

Case 202200019

Enforcement Order

Department of Children and Family Services

14 February 2022

EXECUTIVE SUMMARY

An individual made a subject access request to the Department of Children and Family Services (DCFS) under section 8 of the Data Protection Act (2021 Revision) (DPA) for her own and her child's personal data and related information.

DCFS did not reply within the statutory timescale of 30 days. It claimed no extensions to the deadline and requested clarification on certain details of the request only after the deadline had already expired.

After several months, a response was finally issued, but it was considered incomplete by the complainant. A further 50 days have now passed and no further response was sent to the complainant.

Having investigated the matter, the Ombudsman concluded that DCFS failed to comply with its statutory duty under section 8 of the DPA. An enforcement order was issued, requiring DCFS to provide a comprehensive response no later than the end of business on 7 March 2022.

DCFS was also required to investigate why its response to this request failed to comply with the requirements of the DPA, and to provide these findings to the Ombudsman by 7 March 2022.

The Ombudsman also recommended that DCFS draft a comprehensive policy detailing how it will handle section 8 requests in accordance with the DPA in the future.

A. BACKGROUND

- [1] On 1 August 2021, the complainant made a request to the Department of Child and Family Services (DCFS) under section 8 of the Data Protection Act (2021 Revision) (DPA) on behalf of herself and her child, a minor. The request was for personal data held by DCFS about the two of them in relation to specific legal proceedings.
- [2] On 31 August, the complainant followed up for an update on the request, as she had not received an acknowledgement or a response. DCFS responded the same day to say that it would address this matter urgently and respond within the week.
- [3] The complainant again chased a response on 13 September as she had still not received a response to her request. DCFS again replied on the same day to say that it was working on the request urgently and would be reaching out to her later that day to clarify some particulars in relation to the request.
- [4] On 14 September, DCFS asked the complainant to provide specific dates regarding the data she was seeking. The complainant responded the next day with the required clarification. She sent a further reminder email on 21 September, as she had heard nothing more from DCFS to that point.
- [5] On 19 October, the complainant reached out to the Office of the Ombudsman to inform us that she had not received a response to her request submitted on 1 August. In an effort to expedite a response, we contacted DCFS on the same day, asking that it respond to her as soon as possible. DCFS replied to us later that day, explaining that it was in the process of collating the requested information.
- [6] The complainant contacted us on 6 December for an update on this matter. As we had not received a formal complaint from her about this matter, we had not yet opened a case. We asked if she had heard anything from DCFS since 19 October, and she confirmed that she had not.
- [7] We sent a further reminder email to DCFS on 6 December, asking it to respond to the complainant as a matter of urgency. DCFS responded the next day to say that it would look into it and get back to us. No further response was received. On 14 December we wrote to

advise that we were considering issuing an enforcement notice, and that DCFS should provide an update to demonstrate that a response to the complainant was imminent.

- [8] On 20 December, a response was sent to the complainant with attached records and an apology for the delay. No explanation was offered as to why it had taken until then to respond. The complainant responded on 21 December to state that the records provided were incomplete, and that DCFS had only provided her with reports that had already been filed in court, and which she already had in her possession. She detailed the records she would have expected to have received. DCFS acknowledged this email on 22 December, promising to revert with an update after the Christmas break.
- [9] At this point, we opened a case file on this matter, as DCFS had submitted its response and the complainant had expressed her dissatisfaction with the information provided. We took no further action, awaiting the further response from DCFS. The complainant has confirmed that, at the time of writing no further response was received from DCFS.

B. CONSIDERATION OF ISSUES

- [10] Section 8 of the DPA details the fundamental rights of access to a data subject's own personal data. Section 8(1) states that:

A person is entitled to be informed by a data controller whether the personal data of which the person is the data subject are being processed by or on behalf of that data controller, and, if that is the case, to be given by that data controller a description of —

- (a) the data subject's personal data;*
- (b) the purposes for which they are being or are to be processed by or on behalf of that data controller;*
- (c) the recipients or classes of recipients to whom the data are or may be disclosed by or on behalf of that data controller;*
- (d) any countries or territories outside the Islands to which the data controller, whether directly or indirectly, transfers, intends to transfer or wishes to transfer the data;*

(e) general measures to be taken for the purpose of complying with the seventh data protection principle; and
(f) such other information as the Ombudsman may require the data controller to provide.

[11] In addition to this, section 8(2) states that

A data subject is entitled to communication in an intelligible form, by the relevant data controller, of —
(a) the data subject’s personal data; and
(b) any information available to the relevant data controller as to the source of those personal data.

[12] Sections 8(5) and 8(6) cover the matter of timescales for response to requests made under section 8:

(5) If a data controller reasonably requires further information in order to be satisfied as to the identity of the data subject making the request or to locate the information that the data subject seeks, and has informed the data subject in writing of the requirement, the data controller is not obliged to comply with the request unless supplied with that information, during which period the time specified in subsection (6) shall automatically stand suspended.

(6) A data controller shall comply with a request under this section within thirty days (or such other period as may be prescribed by regulations) of the date on which the data controller receives both the request and fee referred to in subsection (4), but where the data controller has requested further information under subsection (5), the period shall not resume until the information has been supplied.

[13] Regulation 4 of the Data Protection Regulations, 2018 allows for the extension of the time to respond to a subject access request under section 8 in certain circumstances:

(1) A data controller may extend the time for responding to a subject access request under section 8 by up to thirty days where one or more of the following conditions apply —

(a) a large amount of data is requested or is required to be searched and meeting the timelines would unreasonably interfere with the operations of the data controller;

(b) more time is required to consult with a third party or other data controller before the data controller is able to decide whether or not to give the data subject access to the requested data; or

(c) the data subject has given consent to the extension.

(2) With the permission of the Ombudsman, the data controller may extend the time for responding to a subject access request under section 8 —

(a) for a period longer than thirty days, where one or more of the circumstances described in paragraphs (1)(a) to (c) apply; and

(b) where the Ombudsman otherwise considers that it is appropriate to do so.

(3) Where the time for responding to a request is extended under this regulation, the data controller shall inform the data subject of the reason for the extension and when a final response will be given.

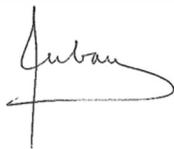
- [14] As the initial request was received on 1 August 2021, DCFS should have responded by 31 August. It failed to do so, and finally responded with a request for clarification on 14 September. This was 14 days after the statutory deadline for response, and pursuant to section 8(5), a request for clarification only suspends the time for response, it does not reset it.
- [15] No indication was given by DCFS that a fee was required to comply with this request, and nor has any extension been claimed under regulation 4.
- [16] The response provided on 20 December was sent 141 days after the original request was received, 111 days after the statutory deadline. The completeness of that response was queried by the complainant who has now waited a further 56 days with no further response from DCFS.

C. FINDINGS, RECOMMENDATIONS AND DECISIONS

Under section 45(1) of the Data Protection Act (2021 Revision), for the reasons explained above, I make the following findings and decisions:

- I find that DCFS has failed to meet its statutory duty under section 8 of the DPA.
- I require DCFS to provide a full response to the request no later than the end of business on 7 March 2022, taking into account all personal data held on the two data subjects that falls within the scope of the request. If any of the information is considered exempt from disclosure under the exemptions contained within the DPA or Data Protection Regulations, DCFS should identify it and explain the exemption to the complainant.
- I also require DCFS to investigate why its response to this request failed to comply with the requirements of the DPA, and to provide these findings, in full, to me by the end of business on 7 March 2022.
- I recommend that DCFS drafts a comprehensive policy detailing how it will handle section 8 requests in accordance with the DPA in the future.

Under section 47 of the Law, a person who receives an enforcement order under the DPA may, within 45 days of receipt and upon notice to the Ombudsman, seek judicial review of the Order to the Grand Court.



Jan Liebaers
Ombudsman (Acting)