

Freedom of Information Act



Practical guidance: Information about the deceased

Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance note aims to help public authorities consider requests for information about deceased individuals under FOIA.

Overview

- There are no special exemptions under FOIA for information about the deceased. In many cases the information will not be sensitive and the fact that it contains some details about someone who has died will not be relevant. The request and the applicability of exemptions should be considered in the normal way.
- If you think the information is sensitive and should not be released, you may particularly want to consider the exemptions for personal information (section 40) and for confidential information (section 41) – see below.
- The identity of the person requesting the information and their relationship to the deceased is irrelevant to whether you can withhold information under FOIA. However, you may still wish to make additional disclosures to certain individuals due to their relationship with the deceased, outside of the freedom of information regime.
- You should also be aware of alternative access rights, such as the limited right for some people to see medical records under the Access to Health Records Act 1990.

The section 40 exemption for personal information

The exemption for personal information (section 40) only applies to living individuals. This exemption cannot be used for information about someone who has died.

However, the exemption may still apply if the information in question is also personal information about another identifiable living person.

Example:

Genetic information may also relate to a surviving relative, or parts of social work records may contain information about other members of a family (see ICO decision notice [FS50082251](#) for an example).

If the information may also relate to a living individual, see [Awareness Guidance 1: personal data](#) for more information on using the exemption.

The section 41 exemption for confidential information

The exemption for confidential information (section 41) may apply if the information was originally obtained from the deceased. This will be particularly relevant for authorities holding information such as health or banking records.

You should first consider whether you have the ingredients for a duty of confidence and if so whether there is a public interest defence to disclosure. See [Awareness Guidance 2: information provided in confidence](#) for more detail on the approach to take. See also ICO decision notice [FS50124800](#) for an example of how we have applied s41 in these circumstances.

If a duty of confidence arises, our view is that the exemption will continue to apply after the death of the person concerned. This has been confirmed by the Tribunal in the [Bluck](#) case¹. The duty would be legally enforceable by the deceased's personal representative (the person or people who administer the deceased's estate under the law relating to wills and probate). You do not need to identify the relevant person. The important thing is to establish in principle that a personal representative might exist who can take action.

The Human Rights Act and the right to privacy

The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law. One of these rights is the right to respect for private and family life of living persons (Article 8), which here could include the privacy of surviving family members.

Public authorities should be aware of Article 8 when considering the relevance of the exemptions for personal information and confidential information. However, in [Bluck](#) the Tribunal confirmed that Article 8 does not act as a separate exemption from disclosure under FOIA. It does not come within section 44 (the exemption for disclosures prohibited by law).

Medical records of the deceased

Most information in medical records is likely to be confidential and exempt under section 41. However, this exemption may not apply to any information already made public, for example on the death certificate or in an inquest or coroner's court, especially if publication was very recent or widely reported.

You should also remember that some people may have rights of access under the Access to Health Records Act 1990 (AHRA) or Access to Health Records

¹ [Bluck v The Information Commissioner and Epsom & St Helier University NHS Trust](#) EA/2006/0090 (17 September 2007)

(Northern Ireland) Order 1993, essentially if they are the deceased's personal representatives or might have a claim arising from the death. The right is for personal representatives, not simply for surviving family members or next of kin.

If the applicant has access rights under the AHRA, the section 21 exemption (information available by other means) would apply to the freedom of information request and access should be dealt with under the AHRA.

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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