

SAFE WELL PROSPEROUS CONNECTED

Information Governance Framework

Schedule 05A Access to Information Policy

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1. Introduction

The Freedom of Information Act, Environmental Information Regulations and the UK General Data Protection Regulation are the information request regimes under which the majority of information is requested from North Lincolnshire Council.

Anyone can request access to general information held by the council using the Freedom of Information Act. The Environmental Information Regulations provide the same right but for environmental information and the UK General Data Protection Regulation provides this right of access for an individual's personal information. The Freedom of Information Act also requires the production of a Publication Scheme to list information that is made available without the need to request it. We also include environmental information in our Publication Scheme.

This policy outlines how the council we comply with access to information requirements and the processes in place that are based on and informed by the Information Commissioner's Office Codes of Practice and relevant legislation. The UK General Data Protection Regulation is tailored by the Data Protection Act 2018 and they should be read together.

This policy is part of a suite of Information Governance policies and procedures.

2. Scope

This policy applies to all council employees and all individuals or organisations acting on behalf of the council.

Schools and Elected Members, who are Data Controllers in their own right, may choose to adopt this policy but where this is not the case it is expected that they will have their own appropriate policy.

3. Associated Processes and Documentation

Associated Request for Information process documents and forms are in place, as follows:

- UK GDPR SAR Request Form – IG24
- DPA 2018 Schedule 2 Form – IG25
- Re-use of Information Form – IG55
- Annex C Request Form – IG61
- UK GDPR and Subject Access Request Guidance – NLCPR11
- FOIA & EIR Guidance – NLCPR09 and NLCPR10

4. Freedom of Information Act

We have two main responsibilities under the Freedom of Information Act, as follows:

- Produce a Publication Scheme;
- Handle and respond to individual requests for information.

Under the Freedom of Information Act anyone can request access to the recorded general information we hold. This includes paper records, emails, information stored on computer, audio records, photographs, handwritten notes, or any other form of recorded information. A Code of Practice under section 45 of the Act sets out recommendations for the handling of these requests for information. To comply your request:

- Must be in writing;
- Must provide your real name and contact address/email;
- Must describe the information you are requesting;

Requesters also have the right to request the preferred format they would like information to be supplied in and where possible this is respected.

Any request that cannot be answered promptly as part of normal day to day business or where we are asked to handle it under Freedom of Information will be treated as a Freedom of Information request.

Information can be withheld if one or more of the exemptions shown in Appendix A applies. Requests for information can be refused for reasons including:

- The information is not held.
- Complying would exceed the 'appropriate limit' fee limit.
- The request is considered vexatious.
- The request is considered repeated.

5. Environmental Information Regulations

The Environmental Information Regulations provide a right of access to environmental recorded information and are similar to the Freedom of Information Act. The definition of environmental information is set out in Appendix D.

There is a Code of Practice in the Environmental Information Regulations that recommends good practice for the handling of requests for information and to comply your request:

- Can be verbal or in writing.
- Must provide your real name and contact address/email.

- Must describe the information you are requesting.

Requesters also have the right to request the preferred format they would like the information to be supplied in.

Any request that cannot be answered promptly as part of normal day to day business or where we are asked to handle it under the Environmental Information Regulations will be treated as an Environmental Information Regulation request.

Information can be withheld if one or more of the exceptions shown in Appendix B apply. Requests can be refused for reasons including:

- The information is not held.
- The request is considered manifestly unreasonable.
- The request is considered repeated.

6. Re-use of Information

You can ask to re-use information we have already made accessible. Requests should be made in writing as set out in Appendix F of this Policy and we aim to respond within 20 working days, as set out by the Re-use of Public Sector Information Regulations 2015 (RPSI). In the spirit of transparency information will be made available for re-use free of charge whenever possible. The Information Charging Policy provides further information on any charges that may apply.

7. Subject Access Requests for Personal Information

You have the right under the UK General Data Protection Regulations to request access to your personal information. This is known as making a Subject Access Requests or SAR.

The UK GDPR applies when personal data is:

- Processed wholly or partly by automated means; or
- Processed other than by automated means where the personal data forms part of, or is intended to form part of a filing system.

Personal information is defined by the UK GDPR as information relating to natural persons who:

- Can be identified or who are identifiable, directly from the information; or
- Who could be indirectly identified from that information if it were to be combined with other information.

Under the UK GDPR SAR requests for information:

- Can be verbal or in writing.
- Must provide your real name and address and proof of identification.
- Must clearly describe the information you are requesting.

Information can be withheld in response to a SAR if an exemption in the UK General Data Protection Regulation / Data Protection Act 2018 applies, including those shown in Appendix C. SAR requests are considered on a case-by-case basis and on occasion we may decide not to release information without a court order.

SAR requests can be refused for reasons including:

- The information is not held.
- The request is for someone else's personal information that you are not entitled to see.
- The request is for a child's information from someone with parental responsibility where the child is considered mature enough Gillick competency to make their own request and has not given consent for the requester to do so on their behalf.

Children's Requests:

Children have the right of access to their personal information, although for young children it is likely the individual with parental responsibility will make the request. Where we consider a child is mature enough to understand their rights we will usually respond to the child.

If a child is not considered mature enough generally an adult with parental responsibility can make the request on their behalf, but this is a case-by-case decision based on what is in the best interests of the child.

8. Subject Access Requests for Third Party Information

A third party can make a SAR on your behalf, but your permission would be required, or the third party must be someone permitted to act on your behalf, such as a solicitor, an advocate or a family member.

A request can be made by an individual who has Power of Attorney or Court of Protection of the data subject. A Best Interest Decision can be made in circumstances where the data subject does not have capacity and the personal representative is in the process of applying for Court of Protection.

A request can be made by a parent to obtain a child's records;

- Where the parent can evidence, they have parental responsibility.
- Where there are no concerns about the safety of the child.
- Where the child is under 12 years of age.
- Or where the young person is unable to understand the subject access process.

9. Accessing a Deceased Person's Records

There is no automatic right of access to personal information relating to a deceased person because the right of access under Data Protection legislation only applies to living individuals. Instead, other legal rules are considered that relate to protecting a deceased person's information, such as the common law duty of confidentiality to balance the continuing duty of confidentiality with the public interest in disclosure.

Requests for information relating to a deceased person will be considered under the Freedom of Information Act as Data Protection legislation only applies to a living person.

The council will only accept Information Requests relating to deceased people from individuals who can prove they are entitled to the information, such as a personal representative. We acknowledge a personal representative as someone who has legal authority to represent the deceased person. This will be someone who is named as an Executor in a Will or is appointed as an Administrator for a Will. We will require proof that you are a personal representative.

Requests for the records of a deceased person will be accepted as follows:

- The requestor is the personal representative.
- The requestor held Health and Welfare and/or Financial Affairs Power of Attorney for the deceased person when they were alive. Depending on which Power of Attorney was held will determine what information may be released.
- If none of the above applies, such as where this is no Will requests are considered on a case-by-case basis depending on the circumstances.

Requests for the records of a deceased person must contain;

- Details of the decease; name, date of birth, date of death / copy of death certification, last known address.
- Proof of identification of the requestor.
- Proof of how the requester is eligible to make the request.

- If there is more than one person potentially entitled to receive information, such as multiple personal representatives, the requestor may be asked to provide a signed letter of authority from any other personal representatives.

10. UK General Data Protection Regulation Schedule 2 Exemption

The Data Protection Act 2018 has exemptions under schedule 2, part 1, paragraph 2 and paragraph 5 that allow personal information to be released to a third party in certain circumstances.

Personal information may be released to third party under Schedule 2, Part 1(Paragraph 2) of the Data Protection Act 2018 for crime prevention, law enforcement or tax collection purposes. Examples of organisations that could make such a request are:

- Police
- HM Revenue and Customs (HMRC)
- Local Authorities

Schedule 2, Part 1(Paragraph 5) of the Data Protection Act 2018 allows personal information to be disclosed to a third party:

- Where disclosure is required by or under an enactment, by any rule of law or by the order of a court
- For the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings) or for the purpose of obtaining legal advice or establishing or exercising or defending legal rights.

Schedule 2 requests must:

- Be in writing.
- Provide the name and address of the requester.
- Clearly describe the information required including the name and address of the person whose personal information is being requested.
- Ideally state the format required.
- Explain how the information would assist the requester and the harm that would be likely to occur without the information.

Schedule 2 requests are considered on a case-by-case basis and on occasion we may decide not to release information without a court order.

11. Requests for CCTV Footage

Requests for CCTV footage of yourself should be made as set out in section 7.0 of this Policy as a Subject Access Request (SAR). Only images of the person requesting the information can generally be supplied unless other individuals who may be identified have consented to the disclosure. Other detail that would identify a third party will be concealed or erased.

CCTV footage considered necessary to investigate a crime or to prosecute an offender should be requested under Schedule 2, Part 1, Paragraph 2 of the Data Protection Act 2018.

CCTV footage considered necessary in connection with legal proceedings or where disclosure of the footage is required by law should be requested under Schedule 2, Part 1, Paragraph 5 of the Data Protection Act 2018.

Where the request is for CCTV footage a charge may be applied as set out in the Information Charging Policy.

12. Requests, Timeframes, Charging and Release of Information

Requests are recorded in a single register and assigned a unique identification reference number.

We aim to acknowledge requests within 5 working days and respond to Freedom of Information, Environmental Information Regulation and Re-use of Information requests within 20 working days, to UK GDPR SAR requests within one calendar month and to requests for the records of deceased people within 60 days. The timeframe starts on the next working day after an agreed request is received. This will include proof of identity where this is a requirement.

The timeframe for voluminous EIR requests can be extended to 40 working days and for UK GDPR SAR requests for a further two months where the request is considered complex or where several SAR requests are received from an individual. The timeframe for carrying out a complex Freedom of Information Public Interest Test (PIT) can also be extended to 40 working days.

If personal information is being requested two pieces of identification may be required as explained on the SAR form on the council's website. This will be proportionate to the information requested.

Details of any charges that apply can be found in our Information Charging Policy.

Any fees or identification will be promptly requested and if the request cannot be understood we will promptly seek clarification. All requests apart from SAR requests will be placed on hold whilst clarification is sought and closed after one month if clarification remains outstanding. SAR requests requiring clarification will be responded to by the response deadline to the best of our ability. All requests where a fee remains outstanding will be closed after 3 months.

13. Responses to Requests for Information

Information may be withheld if one or more of the exemptions shown in Appendix A, B or C apply.

If it is appropriate to release the information it will be collated, we will generally advise it is held and provide a copy in the preferred format, if this is reasonably practicable. Information will be redacted, if for example someone would be identified who should not be. A written explanation will be provided if some or all the requested information is being withheld. Occasionally where permitted we will refuse to confirm or deny if the information requested is held, where responding would in itself reveal information that should be withheld, and in these instances, we will provide no further detail.

Advice and assistance will be provided with responses about how to make an Information Complaint (request an Internal Review) and how to appeal to the ICO.

If the information being released is a dataset wherever possible it will be provided in a re-usable format. Datasets will from the point of release be made available via the Publication Scheme with regular updates unless this is not practical. Duties relating to datasets were added to the Freedom of Information Act by the Protection of Freedoms Act 2012.

A dataset is defined by the Information Commissioner (ICO) as:

‘A collection of factual information in electronic form to do with services and functions of the authority that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered’.

14. Publication Scheme

To comply with the Freedom of Information Act a Publication Scheme should be published. The Information Commissioner’s Office (ICO) produces a list of the information to include, and our scheme is based on this. We commit to:

1. Make the Publication Scheme and information publicly available;
2. Explain how information can be obtained and if there is a charge;

3. Publish any dataset released in a re-usable form;
4. Make any published datasets that are 'relevant copyright works' available for re-use under a licence. The licence may be chargeable but will if possible be the free Open Data Licence, and
5. Routinely review and update all published information, including dataset information, unless in the case of datasets it is not appropriate to do so.

The following categories of information are published:

1. Who we are and what we do;
2. What we spend and how we spend it;
3. What our priorities are and how we are doing;
4. How we make decisions;
5. Our policies and procedures;
6. Lists and registers (including datasets);
7. Services offered.

Information such as the following will not generally be published:

1. Information prevented from disclosure by law or by an exemption;
2. Information that is no longer readily available including that which has been archived or is difficult to access for similar reasons;
3. Information that is not held;
4. Information in draft form;
5. Where it would not be practical or would be too resource intensive to publish.

We also include Environmental Information in our Publication Scheme.

15. Open Data

The Local Government Transparency Code 2015 requires us to regularly publish certain Data Sets as Open Data.

This is defined by the Open Data Handbook as:

'Data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share alike'.

We publish data sets defined as Open Data on our website with the aim of:

- Making data that doesn't identify anyone Open Data so that it can be turned into useful applications;
- Supporting transparency and accountability;
- Making sharing between public sector partners more efficient.

The Data Sets we publish can be re-used in accordance with the Open Government Licence requirements. Appendix F provides further information about the re-use of information.

16. Other Requests for Information

Other Social Service related requests for information are also on occasion received, including the following:

- Requests from other Local Authorities;
- Requests from Child Exploitation and Online Protection (CEOP) Command;
- Requests from the Police in relation to concerns about children.

These are considered on a case-by-case basis.

17. INSPIRE Regulations

Spatial data is any data with a direct or indirect reference to a specific location or geographical area and is covered by the INSPIRE Regulations.

The INSPIRE Regulations apply to all public authorities covered by the Environmental Information Regulations, such as the council and place a legal obligation on these organisations to publish certain datasets.

The information must be published in line with standards and be registered on www.data.gov.uk in a certain way so the information is consistent and can be shared or combined to benefit the development and monitoring of environmental policy across Europe. The DEFRA Website <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs> and the Local Government Association a guide to INSPIRE compliance in Local Government provide further information.

Charges to be made in certain circumstances as set out in the UK Location Data Sharing Operational Guidance Part 2 – Licensing and Charging. Further information can be found in our Information Charging Policy.

18. Contact Details and the Route of Appeal

So that we understand exactly what information you are requesting requests should ideally be made by sending an email to the inforequest@northlincs.gov.uk as explained on the Information Governance area of the council's website and in Appendix G of this Policy.

Anyone dissatisfied with how their request for information or request to re-use information has been handled or with the council's Publication Scheme can make an Information Complaint, as set out in our Information Complaints Policy.

The Route of Appeal for anyone remaining dissatisfied after complaint investigation is to the Information Commissioner's Office (ICO) using the contact details in Appendix G.

Appendix A – Freedom of Information Exemptions

The Act has a series of exemptions that may allow information to be withheld, as follows:

- ‘Absolute’ exemptions – information will not be disclosed under any circumstances.
- ‘Qualified’ exemptions - a public interest test will be carried out and the information will only be withheld if the public interest in not disclosing is greater than the public interest in disclosing.
- Some of the ‘qualified’ exemptions are also subject to a prejudice test, which must be carried out before the information can be considered exempt. This test considers whether harm will or is likely to be caused if the information is released.

Absolute Exemptions

No	Exemption Description	Exemption Section	Other Information
01	Information accessible to the applicant by other means	Section 21	
02	Security Matters	Section 23	
03	Court Records	Section 32	
04	Parliamentary Privilege	Section 34	
05	Conduct of public affairs in relation to parliament	Section 36	
06	Communications with Her Majesty and awarding of honours	Section 37	
07	Personal Information of the requester	Section 40(1)	
08	Personal Information of a third party	Section 40(2)	
09	Information provided in confidence	Section 41	
10	Other legal prohibitions on disclosure	Section 44	

Qualified Exemptions

No	Exemption Description	Exemption Section	Other
01	Information intended for future	Section 22	
02	Research information	Section 22A	Prejudice based
03	National security	Section 24	Prejudice based
04	Defence	Section 26	Prejudice based
05	International relations	Section 27(1)	Prejudice based
06	International relations - relating to information obtained from another state	Section 27(2)	
07	Relations with the UK	Section 28	Prejudice based
08	The economy	Section 29	Prejudice based
09	Investigations and proceedings conducted by public authorities	Section 30	
10	Law enforcement	Section 31	Prejudice based
11	Audit functions	Section 33	Prejudice based
12	Formulation of government policy	Section 35	
13	The effective conduct of public affairs	Section 36	Prejudice based
14	Communications with Her Majesty – to the extent not absolute	Section 37	
15	Health and safety	Section 38	Prejudice based
16	Environmental information	Section 39	
17			
18	Legal professional privilege	Section 42	
19	Commercial interests – which apply to trade secrets	Section 43(1)	
20	Commercial interests	Section 43(2)	Prejudice based

Appendix B – Environmental Information Regulation Exceptions

The Regulations have a series of exceptions that may allow information to be withheld, as follows:

- ‘Absolute’ exemptions – there is one exception that falls into this category that applies to requests for personal information and it means that this information will not be disclosed under any circumstances.
- ‘Qualified’ exemptions - a public interest test will be carried out and the information will only be withheld if the public interest in not disclosing is greater than the public interest in disclosing.
- Information on emissions into the environment is subject to more limited exceptions than other environmental information.
- Under the Regulations there is an express presumption in favour of disclosure meaning that information should be made available unless there is a very strong reason for it not to be.

No	Exemption Description	Exemption Regulation	Other Information
01	Personal information - Applies where the personal information of a third party is requested.	Regulation 12(3) and Regulation 13	
02	Information not held	Regulation 12(4)(a)	
03	Request is manifestly unreasonable	Regulation 12(4)(b)	
04	Request is too general	Regulation 12(4)(c)	
05	Request is for unfinished documents	Regulation 12(4)(d)	
06	Request involves the disclosure of internal communications	Regulation 12(4)(e)	
07	Disclosure would affect international relations, defence, national security or public safety	Regulation 12(5)(a)	Adversely affect
08	Disclosure would affect the course of justice, the ability of a person to receive a fair trial or ability of a public authority to conduct or criminal or disciplinary enquiry	Regulation 12(5)(b)	Adversely affect
09	Disclosure would affect intellectual property rights	Regulation 12(5)(c)	Adversely affect
10	Disclosure would affect the confidentiality of the proceedings of a public authority where such confidentiality is protected by law	Regulation 12(5)(d)	Adversely affect
11	The interests of the supplier of the information would be affected, such as where the provider of the information did so voluntarily and was not under (and could not have been put under) a legal obligation to supply the information and also did not give consent to its disclosure	Regulation 12(5)(e)	Adversely affect
12	The interests of the person who provided the information would be affected.	Regulation 12(5)(f)	Adversely affect
13	Disclosure would affect the protection of the environment to which the information relates.	Regulation(5)(g)	Adversely affect
14	Information relating to emissions is treated differently with the regulations stressing transparency and openness. They provide a greater right of access to information about emissions and Regulation 12(9) removes the right to rely on certain exceptions if someone requests information on emissions.		

Appendix C – UK GDPR and Data Protection Act 2018 Exemptions

Whether or not we can rely on an exemption generally depends on why we are processing the personal data. Some exemptions apply because of the reason for processing, but others only apply to the extent that complying with the UK GDPR would:

- Be likely to harm or have a detrimental effect on the processing, or
- Prevent or seriously impair us from processing personal data in a way that is required or necessary for the purpose.

There are exemptions listed in Schedules 2-4 of the Data Protection Act 2018. These add to and complement a number of exceptions already built into certain parts of the UK GDPR.

In addition, some things are not listed here as exemptions, although in practice they work like an exemption. For example:

- Personal or household activities – personal data processed in the course of a purely personal or household activity, with no connection to a professional or commercial activity, is outside the UK GDPR's scope.
- Law enforcement – the processing of personal data by competent authorities for law enforcement purposes is outside the UK GDPR's scope (e.g., the Police investigating a crime). Instead, this type of processing is subject to the rules in Part 3 of the Data Protection Act 2018.
- National security – personal data processed for the purposes of safeguarding national security or defence is outside the UK GDPR's scope. However, it is covered by Part 2, Chapter 3 of the Data Protection Act 2018 (the 'applied UK GDPR'), which contains an exemption for national security and defence.

Below are the exemptions found in Schedules 2-4 of the Data Protection Act 2018:

Crime, law and public protection

- Crime and taxation: general (DPA 2018 Schedule 2, Part 1, Para 2)
- Crime and taxation: risk assessment (DPA 2018 Schedule 2, Part 1, Para 3)
- Information required to be disclosed by law or in connection with legal proceedings (DPA 2018 Schedule 2, Part 1, Para 5)
- Legal professional privilege (DPA 2018, Schedule 2, Part 4, Para 19)
- Self incrimination (DPA 2018, Schedule 2, Part 4, Para 20)
- Disclosure prohibited or restricted by an enactment (DPA 2018, Schedule 4)
- Immigration (DPA 2018, Schedule 2, Part 1, Para 4)
- Functions designed to protect the public (DPA 2018, Schedule 2, Part 1, Para 7)
- Audit functions (DPA 2018, Schedule 2, Part 1, Para 8)
- Bank of England functions (DPA 2018, Schedule 2, Part 1, Para 9)

Regulation, parliament and the judiciary

- Regulatory functions relating to legal services, the health service & children's services (DPA 2018, Schedule 2, Part 2, Para 10)
- Other regulatory functions (DPA 2018, Schedule 2, Part 2, Para 11-12)

- Parliamentary privilege (DPA 2018, Schedule 2, Part 2, Para 13)
- Judicial appointments, independence and proceedings (DPA 2018, Schedule 2, Part 2, Para 14)
- Crown honours, dignities and appointments (DPA 2018, Schedule 2, Part 2, Para 15)

Journalism, research and archiving

- Journalism, academia, art and literature (DPA 2018, Schedule 2, Part 5, Para 26)
- Research and statistics (DPA 2018, Schedule 2, Part 6, Para 27)
- Archiving in the public interest (DPA 2018, Schedule 2, Part 6, Para 28 and Section 19)

Health, social work, education and child abuse

- Health data – processed by a court (DPA 2018, Schedule 3, Part 2, Para 3)
- Health data – an individual's expectations and wishes (DPA 2018, Schedule 3, Part 2, Para 4)
- Health data – serious harm (DPA 2018, Schedule 3, Part 2, Para 5)
- Health data – restriction of the right of access (DPA 2018, Schedule 3, Part 2, Para 6)
- Social work data – processed by a court (DPA 2018, Schedule 3, Part 3, Para 9)
- Social work data – an individual's expectations and wishes (DPA 2018, Schedule 3, Part 3, Para 10)
- Social work data – serious harm (DPA 2018, Schedule 3, Part 3, Para 11)
- Social work data – restriction of the right of access (DPA 2018, Schedule 3, Part 3, Para 12)
- Education data – processed by a court (DPA 2018, Schedule 3, Part 4, Para 18)
- Education data – serious harm (DPA 2018, Schedule 3, Part 4, Para 19)
- Education data – restriction of the right of access (DPA 2018, Schedule 3, Part 4, Para 20)
- Child abuse data (DPA 2018, Schedule 3, Part 5)

Finance, management and negotiations

- Corporate finance (DPA 2018, Schedule 2, Part 4, Para 21)
- Management forecasts (DPA 2018, Schedule 2, Part 4, Para 22)
- Negotiations (DPA 2018, Schedule 2, Part 4, Para 23)

References and exams

- Confidential references (DPA 2018, Schedule 2, Part 4, Para 24)
- Exam scripts and exam marks (DPA 2018, Schedule 2, Part 4, Para 25)

Subject access requests – information about other people

- Protection of the rights of others (DPA 2018, Schedule 2, Part 3, Para 16 and Para 17)

Special Cases

There are special rules and provisions about SARs and some categories of personal data, including unstructured manual records. In general, the UK GDPR does not cover non-automated information, which is not, or not intended to be, part of a 'filing system'. However, under Article 2(1A) of the UK GDPR, unstructured manual information that public authorities process constitutes personal data. This includes paper records that public authorities do not hold as part

of a filing system. Therefore, public authorities may have to search such information to comply with a SAR, but are not obliged to do so if:

- The request does not contain a description of the unstructured data; or
- They estimate that the cost of complying with the request would exceed the appropriate maximum of £450 for public authorities.

When estimating the cost only the cost of the following activities can be taken into account:

- Determining whether the information is held;
- Finding the requested information or records;
- Retrieving the information or records containing the information; and
- Extracting the requested information from records.

Staff time is rated at £25 per person per hour, regardless of who does the work, including external contractors, meaning the limit is 18 staff hours working to the limit of £450.

Appendix D – Records for Deceased Person’s Exemptions

Exemptions and relevant legislation which are taken into consideration for requests that relate to deceased people:

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 Freedom of Information Act (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 most of the 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 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 most cases the information being requested from the council will be special category personal information, 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 a duty of confidence will continue to apply 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 it 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 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.

Other relevant legislation to be taken into consideration;

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 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 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.

Appendix E – Environmental Information Definition

- a) The state of the elements of the environment – e.g. air, atmosphere, water, soil, land, landscape and natural sites such as wetlands, coastal and marine areas, biological diversity and the interaction of these elements;
- b) Factors affecting (or likely to affect) the environment – including energy, noise, radiation, waste, emissions, discharges and other releases into the environment.
- c) Measures – such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to above;
- d) Reports – on the implementation of environmental legislation;
- e) Economic analyses – including cost benefit and other economic analyses and assumptions used within the framework of measures and activities referred to in (c);
- f) The state of human health and safety – including the contamination of the food chain, conditions of human life, cultural sites and built structures insofar as they are or may be affected by the state of the elements of the environment referred to in (a) or through those elements by any of the matters referred to in (b) or (c).

Appendix F – Re-use of Information

We comply with the Re-use of Public Sector Information Regulations (RPSI) and encourage your re-use of our information. Our approach is to be open and transparent and to treat all applications to re-use in a fair and non-discriminatory way.

The RPSI apply to Public Sector information produced as part of the 'Public Task', which means our core role and functions, as defined in legislation or established through custom and practice. 'Reuse' means the use by a person (or company) of a document or information held by the council for a purpose other than the initial Public Task purpose for which it was produced.

Please note, that although the Freedom of Information Act and Environmental Information Regulations give you a right of access to recorded information, but they do not provide you with the right to re-use the information which is disclosed to you. RPSI also does not apply to information that would be exempt from disclosure under access to information legislation, unless the exemption is section 21 where the information is already reasonably accessible to the requester. RPSI does not apply where the council does not hold the intellectual property rights.

To re-use North Lincolnshire Council's information you may need to contact us to request a licence.

Personal Use of Information

You are free to use the material on the council's website, or the content from any council publication for your own purposes, including any non-commercial research, private study, reviews or news reporting.

Reusing Information under the Open Government Licence (OGL)

Information that is published under the 'Open Data and Transparency' agenda on our website is immediately available for you to use under version 3 of the Open Government Licence. No registration is necessary.

Further information about what the Open Government Licence allows and does not allow you to do is available from the National Archives website.

Our Information Asset List that is part of our Publication Scheme identifies the council's data sets. When you use information under the Open Government Licence, you should include the following attribution: [Open data, North Lincolnshire Council], licensed under the Open Government Licence.

Applying for a Licence to Re-use Information

To re-use information for a commercial purpose, not covered by the Open Government Licence you will need to contact the council to apply for a licence to re-use the information. We use the UK Government Licensing Framework (UKGLF) and further information is available from the National Archives website.

To apply to re-use information you can complete the Re-use Application Form shown as Appendix I or make an application in writing, by email or letter to the Information Governance Function stating:

- Your name and contact details;
- A full description of the material you wish to re-use (including the web address of the material if appropriate); and
- A short description of your intended re-use of the material (including the website address you plan to publish the information on if appropriate).

You should receive a reply within twenty working days confirming your licence or telling you if there is a problem (for example, we might not own the copyright on some of the information).

Further information about the Reuse of Public Sector Information Regulations and how applications are dealt with including rights of appeal can be found on the Information Commissioner's website.

Appendix G – Contact Details

North Lincolnshire Council Contact Details

Website – [North Lincolnshire Council](http://www.northlincolnshire.gov.uk)

Email - inforequest@northlincs.gov.uk

Telephone - 01724 296224

In Person - By contacting one of our Information, Advice and Guidance Centres.

North Lincolnshire Council Customer Service Centres

Ashby & District - Ashby High Street, Scunthorpe, DN16 2RY

Barton – Baysgarth Leisure Centre, Brigg Road, Barton-upon-Humber, DN18 5DT

Brigg and District - The Angel, Market Place, Brigg, DN20 8LD

Crowle & North Axholme – Crowle Library, 52-54 High Street, Crowle, DN17 4LB

Epworth & South Axholme - Epworth Library, Chapel Street, Epworth, DN9 1HQ

Scunthorpe Central - Scunthorpe Central, Carlton Street, Scunthorpe, DN15 6TX

Winterton & District - Winterton Library, 54 West Street, Winterton, DN15 9QF

How to contact the Information Commissioner

Website - <https://ico.org.uk/global/contact-us/> or
<https://ico.org.uk/make-a-complaint/>

Telephone - 0303 123 1113

Address: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF