information management & security

Gloucestershire COUNTY COUNCIL

Access to Deceased Person's Records Policy

1.0 Policy Statement

In order to operate efficiently, Gloucestershire County Council collects and uses information about the people we work with. This may include members of the public, current, past, and prospective employees, service users, customers, and suppliers. We may also be required by law to collect and use information to comply with the requirements of central government. The personal information the Council collects must therefore be safely handled and dealt with properly, no matter how it is recorded and used, and whether it is on paper, in computer records or recorded by any other means.

The Council regards the lawful and correct treatment of personal information as critical to its successful operations, maintaining confidence between the Council and those with whom it carries out business. The Council will ensure that it treats personal information correctly in accordance with the law.

This document sets out the right of access, where it exists, to the records of deceased individuals. There is no specific exemption under the Freedom of Information Act 2000 (FoIA) dealing with access to records of the deceased, and the General Data Protection Regulations (GDPR) does not apply directly as it only covers living individuals. However, this does not mean there is an automatic right of access by the public to information about the deceased, as certain exemptions under the FoIA can legitimately be applied.

2.0 Scope

This policy applies to all employees, elected Members, contractors, agents, representatives, and temporary staff, working for or on behalf of the Council and to all personal information created or held by the Council, its contractors, or agents, in whatever format. For example, paper, electronic, email, microfiche, film and however it is stored, e.g. ICT system/database, SharePoint, OneDrive, drive filing structure, email, filing cabinet, shelving and personal filing drawers.

3.0 Responsibilities and processes

All requests for access to deceased person's records are processed by the Information Management Service and Gloucestershire Archives.
Historical records already in the public domain e.g. proved wills from 1541 – 1941, can be accessed via the online catalogue are available from Gloucestershire Archives.

Requests for access to records relating to Council services provided to deceased individuals (usually social care or occupational health records), are managed by the Information Management Service (IMS).

Requests received directly by service areas must be forwarded to IMS within 3 working days.

IMS will log and monitor all requests and acknowledge requests within 5 working days of receipt within GCC. IMS will assign requests to the relevant business area(s).

The business area(s) will ensure that all relevant databases are checked, and all information held is provided to IMS within the deadline provided.

Team managers, on being asked to locate information in response to a request, will provide all information held. This will include, but is not limited to, paper records, all database records, emails, information on OneDrive, SharePoint and handwritten notes.

Teams must not filter the information before providing it to IMS.

IMS will provide support and advice in applying these procedures and on related issues. IMS will also liaise with teams where appropriate to determine what can and cannot be released. In complex cases the redacting officer (usually IMS staff) will arrange for a Senior Manager to review the information before release.

In addition, the GDPR requires local authorities to consider whether providing information would also release the personal data of other parties. In other words, the Council is not able to disclose information that would contravene someone else's rights under the GDPR. Additionally, information will be withheld if disclosure is likely to prejudice the Council's ability to provide a service should disclosure be considered to cause harm to any individual.

4.0 Consideration of requests about the deceased

The main elements that will be considered when dealing with requests for information about the deceased are as follows:

- Is the information requested already publicly available?
- Is the requester the personal representative? This is the person who is entitled to administer the estate of the deceased person under the law relating to wills and probate. This will be by virtue of either a grant of probate (if the deceased person left a will) or letter of administration (if they died intestate) of the deceased.
- Is the information requested special category (as defined by the GDPR)?
- Was the information being requested originally provided in confidence?
- Does the information requested contain personal data relating to any third parties?

The exemptions (not limited) listed in Appendix 1 will also be considered, to determine if they apply in cases where information about deceased person(s) is requested.

5.0 Circumstances under which records may be released

Gloucestershire County Council will **only** release the records of deceased individuals 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 Health & Welfare Lasting Power of Attorney for the deceased person when they were alive
- The request has been made by an individual who held a Financial Affairs Lasting Power of Attorney for the deceased person when they were alive (although they would only be entitled to information about paying their bills, collecting their benefits, or selling their home)
- The request has been made by an individual who was a Personal Welfare Deputy for the deceased person when they were alive, providing the request does not go against any decision made by an attorney acting under a Lasting Power of Attorney
- The request has been made by an individual who has proof that they have a claim arising from the deceased individual's death
- The information requested is already known to be in the public domain; GCC will attempt to signpost the requester to the information where possible
- There is sufficient evidence to support the assumption that the deceased individual would have given their consent to the release of their personal information if they were still alive

If one or more of the above criteria can be met, the request will then be dealt with under the Council's standard FoIA process.

6.0 Document Control

6.1 Document information

Owner:	Jenny Grodzicka, Head of Information Management Services
Author:	Steve Taylor, Information Requests Officer
Reviewer:	Beth Blakemore, Principal Information Requests Officer
Board(s) consulted:	
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6.2 Version History

Version	Version date	Summary of Changes
1-0	November 2013	Approved by Information Board, 12 November 2013
2.0	February 2019	Review of generic content and amended of DPA 1998 references to GDPR.
2.1	March 2022	Updated header & footer to reflect updated style/version. Approved by Information Board, 22 March 2022
2.2	December 2022	Accessibility review, and updates to formatting. Broken links fixed.
2.3	January 2024	Removed references to P: and S: drives and replaced with M365 equivalent.
2.4	January 2025	Minor wording amendments in section 3.0 for clarity

6.3 Review

This policy will be reviewed as it is deemed appropriate, but no less frequently than every 3 years.

6.4 Contact Us

Post: The Information Management Service
Gloucestershire County Council
Shire Hall
Westgate Street
Gloucester

GL1 2TG

Email: foi@gloucestershire.gov.uk

Phone: 01452 324000

Appendices

Appendix A - Abbreviations

Abbreviation	Description
AHRA	Access to Health Records Act 1990
EIR	Environmental Information Regulations 2004
FoIA	Freedom of Information Act 2000
GDPR	General Data Protection Regulation
ICO	Information Commissioner's Office
IMS	Information Management Service
LPA	Lasting Power of Attorney

Appendix B - Exemptions under the Freedom of Information Act

Section 21 (Reasonably Accessible Elsewhere) Exemption

If the information being requested is already in the public domain, e.g. date and cause of death, anything provided in open session at a court or inquest, or anything otherwise made public, this would not need to be disclosed under the FoIA, but where possible, the requester should be signposted to the appropriate source. In these cases the s21 exemption (reasonably accessible elsewhere) under the FoIA could be applied.

Although the presumption is that the majority of information in social care records is confidential, it is possible that some information may have already been made public. For example, cause of death as recorded on a death certificate (a public document) would already be in the public domain. This would also apply to any information that had been made public via a court case, inquest or had otherwise been made accessible to the public.

Section 40 (Personal Information) Exemption

Records may also contain personal data relating to third parties, such as carers, relatives and/or social and healthcare staff. If/when the deceased individual's social care record contains information about living individuals this information is considered to be the personal data of these individuals. Where this is the case, the s40 exemption (personal information) under the FoIA could be applied.

Section 41 (Information Provided in Confidence) Exemption

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. In accordance with guidance from the Information Commissioner (ICO), due to the very personal and sensitive nature of the information contained in social care records, it is likely that they can continue to be subject to a duty of confidence after the death of the individual concerned.

Generally, it can be assumed that this information would have been provided in confidence. As such the s41 exemption (information provided in confidence) under the FoIA could be applied.

For the s41 exemption to apply, the Council must be able to show that we did not create the information within the file and that it had been "obtained from another person". In general, this requirement will be met because social care records concern the care of an individual, and the information within them will have been obtained both from the individual themselves, and from the professionals involved in providing their care

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 they could be taken to court) then the exemption can legitimately be applied to the disclosure of social care records of a deceased individual.

Generally, case precedent developed by the Information Commissioner's Office (ICO) has established 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.

Appendix C - Other relevant legislation

Access to Health Records

The Access to Health Records Act 1990 (AHRA) gives a right of access to the **health records** (generally only Occupational Health records within the County Council) of the deceased to their personal representative(s), or to any person who may have a claim arising out of the death of the individual.

In these cases the definition of a personal representative is very narrow (see definition below), with the right of access only being granted to such a person, rather than any surviving family members or next of kin. In order to gain access to these records under the Access to Health Records legislation, the applicant must prove to the Council that they are the personal representative, or can substantiate a claim as a result of the individual's death.

Environmental Information Regulations 2004

Where information about the deceased is subject to the Environmental Information Regulations 2004, the Council will consider the provisions of regulations 12(5)(f) and 13 if the information being requested is deemed to have been given in confidence or includes the personal information 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 to 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 service, health and local authorities, for the purpose of reducing and preventing crime and disorder.