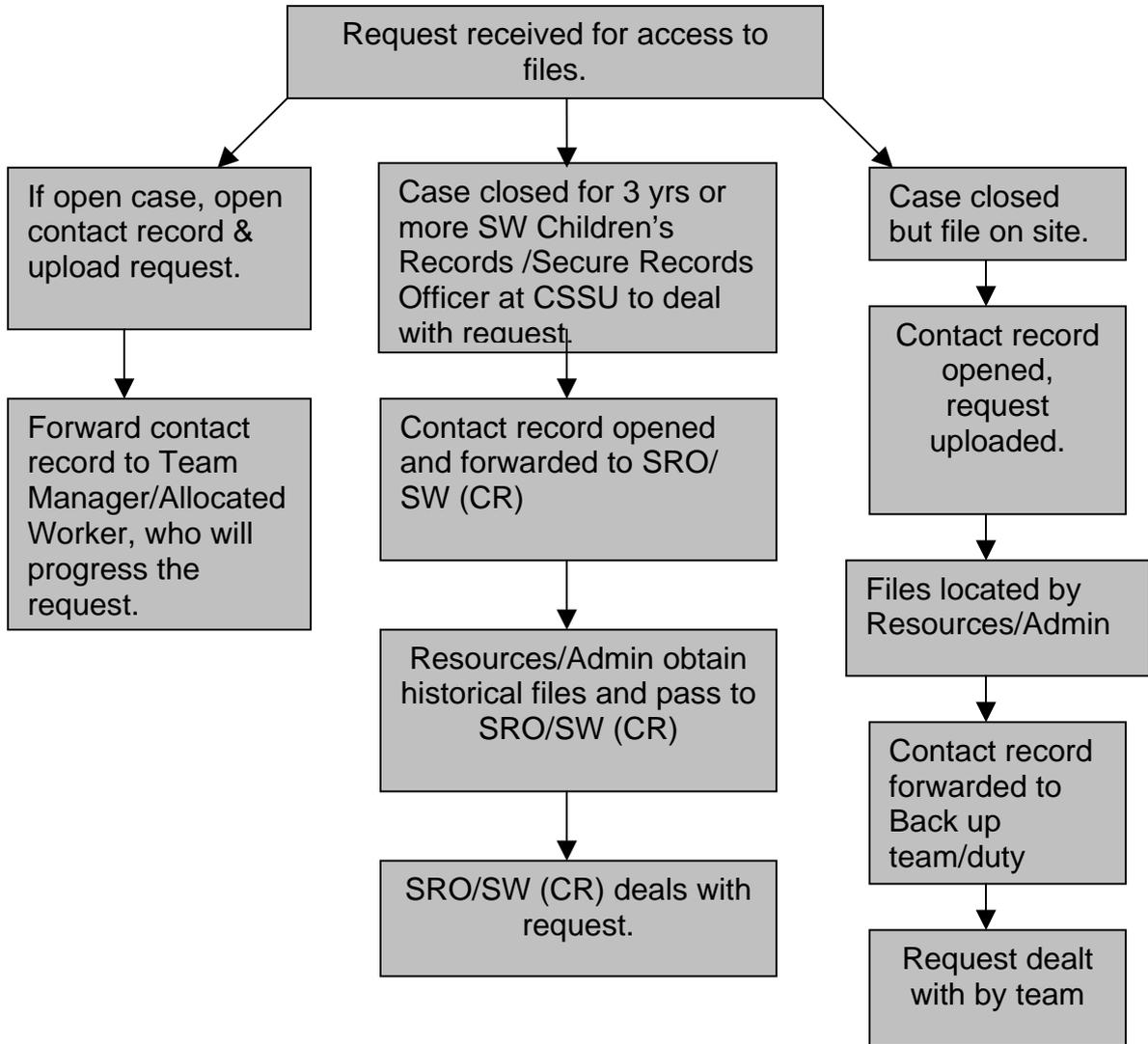
## Appendix 4 CAFCAS Flowchart

**CSSU central point for all CAFCASS Requests for information**



Email: [Newcastle.admin@cafcass.gsi.gov.uk](mailto:Newcastle.admin@cafcass.gsi.gov.uk)

## Appendix 5 External requests to view files flowchart



Appendix 6  
Acceptance form

**John Collings,**  
**Executive Director of Children's Services**  
Children's Safeguarding Standards Unit  
Newcastle Springfield Centre  
Blakelaw, Newcastle upon Tyne, NE5 3HU  
www.newcastle.gov.uk



**ACCESS TO PERSONAL INFORMATION  
REQUEST**

I .....

Dob.....

Address

.....

.....

acknowledge receipt of the following documentation / information held by Newcastle Children's Social Care.

**File 1**  
Chronology  
Assessment and planning. etc

**File 2**  
Etc

I understand that this information is confidential to me and any documents which have been part of any Court Proceedings must not be shared with others without seeking further advice.

I accept full responsibility for the security and confidentiality of these documents.

Signed.....

Date.....

**This correspondence is available in audio, Braille or large print if required. Please contact the above number to arrange.**