

DATA PROTECTION ACT 1998 FREEDOM OF INFORMATION ACT 2000

Your request for information has now been considered and the Council's response to your questions is as follows:

The Data Protection Act only covers living individuals; there are no subject access rights to a deceased person'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.

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: states that fact; specifies the exemption in question and states (if not otherwise apparent) why the exemption applies.

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 personal records have the expectation that it will be treated fairly and it would be unfair to the 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.

You may wish to approach the NHS and request this information under the Access to Health Records Act 1990. Where a patient has died, an application for access to a health record can be made by the patient's personal representative and any person who may have a claim resulting from the person's death. A health record is any record of information relating to someone's physical or mental health that has been made by (or on behalf of) a health professional as defined by section 1 of the Access to Health Records Act (AHRA). Social workers and care home staff are not registered health professionals as defined by the Act. Therefore, social work and care home records as a generic group are not available from Leicester City Council under the AHRA.

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

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

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.