



# Access to Deceased Person's Records

## Request the information of someone who has died

This document sets out the right of access, where it exists, to the records of deceased individuals held by Herefordshire Council.

On occasion, the council receives requests for the personal data of an individual who has passed away. The data protection legislation which would usually protect personal data does not apply in such cases, as that only applies to living individuals. However, this does not mean that there is an automatic right of access to the public to information about the deceased.

Any requests for information about deceased individuals are processed under the Freedom of Information Act (FOIA) 2000. Please note that any disclosure under the FOIA is to the world at large, not just to the individual who requested it. Once disclosed the council can no longer protect the information.

Depending on what information is being requested, it may therefore be the case that we consider exemptions apply to the information, and the request may be refused. Details of the exemptions (not limited) that may be considered are listed in Appendix 1.

## Circumstances under which records may be released

Sometimes the family of the deceased have concerns about the care of their relative. In these cases, we will consider providing a direct disclosure of information in the following circumstances:

- The request has been made by the deceased person's 'personal representative' (also known as the executor or administrator of their estate).
- The request has been made by an individual who held a Property & Financial Affairs Lasting Power of Attorney (LPA) for the deceased person when they were alive (although they would only be entitled to the information about paying bills, collecting their benefits or selling their home).
- The request has been made by an individual who held a Health & Welfare LPA for the deceased person when they were alive.

If one or more of the above criteria can be met, you would need to submit the following when making your request:

- Your name and contact details (email or postal)
- Proof of your identity – such as a valid passport or driving licence
- Proof that you are the executor of the deceased person's will or,
- If you held LPA for Health & Welfare or for Property & Financial Affairs a complete copy of the LPA.

- Full name and date of birth of the deceased person
- Details of your concern and / or the records that you are interested in

Any requests for direct disclosure will be dealt with on a case-by-case basis. We may not be able to provide full access to the deceased's records but would consider disclosure of a summary or certain documents limited to the concern raised. Exemptions such as the personal data of third-party living individuals would still apply.

Please note that there is no statutory timescale for the provision of information through a direct disclosure, but we will endeavour to provide relevant information to you as soon as possible.

If you do not meet the above criteria any request for information about the deceased would be processed under the remit of the FOIA.

## **Requests for Historical Records**

Requests for historical records (e.g. by someone undertaking genealogical enquiries) already in the public domain should be made to [Herefordshire Archive & Records Centre \(HARC\)](#)

## **Other Relevant Legislation**

### **Access to Health Records**

The Access to Health Records Act 1990 allows relevant individuals to make an application to view a health record (i.e. a record that consists of information relating to the physical or mental health of an identifiable individual) that has been made by a health professional – as defined by Section 204 of the Data Protection Act 2018. Applications under this legislation can be made to the “Holder” of the health care records. Holders are defined as health professionals performing primary medical services under a general medical service contract with NHS England / Local Health Board.

Social care records held by Herefordshire Council that are completed by social care staff would not fall under this definition and additionally Herefordshire Council does not fall within the definition of an organisation that would hold a health record. To make a request for information under the Access to Health Records Act you would need to contact the relevant health organisation.

### **Environmental Information Regulations 2004**

Where information about the deceased is subject to the Environmental Information Regulations, the council will consider exceptions under Regulation 12 (5) (f) and 13 if the information being requested is deemed to have been given in confidence or includes the personal data of living individuals.

## **The common law duty of confidentiality**

In addition to any duties conferred by statute, a local authority owes a duty of confidentiality to service users and others from whom it obtains personal information in the discharge of its statutory functions. This means that information about an individual may not normally be disclosed to a third party without the individual's consent.

## **Doctrine of Public Interest Immunity**

A local authority has a duty to preserve the confidentiality of its records in the interests of public policy. This means that a local authority has a duty not to disclose information except when required or permitted by statute or common law as set out above. This duty is absolute and may only be overridden by a court order.

## **Crime and Disorder Act 1998**

Section 115 permits information to be disclosed to the police, probation services, health and local authorities, for the purposes of reducing and preventing crime and disorder.

# **Appendix 1: Potential Exemptions under the FOIA which may be applicable**

## **Section 21 (Reasonably accessible by other means)**

Although there is a presumption that the majority of information in a social care record is confidential, it is possible that some information may have already been made public e.g. date and cause of death as recorded on a death certificate (a public document), any information provided in open session at a court or inquest, or anything otherwise made public. Such information would be exempt under Section 21 of the FOIA and the requester signposted to the appropriate source to access the information.

## **Section 40 (Personal Information)**

This exemption can only be applied to living individuals not the deceased. However, the deceased's records may also contain personal data relating to third parties, such as carers, relatives and / or social and health care staff. If it is considered that the records contain information about living individuals it is considered to be their personal data, and the Section 40 exemption under FOIA could be applicable.

## **Section 41 (Information provided in confidence)**

In the majority of cases the information being requested from the council will relate to special category information about an individual, such as that contained in social care files or medical records. These records are usually very personal and sensitive in nature, and the Information Commissioner's Office (ICO) considers they continue to be subject to a duty of confidence after the death of the individual concerned.

For the Section 41 exemption to apply, the council must be able to show that it did not create the information within the file and that it has been 'obtained from another person'. Social care records concern the case of an individual, the information within them will have been obtained from the individual themselves, their relatives / friends, and from professionals involved in providing their care, and therefore this requirement will be met.

If the council can also show that disclosure of the information would give rise to an actionable breach of confidence (i.e. if the council disclosed the information it could be taken to court) then the exemption can legitimately be applied to the disclosure of the social care records of the deceased.

The ICO considers that there is an established case precedent that following death, a duty of confidence continues, and can be transferred to the deceased individual's personal representative. Whether a personal representative actually exists, or is known to the council, is irrelevant, what is important is the ability to establish in principle that a personal representative might exist who could take legal action against any breach of confidence. If the council considers that is the case, the Section 41 exemption will be applied.