

# Subject access requests in respect of a deceased person's files

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Note: If printed, this document is for immediate reference only. Do not file it, as it will go out-of-date over time and be replaced by newer versions on-line. Always refer to the latest CMS version.

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**Individuals are entitled to make subject access requests for their personal information in accordance with the General Data Protect Regulations and Data Protection Act 2018.**

However, when a request is received from a relative in respect of a deceased person's files, then that request is to be treated as a request under the Freedom of Information Act 2000 ('FOI'), whether or not the request refers to the FOI, the reason being that the information requested does not relate to a living individual. Under the FOI provisions, the request is to be complied with within 20 working days of receiving the request and forwarded to the team for logging and handling. **Do not respond directly to the requester** but always work through the FOI team.

The presumption is that if the relative can satisfy the Council that they either are the personal representative of the deceased or have the consent of the personal representative of the deceased then they are entitled to such copy documentation as the deceased would have been entitled to in their lifetime under the Data Protection Act 2018 subject access provisions.

There are three potential categories of personal representative:

- (i) an executor appointed in a will – proof of being an executor being an office copy of the Grant of Probate which the executor will obtain from the Registry of Births, Marriages and Deaths
- (ii) an administrator appointed under the rules which apply on intestacy where the deceased died without leaving a valid will – proof of being an administrator being an office copy of the Grant of Letters of Administration which the administrator will obtain from the Registry of Births, Marriages and Deaths
- (iii) an administrator where the deceased left a will appointing an executor but where the executor predeceased the adult or is unwilling to act – proof of being an administrator being an office copy of the Grant of Letters of Administration with Will Annexed which the administrator will obtain from the Registry of Births, Marriages and Deaths

If the relative is a personal representative, they need to provide an office copy of one of the documents referred to above at (i) to (iii). If they say they have the consent of the personal representative, the personal representative needs to provide the office copy and their written consent to the disclosure.

If the relative is neither a personal representative nor has the consent of the personal representative, then they are not entitled to the copy documentation as a result of the exemption under s41 FOI.

Where there is more than one person administering the will, the information goes to both parties or is agreed with them as to which one should receive it. Where there is more than one will, and the will is being contested, seek legal advice.