



Scottish Information
Commissioner

**Decision 193/2007 Mr Michael Peterson and
Shetland NHS Board**

*Request for information held by NHS Shetland Board in relation to
the death of the applicant's mother*

**Applicant: Michael Peterson
Authority: Shetland NHS Board
Case Nos: 200601913 and 200700493
Decision Date: 23 October 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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Decision 193/2007 Mr Michael Peterson and Shetland NHS Board

Request for all information held by NHS Shetland Board in relation to the death of the applicant's mother, including statements made by nurses and physicians to the NHS Scotland Central Legal Office – Commissioner found information to be exempt from disclosure

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2(1) (Effect of exemptions); 3(2)(b) (Scottish public authorities); 25(1) (Information otherwise accessible); 36(1) (Confidentiality); 38(1)(b) and (d), (2)(a)(i) and (b) (Personal information)

Data Protection Act 1998 (DPA): sections 1 (Basic interpretive provisions) (definition of "personal data"); Schedule 1, Part 1 paragraph 1 (The first data protection principle)

Access to Health Records Act 1990: sections 1(1) ("Health record" and related expressions) and 3(1)(f) (Right of access to health records)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Michael Peterson (Mr Peterson) requested copies of all information relating to the death of his mother held by NHS Shetland Board (the Board). The Board responded by disclosing some information to Mr Peterson but withheld other information exchanged between itself and its legal advisors along with statements made by nurses and physicians to its legal advisors under section 36(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr Peterson remained dissatisfied following an internal review and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the information withheld from Mr Peterson was exempt from disclosure under FOISA.



Background

1. A Fatal Accident Inquiry (FAI) into the circumstances of the death of Mr Peterson's mother was held on 10 July 2006.

First request made by Mr Peterson

2. On 23 August 2006, Mr Peterson wrote to the Board requesting all data held or generated by the Board, NHS Scotland and other agencies relating to his mother's case.
3. On 22 September 2006, the Board wrote to Mr Peterson in response to his request for information. The Board released some information to Mr Peterson, but informed him that it could not provide him with information which was held by other bodies. The Board also informed Mr Peterson that it was withholding correspondence exchanged between itself and its legal representatives in terms of section 36(1) of FOISA.
4. On 26 October 2006, Mr Peterson wrote to the Board requesting a review of its decision. In particular, he drew the Board's attention to the potential public interest in the release of the withheld correspondence. Mr Peterson also acknowledged that the Board could not provide him with information held by other bodies.
5. On 28 November 2006, the Board wrote to notify Mr Peterson of the outcome of its review. The Board upheld its original decision to withhold the correspondence with its legal advisors in terms of section 36(1) of FOISA.
6. On 8 December 2006, Mr Peterson wrote to my Office, stating that he was dissatisfied with the outcome of the Board's review and applying to me for a decision in terms of section 47(1) of FOISA.

Second request made by Mr Peterson

7. On 24 January 2007, Mr Peterson wrote to the Board and asked for additional data in relation to his first request. Specifically Mr Peterson requested:
 - a) details of notes made by a named nurse at a training course
 - b) details of notes made at the FAI by a named observer
 - c) copies of emails exchanged between Board staff
 - d) copies of statements made by named nurses and physicians referred to in a report produced during the FAI



8. On 19 February 2007, the Board responded to Mr Peterson and provided the following answers to his queries:
 - a) the named nurse did not attend the training course and therefore did not make any notes.
 - b) the named observer did not make any notes at the FAI.
 - c) only one email was sent (which he already has a copy of) as the named member of staff spoke directly with the other Board staff members and so no further emails were generated.
 - d) the report mentioned at the FAI (including the statements made by named nurses and physicians within it) was prepared at the request of the Board's legal advisors and therefore the report and the statements are not held by the Board but are held by NHS Scotland's Central Legal Office (CLO).
9. On 22 February 2007, Mr Peterson wrote to the Board requesting a review of its decision. In particular, and in relation to request a) Mr Peterson requested a copy of the course notes provided by the trainer at the course the nurse was unable to attend. Additionally, in relation to request d) Mr Peterson asked that the Board review its decision not to disclose the statements to him, particularly the ones made by a named nurse.
10. On 15 March 2007, the Board wrote to Mr Peterson and provided him with copies of the trainers' notes he sought in request a). In relation to his outstanding query in request d) the Board advised Mr Peterson that it did not hold copies of the statements he requested as the sought documents were held by the CLO and not the Board.
11. Mr Peterson was dissatisfied with the outcome of the review and made a further application to me on 20 March 2007 in respect of his second information request.
12. An investigating officer was allocated to both cases, and Mr Peterson's applications were validated by establishing that he had requested information from a Scottish public authority, and had applied to me only after requesting the authority to review its response to his requests.



The Investigation

13. Regarding Mr Peterson's first request, a letter was sent to the Board on 2 February 2007, informing it that an application had been received from Mr Peterson and that an investigation into the matter had begun. The Board's comments were sought in terms of section 49(3)(a) of FOISA. The Board was also asked to supply my Office with copies of the information that it withheld from Mr Peterson.
14. The Board responded to this letter on 16 February 2007 and provided me with a schedule of documents it had identified as falling within the scope of Mr Peterson's request.
15. Regarding Mr Peterson's second request, a similar letter was sent to the Board on 18 April 2007, informing it that an application had been received from Mr Peterson and that an investigation into the matter had begun. The Board's comments were again sought in terms of section 49(3)(a) of FOISA.
16. On 2 May 2007, the Board responded to this letter and provided my Office with a schedule of documents that was almost identical to the schedule it had previously submitted (on 16 February 2007).
17. The investigating officer contacted the Board on 10 May 2007 and asked further questions about the information it held in relation to Mr Paterson's request.
18. In this letter, the Board was referred to The Law Society of Scotland's *Guidelines on the ownership and destruction of files 2001 (amended 2003 and 2006)* which states that material ordinarily owned by the client includes "*Documents produced by the client or produced by the solicitor for the client*". In light of this, the Board was asked to supply my Office with copies of the statements taken by the CLO in relation to the death of Mr Peterson's mother. The Board was also asked to provide copies of any other documents produced by the CLO on behalf of NHS Shetland Board in relation to the death of Mr Peterson's mother, and which it had not previously supplied to my Office. In addition, the Board was asked for details of its decision to apply the exemption in section 36(1) in relation to the information requested by Mr Peterson.
19. The Board responded to this letter on 24 May 2007. In this letter, it provided a schedule of documents which identified 19 items that were held by the CLO and which it also wished to withhold in terms of section 36(1) of FOISA.



20. The investigating officer also sent a letter to the Board on 12 September 2007, in which the Board was asked questions about the specific documents it was withholding in terms of section 36(1) of FOISA.
21. The Board responded to this letter on 27 September 2007 and advised the investigating officer that it wished to retract the application of section 36(1) to nine of the withheld items, as it now considered these documents to be exempt in terms of section 25 of FOISA. The Board also submitted arguments supporting the application of section 25 to these items and provided comments in relation to the exemption contained in section 38(1)(d) of FOISA. I will therefore consider the following documents under the following exemptions:

Section 25(1) – documents 7a, 13a, 14a, 18a, 19a, 36, 37, 38, 41

Section 36(1) – documents 1, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17a, 18, 19, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39, 40

Section 38 – documents 2, 3 and 6

Submissions from the Board

22. In its responses, the Board explained that it had withheld some documents which consisted of correspondence between itself and its legal advisors. The Board argued that the information was confidential, in terms of section 36(1) of FOISA, and is therefore not required to be disclosed unless this would be in the public interest. The Board asserted that it is in the public interest to uphold the legal privilege between client and solicitor, and that subsequently the information should not be disclosed.
23. The Board also advised my Office that it had not provided Mr Peterson with copies of the statements made by physicians and nurses to the CLO in relation to his mother's death, as it believed that it did not hold copies of the documents he sought. The Board explained that the documents were created and held by the CLO and therefore it had considered them to be outwith the scope of Mr Peterson's request. However, the Board argued that even if it did hold copies of the requested statements it would have withheld them in terms of section 36(1) of FOISA, on the basis that solicitor / client correspondence should be considered privileged.



24. The Board maintained that the statements themselves are draft documents which have not been signed by the personnel that were interviewed. The Board explained that the statements were taken close to the time of the FAI, and as a result none of the interviewed personnel had the opportunity to revise or approve the statements. The Board argued that if these draft statements entered the public domain it might influence the willingness of personnel to make statements to solicitors in future if they are aware that early un-signed drafts might be disclosed under FOISA.
25. As noted above, the Board submitted that it considered nine of the documents it had previously withheld in terms of section 36(1) to be exempt in terms of section 25. The Board argued that all of these nine documents were either authored by Mr Peterson himself, or were made available to Mr Peterson through the FAI, and as a result they constituted information that was otherwise available to Mr Peterson.

Submissions from Mr Peterson

26. Mr Peterson submitted that it is in the public interest for the withheld documents to be disclosed. Mr Peterson stated that he requires the withheld information in order to obtain a full account of the events surrounding his late mother's treatment. He asserted that during the FAI into the death of his mother, the Board (with the support of the CLO) put forward a series of arguments which was inconsistent with the material record of his mother's death. Mr Peterson also argued that disclosure of the documents will give his family the evidence they need to campaign for better health care for elderly patients in Shetland and to seek improvements in the Board's systems for recording information.

The Commissioner's Analysis and Findings

27. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Peterson and the Board and I am satisfied that no matter of relevance has been overlooked.

Withheld Information

28. The information withheld from Mr Peterson consists of correspondence exchanged between the CLO and the Board in relation to his mother's case. In addition, the Board has also withheld the statements of nurses and physicians taken by the CLO as preparation for the FAI into Mr Peterson's mother's death as well as a number of other documents.



29. In relation to the withheld statements, I have taken guidance from the Law Society of Scotland (referred to above) into account in determining that these statements are, for the purposes of FOISA, held by the CLO on behalf of the Board in terms of section 3(2)(b) of FOISA.
30. In its submissions to my Office on 24 May 2007, the Board identified a further 19 items that were held by the CLO, and which it also wished to withhold from Mr Peterson under section 36(1). For the purpose of this Decision Notice, these items will be renumbered 24 to 43. (Where a numbered document includes an attachment (e.g. an email with a word document attached) the attachment is differentiated by an 'a'. For example, the attachment to item 7 will be referred to as 7a.)
31. In its letter of 27 September 2007, the Board advised the investigating officer that it wished to retract the application of 36(1) to items 7a, 13a, 14a, 18a, 19a, 36, 37, 38 and 41 as it now considered these documents to be exempt in terms of section 25 of FOISA.

Information outwith the scope of Mr Peterson's request

32. I have considered the content of each document withheld by the Board, and I have found that items 20, 21, 22, 23, 24, 25 and 42 are outwith the scope of Mr Peterson's request and I will not consider them in this Decision Notice. The documents are not related to the death of Mr Peterson's mother, but instead consist of discussions and correspondence in relation to the Board's processing of Mr Peterson's freedom of information request, including correspondence with my Office.

Application of the exemption 25(1)

33. Section 25(1) of FOISA provides that information is exempt information where an applicant can reasonably obtain it other than by making a request under section 1(1) of FOISA. The Board has relied upon this exemption when withholding items 7a, 13a, 14a, 18a, 19a, 36, 37, 38 and 41. This is an absolute exemption and as such is not subject to the public interest test in section 2(1)(b) of FOISA.
34. The Board has asserted that items 7a, 14a, 19a, 36, 37, 38 and 41 are documents that were lodged with the Court at the FAI, and that as Mr Peterson attended the Court he would have obtained copies of these items at the time. I have considered these documents and am satisfied that they contain information which he can reasonably obtain other than by requesting it under section 1(1) of FOISA. Consequently, I conclude that items 7a, 14a, 19a, 36, 37, 38 and 41 are exempt from disclosure in terms of section 25(1) of FOISA.



35. The Board has indicated that items 13a and 18a consist of submissions received from Mr Peterson himself, and that subsequently these items are exempt from disclosure in terms of section 25(1). I have examined these two documents and it is clear to me that they are, indeed, submissions from Mr Peterson and consequently I uphold the Board's application of section 25(1) in relation to both documents.
36. As noted above, the exemption in section 25(1) is not subject to the public interest contained in section 2(1)(b).

Application of the exemption in section 36(1)

37. Section 36(1) of FOISA states that information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.
38. One type of communication covered by this exemption is communications between legal adviser and client. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled. For example, the information being withheld must relate to communications with a legal adviser. The legal adviser must be acting in a professional capacity and the communications must occur in the context of a professional relationship with the client.
39. In this case, the Board sought legal advice from the CLO in relation to the FAI into the circumstances surrounding the death of Mr Peterson's mother. The advice was communicated in a series of letters, emails and notes exchanged between the CLO and the Board, and this forms part of the information which the Board withheld in terms of section 36(1) of FOISA.
40. In addition, as preparation for the FAI, the CLO, on behalf of the Board, took statements from physicians and nurses employed by the Board. These statements were held by the CLO and form the remainder of the information that the Board withheld in terms of section 36(1) of FOISA.
41. I note that items 2 and 3 consist of handwritten notes that were made by a member of the Board's staff. The Board has confirmed that these notes were not communicated to the CLO. I also note that item 6, also withheld under 36(1), consists of an internal email exchange between members of the Board's staff. I have considered all of the documents withheld under section 36(1) by the Board, and I have concluded that items 2, 3 and 6 do not constitute legal advice and do not attract legal professional privilege. However, other exemptions do apply to these three items and they will be discussed later in the decision.



42. Mr Peterson has argued that as the withheld statements from named physicians and nurses were referred to in a production lodged at the FAI they now constitute public documents and should be disclosed. Mr Peterson stated that one of the statements (that of a named nurse) was actually quoted in the production lodged at the FAI and so it cannot be considered privileged and should be released. I have considered the report which makes reference to the statements and which paraphrases a sentence from the named nurse statement and, in this case, I am not satisfied that this is sufficient to waive the privilege attached to the statement. I am satisfied that the statements fall under the exemption contained in section 36(1) of FOISA.
43. In relation to the correspondence between the Board and the CLO, I have examined the content of each item and it is clear to me, that in each case where 36(1) has been applied, the correspondence constitutes communication between a client and their legal advisor, is legally privileged and is therefore also exempt from disclosure in terms of section 36(1) of FOISA.
44. Section 36(1) is a qualified exemption in that it is subject to the public interest test contained in section 2(1)(b) of FOISA. Therefore, even where an authority considers the information to be exempt it must still go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

The public interest test

45. As I have noted in previous decision notices (such as decision 033/2006, Mrs O'Donnell and East Dunbartonshire Council), the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds. Many of the arguments in favour of maintaining confidentiality of communications were discussed in a House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England* (2004) UKHL 48.
46. As the above case law attests, there is a strong public interest in maintaining the right to confidentiality of communications between legal adviser and client. Consequently, whilst I will consider each case individually, I am likely only to order the release of such communications in highly compelling cases.



47. I have considered carefully the public interest arguments presented by the Board. I accept that there are very strong arguments supporting the view that it is in the public interest to uphold the legal privilege exhibited by the client/solicitor relationship. I am of the view that it is in the public interest that an authority can communicate its position to its advisers fully and frankly in confidence, in order to obtain the most comprehensive legal advice to defend its position adequately should that become necessary. It is also my opinion that it is in the public interest that a public authority can receive the most comprehensive legal advice about its proposed actions. I accept that in general it will not be in the public interest to take any action which would undermine the willingness of personnel to make statements to solicitors in future.
48. However, there are also strong public interest arguments which would support the case for disclosure of the information. The public interest arguments in favour of disclosing these documents include whether disclosure would contribute to ensuring that any public authority with regulatory responsibilities is adequately discharging its functions. Mr Peterson has asserted that disclosure of the sought information will allow the public to determine any failures of the Board in fulfilling its remit to provide adequate healthcare for elderly patients, and will also reveal any inadequacies about its existing procedures for recording and communicating information about its patients.
49. In weighing up the competing public interests in this case it seems to me that, on the one hand, I must consider the effects of disclosing information which comprises confidential communications between a legal advisor and their client and, on the other hand, I must consider whether disclosure would shed any further light on the circumstances surrounding the death of Mr Peterson's mother.
50. In considering the latter point, I have taken into account the fact that a FAI has already been held into the circumstances surrounding the death of Mr Peterson's mother. I have also come to the conclusion that disclosure would achieve little in terms of shedding further light on the circumstances surrounding the death of his mother. I appreciate that Mr Peterson would certainly prefer to receive the information in order to satisfy himself on that point; however, I have decided that, on balance, the overall public interest in this case lies in upholding the use of the exemption in section 36(1) and so preserving the principle of confidentiality between client and solicitor, particularly given that the release of information under FOISA would not simply entail a disclosure to Mr Peterson. It would entail the information being put into the public domain.
51. In all the circumstances, I am satisfied that the public interest in allowing the Board to receive legal advice and clarify such matters in a process of free and frank exchanges, without fear of subsequent disclosure, outweighs that in disclosure in this case.



52. I am satisfied therefore, that the Board acted in accordance with FOISA in withholding all of the documents (except items 2, 3 and 6) in terms of section 36(1).

Application of the exemption in section 38(1)(d)

53. Section 38(1)(d) states that information is exempt information if it constitutes a deceased person's health record. It should be noted that section 38(1)(d) is an absolute exemption and, as such, if engaged, is not subject to the public interest test contained in section 2(1)(b) of FOISA.
54. I have considered the contents of items 2 and 3 and it is my opinion that they fall under the exemption provided by section 38(1)(d) of FOISA.
55. Although information which constitutes a deceased person's health record is absolutely exempt under FOISA, there is a separate, albeit limited, right to access such information under section 3 of the Access to Health Records Act 1990 (the 1990 Act). The term "health record" is defined in section 1(1) of the 1990 Act as a record consisting of information relating to the physical or mental health of an individual who can be identified from that information, or from that and other information in the possession of the holder of the record and which has been made by or on behalf of a health professional in connection with the care of that individual.
56. The Board has confirmed that items 2 and 3 contain material from the health record of Mr Peterson's mother. The Board has also submitted that Mr Peterson has already had access to his mother's health record as he is the personal representative of the deceased, being her son and recorded next of kin while she was alive. I note that when applying the exemption contained within section 38(1)(d), it is of no relevance whether the applicant already has access to the said material, the crucial factor is whether the information does, in fact, constitute the health record of a deceased person. I have carefully considered the content of items 2 and 3 and it is clear to me that both items do contain material from Mr Peterson's mother's health record and, consequently, I find that the exemption in 38(1)(d) applies to both documents.

Application of the exemption in section 38(1)(b)

57. This, therefore, leaves one final document, item 6, to be considered. The Board argued that it was exempt under section 36, but, for the reasons set out above, I do not agree that this is the case.
58. Item 6 is an internal email exchange between two members of the Board's staff on the subject of the name, address and mobile phone numbers of two health professionals who were, at the time the email was sent, no longer employed by the Board.



59. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (b), exempts information if it constitutes personal data, the disclosure of which to a member of the public otherwise than under FOISA would contravene any of the data protection principles in Schedule 1 of the DPA. Section 38(1)(b), read with section 38(2)(a)(i) or (b) confers an absolute exemption. Therefore, where a public authority considers that information falls within the scope of this exemption it is not required to consider whether the public interest lies in disclosure of the information or in the maintenance of the exemption. In this case, I will consider the application of section 38(1)(b) to item 6.

Does the information constitute personal data?

60. When considering the exemption in section 38(1)(b), I must first consider whether the information concerned is personal data. "Personal data" is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in Appendix 1).
61. Item 6 is an internal email exchange between two members of the Board's staff which includes the name, address and mobile phone numbers of two health professionals who are no longer employed by the Board.
62. In all the circumstances of this particular case, I am satisfied that the name, address and mobile telephone number of an individual, constitutes that individual's personal data.

Would disclosure breach the first data protection principle?

63. I must now go on to consider whether disclosure of the personal data falling under the scope of Mr Peterson's request would breach the first data protection principle.
64. The first data protection principle states that personal data must be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met. (I have considered the definition of "sensitive personal data" in section 2 of the DPA and do not consider that the information sought by Mr Peterson falls into this category.)



65. According to guidance from the Information Commissioner, who is responsible for overseeing and regulating the DPA, ("Freedom of Information Awareness Guidance 1", which can be viewed at http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance%201%20personal_information_v2.pdf), the assessment of fairness includes looking at whether the third party would expect that his/her information might be disclosed to others and/or whether the third party would expect that his/her information would be kept private.
66. It is my view that an individual who leaves the employment of an organisation has an expectation that their personal contact details would remain confidential and would not be disclosed to the wider public. It is clear to me, that should this information be released it would breach the first data protection principle as it would be unfair to living individuals from whom the information had been obtained, and would also be in breach of the requirements of the DPA to give notice of the purposes for which the information will be put.
67. I have considered the nature of the information within item 6 and I accept that, for the reasons set out above, that it is reasonable to conclude that an individual would have the expectation that information consisting of their name, address and mobile phone number would not be publicly disclosed.
68. I have also considered whether disclosure would be unfair and I am satisfied that in all the circumstances of the case, disclosure of the information would be unfair and therefore in breach of the first data protection principle.
69. As I have found that disclosure of item 6 would be unfair I am not required to go on to consider whether any of the conditions in Schedule 2 can be met or whether the release of the information would be lawful.

Decision

I find that NHS Shetland Board generally acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Mr Peterson's information request. In particular, I have found that the Board was correct to withhold much of the information he requested in terms of section 36(1) and section 25(1) of FOISA. Where I did not uphold the Board's application of 36(1), I have found the documents to be exempt in terms of section 38(1)(b) or (d).

I therefore find that NHS Shetland Board was entitled to withhold the information falling within the scope of his request from Mr Peterson.



Appeal

Should either Mr Peterson or NHS Shetland Board wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
23 October 2007



Appendix 1

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

2 Effect of exemptions

- (1) To information which is exempt by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

3 Scottish public authorities

- (...)
- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held –
 - (...)
 - (b) by a person other than the authority, on behalf of the authority.

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.



36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

38 Personal Information

- (1) Information is exempt information if it constitutes-
 - (...)
 - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
 - (...)
 - (d) a deceased person's health record.
- (2) The first condition is-
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles; or...
 - (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

Data Protection Act 1998

1 Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires –
...
"personal data" means data which relate to a living individual who can be identified –
 - (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual



Schedule 1: The data protection principles

Part 1: The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Access to Health Records Act 1990

1 “Health record” and related expressions

- (1) In this Act “health record” means a record which –
 - (a) consists of information relating to the physical or mental health of an individual who can be identified from that information, or from that and other information in the possession of the holder of the record; and
 - (b) had been made by or on behalf of a health professional in connection with the care of that individual

3 Right of access to health records

- (1) An application for access to a health record, or to any part of a health record, may be made to the holder of the record by any of the following, namely--
 - (...)
 - (f) where the patient has died, the patient's personal representative and any person who may have a claim arising out of the patient's death.