



Eich cyf/Your ref
Ein cyf/Our ref/ SF/MD/3329/14

To: Local Authority Chief Executives
Directors of Social Services
Heads of Children's Services
Voluntary Adoption Agencies

11 December 2014

Dear Colleagues

Amendment to the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005 Guidance (December 2006)

I am writing on behalf of the Minister for Health and Social Services, one of the Welsh Ministers, to inform you of the following amendment to the above guidance.

Paragraph 32, which reads:

Where an adopted person is only seeking information about their adoption, they can continue to apply to the adoption agency that holds the relevant case records about their adoption. The adoption agency continues to have discretion under the Adoption Agencies Regulations 1983 to disclose any non-identifying information it considers appropriate to the adopted person¹. Providing access to its own records is not an intermediary service for the purposes of section 98 of the Act and the regulations.

is to be replaced by the following paragraphs:

Where an adopted person is only seeking information about their adoption, they can continue to apply to the adoption agency that holds the relevant case records about their adoption. The adoption agency continues to have discretion under the Adoption Agencies Regulations 1983 to disclose any information it considers appropriate to the adopted person². Providing access to its own records is not an intermediary service for the purposes of section 98 of the Act and the regulations.

Where it is a question of possible disclosure of third party information, such as identifying information about members of the birth family or former foster carers, the

¹ An adoption agency's power to provide an adopted person with access to its adoption records is preserved through a saving of the 1983 Adoption Agencies Regulations. The saving is made by regulation 13 of the Adoption and Children Act 2002 (Commencement No.10 Transitional and Savings Provisions) Order 2005 (S.I. 2005/2897 C.123).

² Ditto.

agency must act in accordance with the principles of the Data Protection Act. Although the starting point for disclosure of third party information is that it should only be disclosed with the consent of the person to whom it relates, information about a third party must be disclosed if “it is reasonable in all the circumstances” to do this without their consent (see section 7(4) of the Data Protection Act). A similar approach is likely to be helpful in deciding how to apply the Data Protection Principles to disclosure of adoption information. Adoption agencies will need to consider the impact that disclosure will have on the third party and weigh this against the impact that non-disclosure will have on the person seeking information. In exercising its discretion, the agency will need to take account of the context and all the circumstances (see the case of *Gunn-Russo v Nugent Care Society* [2001] EWHC Admin 566). It is important that the reasoning behind any decision as to disclosure be fully recorded.

We have decided to make this change to clarify the information which adoption agencies may disclose to people who have been adopted; and to remove the anomaly which exists between the 1983 regulations, which gives an adoption agency the power to disclose to an adopted person such information in its possession as it sees fit, and the existing guidance, which limits this discretion to non-identifying information only. This is in line with our policy intention towards greater openness about adoption. It is hoped that this change to the guidance will allow adoption agencies to take a more balanced approach to the disclosure of important information, such as the name of a birth parent.

This letter is issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services functions to act under the general guidance of the Welsh Government.

The amendment will come into force from the date of this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alistair Davey', written in a cursive style.

Alistair Davey

Deputy Director, Delivering Policy for Children and Adults
Department for Social Services and Integration