

Access to Deceased's Records Guidance

Blackpool Council



Access to Deceased Records

Introduction and scope

This guidance explains Blackpool Council's approach to how it will handle a request for access to a deceased's personal information or records.

It will be made available to, and will be referred to, by all employees, elected members, contractors, agents, representatives or temporary staff, who work for or on behalf of the Council.

As each request will be dealt with on an individual basis due to the differing circumstances surrounding the deceased person's contact with the Council, this guidance should not be taken as being the Council's definitive policy. It should be read as provision of guidance on the different aspects that an applicant should be aware of.

The guidance covers:

- How to apply?
- Who can apply?
 - Personal Representatives
- Responsibilities and Process
- Consideration of requests;
- Possible exemptions;
- Other legislation;
- Additional information.

The Data Protection Act 1998 (DPA) and the General Data Protection Regulation (2016/679) (GDPR) from May 2018, only apply to living individuals and therefore cannot be used to access personal information for a deceased individual. This means that any request for a deceased's personal information will be dealt with under the Freedom of Information Act 2000 (FOIA).

However, this does not mean that there is an automatic right of access to the deceased's personal information as some exemptions may be applied.

The Council understands and acknowledges that due to legislation, the approach outlined in this guidance may cause an applicant some distress if we are unable to provide information to them, and that this may also

cause some Council Services some difficulties in working with service users, families and carers.

How to apply?

Requests for access to a deceased's personal information that may be held by the Council should be made to the Information Governance Team in the first instance.

These can be emailed to: FOI@blackpool.gov.uk

or sent by post marked confidential to:

Access to Deceased Records, Information Governance Team, Blackpool Council, PO Box 4, Blackpool, FY1 1NA

When applying to Blackpool Council you will need to provide as much information as you can to help us locate data or records, and help us to make the necessary considerations.

We will ask for:

- Details of the deceased
 - Name
 - Date of Birth
 - Date of Death (if not providing a copy of the Death Certificate – see below)
 - Last known address
 - Confirmation that the person has died if not providing a Death Certificate (such as a Letter granting Probate or Letters of Administration);
 - Proof that you, as the applicant, are a Personal Representative (see 'Who can apply');
 - Your identification as the person requesting the deceased's personal information, which must show your name and address.
 - If it is known to us that there are more than one Personal Representatives, you may be asked to provide a signed letter of authority from any other Personal Representatives.
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Who can apply?

In considering a request for access to a deceased's personal information, the Council will require proof

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that the applicant is a personal representative - a copy of the letter of representation or a copy of the Will that proves the applicant is an Executor, and proof of the personal representative's name and address if not on the letters of representation.

The Council reserves the right to ask for additional proof of identity where this is appropriate.

Personal Representatives

The Council acknowledges that a Personal Representative is someone who has legal authority to represent the deceased person.

Having regard to the Government guidance, the Personal Representative will be someone who is named as an Executor in a Will, or is appointed as an Administrator for a Will. Generally they will apply for Grant of Representation (known as grant of probate), or be appointed as an Administrator by the Probate Registry.

The Government guidance indicates that the duties of a Personal Representative are:

- To make the funeral arrangements;
 - Establish the value of the assets and liabilities and collate them for the purpose of the HM Revenue and Customs Account;
 - Calculate and pay any Inheritance Tax;
 - Payment of debts and legacies;
 - Prepare Estate accounts
 - Distribute the remaining assets to those entitled to them.
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Responsibilities and Process

Requests received directly by Council services should be forwarded to the Information Governance Team within 2 working days.

The Information Governance Team will log and monitor these requests, provide an acknowledgment

to the requester or seek further clarification or proof of personal representation.

This team will liaise with Council Services to locate and collate information where this is appropriate for the response.

When requested, Council Services will be expected to search relevant databases, records, paper files and emails etc., for information and provide this in an unfiltered, electronic format (this may be scanned) to the Information Governance Team.

The Information Governance Team will make the necessary considerations of obligations imposed by the DPA and/or GDPR for any information that relates to another person (a third party) and ensure that all redactions are undertaken where necessary before responding on behalf of the Council.

This team will also consider any applicable exemptions under the FOIA as detailed later in the section of this document titled 'The legislation that applies and any exemptions'.

Consideration of requests

Requests must be made in writing to the Council and should include evidence of the legal authority vested in the applicant.

The main considerations will be:

- Is the personal information requested already publicly available?
- Is the applicant the Personal Representative of the deceased?
- Is the personal information requested Sensitive (as defined within the DPA) or a Special Category of Data (as defined within the GDPR)?
- Was the personal information requested originally provided to the Council in confidence?
- Does the personal information requested contain personal details of any third parties (such as

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Carers, relatives, social care staff or social workers and healthcare staff)?

- Have any third parties expressly refused consent to disclosure of their personal information or any information that they have provided to the Council?
- Whether the disclosure would cause harm or distress to an individual including the requester.

It will be necessary to consider if disclosing the personal information would be likely to prejudice the Council's ability to provide a service.

The Council also has to consider if the legitimate interests of the applicant outweigh the rights, freedoms and legitimate interests of the deceased or other individuals. The FOIA contains a number of exemptions that may be applicable and these are listed in the section of this document titled 'The legislation that applies and any exemptions' below.

Possible exemptions

As stated previously, requests for a deceased's personal information will be dealt with under the Freedom of Information Act 2000. This Act contains a number of exemptions which restrict or prevent the disclosure of information.

Some or all of the following FOIA exemptions may be applicable.

Section 21 Information accessible to the applicant by other means.

If the personal information requested is already in the public domain, for example, where an open session at a court or inquest has been held, this would not need to be disclosed under the FOIA.

Although there is a presumption that the majority of personal information in social care records is confidential, some may already have been made public, for example the cause of death is included on the death certificate which is a public document.

Section 40 Personal Information.

The deceased's personal information may contain personal information relating to another person or persons. These are known as Third Parties. A third party may include Carers, relatives, social care staff or social workers and healthcare staff.

If the deceased's records do contain another's personal information the exemption in section 40 could be applied.

Section 41 Information provided in confidence.

In most cases the personal information being requested will relate to sensitive personal information about the deceased, especially where it is contained within a social care or health record. In accordance with guidance from the Information Commissioner's Office and case decisions from the First-Tier Information Rights Tribunal, due to the very personal and sensitive nature of these records, it is likely that they continue to be subject to a duty of confidence after the individual's death.

It is generally assumed that this personal information would have been provided in confidence and as such, the exemption within section 41 may apply.

The Council must show that it did not create the information and that it had been obtained from another person. This will usually be met for social care records as these are concerned with the welfare and care of an individual. It is very likely that the information will have been obtained from the individual themselves, or the professionals involved in their care.

If the Council believes that disclosure of the deceased's personal information would be likely to give rise to an actionable breach of confidence then the exemption can be applied. The Information Commissioner's Office has case precedent that establishes that the duty of confidence continues after death and that this can be transferred to the personal representative.

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Other legislation

Medical or Health Records will only be available through the **Access to Health Records Act 1990** and you will be required to contact the deceased's GP or the relevant health professionals involved in the deceased's care.

Section 115 of the **Crime and Disorder Act 1998** permits data to be disclosed to the Police, Probation Service, Health and Local Authorities, for the purpose of reducing and preventing crime and disorder.

The common law **Duty of Confidence** means that the Council owes a duty of confidence to service users and others from whom it obtains personal information for the discharge of its statutory functions.

Additional information

The Council publishes a Corporate Retention Schedule which outlines how long information, personal information and records will be retained for before secure disposal or destruction (see the Council website <https://www.blackpool.gov.uk/Your-Council/Transparency-and-open-data/Documents/CorporateRetentionSchedule.pdf>).

Historical Records already in the public domain may be held by Lancashire County Council Archives and Records Office (see their website at <http://www.lancashire.gov.uk/libraries-and-archives/archives-and-record-office.aspx>).

The Blackpool Registration Service holds information on Births, Deaths and Marriages in the Blackpool District (go to the Life Events pages of the Council website <https://www.blackpool.gov.uk/Residents/Life-events/Life-events.aspx>).

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