



# Phoenix Community Care Ltd Foster Care Agency Policy & Procedure

## 0202 -Access to Records

Version	Written	Updated/ Reviewed	Scheduled Review Date	Author/ Reviewer	Approving Body	Date Approved
1	2009	2009	2010	Gareth Hawkes	Board of Directors	
2		2010	2013	Angela Kelly	Board of Directors	
3		Oct'2013	Oct'2014	J A Coates	Directors	5.2.14
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## **1. Scope**

This policy applies to all PCC Foster Care Agency employees, including:

- Permanent staff
- Voluntary staff
- Placements and Work Experience
- Temporary staff

## **2. Purpose**

To ensure that service users and carers are enabled to access their records in compliance with the Data Protection legislation and that staff are consistent in their approach to access of files.

## **3. Introduction**

PCC Foster Care Agency is committed to fulfilling its duties and responsibilities as described in the statutory framework including:

- The Data Protection Act 1998
- The Crime and Disorder Act 1998, Section 115
- The Human Rights Act 1998
- The Freedom of Information Act 2000

The Data Protection Act applies to all personal information within the relevant definitions of the Act and as further defined by court decisions.

## **4. Rights of Access**

Under the terms of the Data Protection Act any living person has a right to access to personal information about themselves. Where access is denied the individual may refer this to the data protection officer or PCC Directors.

Service Users have free informal access to information held on them.

When dealing with other agencies or individuals it is important to ask them if the jointly held information can be shared with the service user.

Formal access to closed and open files will be provided free of any charge.

Requests for personal information will need to be authenticated before allowing access. An individual should provide at least two proofs of identity such as a passport, driving license and utilities bill with an address. If this person is a current service user then a key worker can complete authentication and if necessary accompanied by a signed letter on PCC Letterhead.

Individuals can apply for access to their personal information through a key worker or, if they have left the service of PCC, a representative who will need to be verified. See below for further details.

#### **4.1 Requests made by, or on behalf of, a child**

Where a child or young person under the age of 18 years makes a request for access to their information, the Key Worker / Internal Social Worker, together with relevant case workers, must decide whether or not he/she has sufficient understanding to do so. That is, does he/she understand the nature of the request? If so, then the request for access should be complied with.

If a child does not have sufficient understanding to make his/her own request, a carer / social worker can make the request on the child's behalf or the service user's social worker. In this case the status of the person making the request will need to be verified.

Where the Key Worker / Internal Social Worker and the case worker considers that granting access to a carer / social worker is likely to result in serious harm to anyone or is not in the child's best interest, they may refuse access. The reasons for refusal must be recorded in writing and included in the child's file. In this case the carer / social worker may then apply to the County Council's Data Protection Officer or the Information Commissioner, or the court for access. That decision should also be circulated the data protection officer and all PCC Directors

#### **4.2 Requests on behalf of a person lacking mental capacity**

If a person over 18 years of age with a mental illness has legal capacity i.e. she/he understands the nature of the request, she/he can request access.

If a person lacks capacity to manage their affairs, someone acting under an order of the Court of Protection or acting within the terms of a registered Enduring Power of Attorney can request access on his/her behalf. Mental order does not necessarily equate with mental incapacity.

#### **4.3 Disclosure to social care staff**

Access to personal information will be made available to the designated employees with responsibility to prepare the files for access or for whom the information is necessary in order to carry out the service within Social Care settings and to meet statutory and legal obligations.

#### **4.4 Disclosure to councillors**

Personal information about service users is not automatically available to Councillors on Scrutiny Committees. However, a Councillor does have a common law right to inspect information in the possession of the authority if it is reasonably necessary for the performance of his/her duties.

The Director of the Service Grouping will be informed of all such requests and will also be required to authorise any disclosures to Councillors who are not members of Scrutiny Committees.

#### **4.5 Disclosure to research workers**

In considering requests from research workers for personal information, the following principles will apply:

All research activity should be subject to ethical review. The degree of ethical scrutiny will be proportionate to the likely risks to services users and others involved in the research process

The information will only be used in a manner which is consistent, with benefit to people and will not be used in a manner which may cause damage or distress to the person

The personal information used in statistical research will not be processed to support measures or decisions with respect to particular individuals

Wherever possible, the consent of the person will be obtained

Adoption information will not be disclosed to researchers unless the above principles are applied and authorisation has been gained in writing by the Secretary of State to obtain such information under regulations 15.2.6 of the Adoption Act Regulations 1983

#### **4.6 Disclosure to other agencies and organisations**

Information may only be disclosed to other agencies if there is a valid, signed and up to date Information Sharing Protocol.

Section 115 of The Crime and Disorder Act 1998 enables all relevant authorities (the Partners) to disclose information between them for the purpose of the Act, which is to tackle crime and disorder to create safer communities. The presumption of confidentiality will, however, still apply. PCC will therefore need to make objective assessments of all the available information to determine whether disclosure is justified by public interest or in the interest of safeguarding a child.

In considering requests for access the best interests of the service user or carer must be borne in mind, especially where access is being given without the direct consent of the service user or carer. If there is any doubt about whether or not to give access to all or part of any record the Data Protection Officer and Legal Services should be consulted.

#### **5. Withholding information**

Certain personal information is exempt from the disclosure requirements of the Data Protection Act. The exceptions are:

#### **6. Prevention of Crime etc.**

The authority need not disclose information to the service user or person requesting the file on behalf of the service user which is held for the purposes

of the prevention or detection of crime, or to apprehend or prosecute offenders if disclosure would be likely to prejudice one of these purposes.

## **7. Risk of Serious harm.**

The authority need not disclose information to the service user or person requesting the file on behalf of the service user if it believes this would prejudice the carrying out of social work because it would be likely to cause serious harm to the physical or mental health or condition of the individual or another person.

## **8. Information about physical or mental health condition.**

The authority must not disclose this kind of information to the service user or person requesting the file on behalf of the service user without first consulting an 'appropriate health professional'. This would normally be the person responsible for the individual's current clinical care in connection with matters to which the information relates.

## **9. Other legislation.**

Where other legislation prevents disclosure, then the person cannot rely on the Data Protection Act 1998 to seek access to records. These include, for example, adoption records and reports; parental order records and reports. (Adoption Records are accessed through the Adoption Service; requests should be made directly to them).

## **10. Refusal to access.**

If access is refused, this should be notified to the person requesting access as soon as practicable and in writing, even if the decision has also been given in person. The employee should record the reasons for the decision and explain these to the individual.

## **11. Formal access**

This applies to requests for access made formally to Social Care settings in writing (or by fax or E-mail).

Service user and carers rights under the law

The Data Protection Act requires information to be recorded in an appropriate form. Copies of the information must be supplied if requested. However the Authority need not supply a copy if it is not possible, or would involve disproportionate effort, or if the individual agrees otherwise

Some of the material may be known to an individual, but it may still be helpful to have someone available to help the person 'take in' the material or explain anything that is not understood

The service user has the right to amend inaccurate information and to receive a copy of any such additions, amendments, deletions or notes. Where

agreement on changes cannot be reached and they remain the same this must be recorded on the record

When a request for Access to Records is made this will apply to both manual and electronic files.

## **12. Third Party Information**

Personal information may include details about another person (a third party). If disclosure would allow the third party to be identified the Access to Records Officer must confirm the third party's consent before disclosure. If it is reasonable in all the circumstances the information could be disclosed

To decide what is reasonable, the following factors must be considered:

- Any duty of confidentiality owed to the third party
- Any steps taken to seek their consent
- Whether the third party is capable of giving consent
- Whether consent has been expressly refused
- Any legal prohibition

If consent is not given by a third party within 40 days, PCC should give as much information as possible without identifying the third party and should give an explanation why some of the information requested has not been given.

## **13. Access to records procedure**

Formal requests should be notified to the key worker / internal social worker who will be responsible for responding to any requests. An acknowledgement letter of the request and to ask for any further information required to identify the individual and locate the information should be sent within 5 working days.

Requests must be responded to within 40 days of receiving the request. The 40 day period does not start until the following information has been received:

- Any information reasonably required to identify the individual
- Any information reasonably required to locate the information

The key worker / internal social worker who has received the request is responsible for:

- Locating all the relevant information
- Arranging access to the files
- Arranging an appropriate person to accompany the individual whilst they are accessing their files
- Authenticating the identification of individuals before access
- Gaining third party consent of disclosure
- Ensuring that any third party information where consent is not agreed is removed or anonymised before access
- Replying within 40 days of receipt of the request for access
- Monitoring the progress of all requests

- Scanning the file before access to identify any third party information
- Scanning any 'privileged' information
- Removing any third party information where access has not been agreed
- If the personal information requested is not held, the key worker / internal social worker must inform the applicant as soon as possible.

Where an appointment has been made to see records and no response has been received from the applicant (or if the applicant does not keep the appointment) a second appointment will be offered. If this fails a new access request will have to be made.

In some cases it may be deemed appropriate to send a copy to the applicant in the post (for example, if they live too far away to travel to our registered offices). In these circumstances the applicant must be informed that it will be sent via recorded delivery and that they may wish to contact the office to discuss issues relating to the composition of their file once they have had the opportunity to read through it.