

## **DATA PROTECTION ACT 1998 FREEDOM OF INFORMATION ACT 2000**

Your request for information regarding access to your relative's record has now been considered and the Council's response to your questions is shown below.

The Data Protection Act only covers living individuals so there are no subject access rights to deceased people's information.

You can request any recorded information under the Freedom of Information Act. However the Act is applicant blind so we must consider whether the information is suitable for release not only to you, but also the general public at large.

Section 17 of the Freedom of Information Act 2000 requires Local Authorities when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if not otherwise apparent) why the exemption applies.

The exemption/s, as well as the factors the Department considered when deciding where the public interest lies, are listed below:  
The exemptions are as follows:

Section 40(2)(a)(b) – Personal Information

Section 41 Information Provided in Confidence

Sections 40 and 41 are Class based and Absolute exemptions, therefore no harm/Public Interest Tests (PIT) are required.

Section 40(2)(a)(b) is an absolute exemption which means there is no requirement on the Local Authority to consider whether there is a public interest in disclosure. Personal data is governed by other law (The Data Protection Act 1998) and there are two elements to this exemption.

The first element of this exemption is engaged if the information requested constitutes personal data and is made by the data subject. The information will be covered by section 40(1) and the request will be dealt with under section 7 of the Data Protection Act 1998, rights of access.

The second element of this exemption is engaged if the personal data is about someone other than the applicant. Where someone makes an application for information other than the data subject, disclosure of that information will often constitute a breach of the Data Protection Act covered by section 40(2).

Any disclosure under FOIA is a public disclosure and release of the personal data of an individual relating to their record would breach principles 1 & 2 of the Data Protection Act 1998.

Principle (1), that personal data is processed lawfully and fairly. Personal data imparted and recorded for updating and maintaining personnel records will be confidential and any public disclosure would be unlawful if there would be a breach of that law of confidentiality. Persons who give their data to the Local Authority for the purpose of informing and maintaining their personnel records have the expectation that it will be treated fairly and it would be unfair to an individual concerned to disclose his/her personal data into the public domain.

Principle (2), that personal data is processed for a specific purpose and not further processed in any manner incompatible with that purpose. Public disclosure would cause unnecessary distress or damage to the persons involved, they would not have an expectation their personal data will be disclosed to others or possibly used for another purpose.

#### Section 41 (a)(b) Information Provided in Confidence

When the originator imparted this information they did so on the understanding that it would be used for the purpose for which it was supplied. Persons who supply their information for the purpose of informing and maintaining their personal records would not expect that information to be released into the public domain. Disclosing this information would constitute a breach of confidence.

The legislation allows you to use the information supplied for your own personal use. Please be aware that any commercial or other use, for example publication, sale, or redistribution may be a breach of copyright under the Copyright, Designs and Patents Act 1988 as amended unless you obtain the copyright holder's prior permission.

Not all the information that is supplied which is covered by copyright will be the Council's copyright, for example it may be the copyright of a government department or another Council. You should seek either the Council's consent or their consent as appropriate. The Council is willing to advise you of any such potential issues on request. In order to make a request to re-use the information please contact the Information Governance Manager using the details below.

If you are dissatisfied with the handling of your request please write to:

**Information Governance Manager**

**Information and Support**

**Leicester City Council**

**FREEPOST (LE985/33)**

**New Walk Centre**

**LEICESTER LE1 6ZG**

e-mail: [info-requests@leicester.gov.uk](mailto:info-requests@leicester.gov.uk)

Your request for internal review should be submitted to the above address within 40 (forty) working days of receipt by you of this response. Any such request received after this time will only be considered at the Council's absolute discretion.

You can also complain to the Information Commissioner at:

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow SK9 5AF**

**Telephone: 01625 545 700**

[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

Please be aware that the Information Commissioner does not normally consider appeals or complaints until the internal appeals and complaints processes of the public authority which is answering the request have been exhausted. You are therefore advised to complain or appeal to the Information Governance Manager before contacting the Commissioner.