

# Request title:

## Deceased patients without any next of kin

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Date of Response: 2<sup>nd</sup> October 2015

Further to your Freedom of Information request, the Trust has answered your questions in the order they appear in your request.

### Request and reply

1. What happens when a patient dies in the care of the trust and there are no details of the next of kin provided?  
A tracing agency is contacted to try to trace the next of kin.
2. Who tries to locate/trace the next of kin if the information is unknown? (name, department and contact details)  
Bereavement Service, Mortuary, Royal Devon & Exeter Hospital, Barrack Road, Exeter EX2 5DW. 01392 402349.
3. What are the steps taken to locate the next of kin of the deceased patient?  
A tracing agency is contacted to try to trace the next of kin.
4. What happens when the trust is unable to locate the next of kin?  
The Trust arranges a contract funeral.
5. If the patient dies within the care of the trust and the next of kin cannot be traced, whose responsibility is it to provide a funeral? (name and contact details)  
When there is no next of kin, the Trust will arrange a funeral.
6. On how many instances has the trust provided a funeral for a patient since 1<sup>st</sup> January 2015?  
None.
7. Of these public health funerals please provide:
  - a) Name of deceased
  - b) Date of birth and date of death
  - c) Last residential address
  - d) Have the next of kin/family members been traced?
  - e) What date have the details been referred to the QLTR, Bona Vacantia, Treasury Solicitor, Government Legal Department, National Ultimus Haeres, Duchy or Farrer & Co?The Trust is not willing to provide an answer to these questions under Section 41 and Section 44 of the Freedom of Information Act 2000. Please see the Trusts full refusal notice below.
8. Have there been cases since 1<sup>st</sup> January 2015 where the trust has referred/or plan on referring details of the deceased patient to the Treasury Solicitor/Government Legal Department, Bona Vacantia, National Ultimus Haeres, Crown Solicitor, Duchy Farrer & Co or QLTR?  
No.
9. Which other organisations have details (of the deceased with no known kin) been passed to and why?  
None.
10. Does the trust conduct an asset search and/or will search?  
The Trust has so far not needed to do so.
11. Which department deals with the deceased's assets? (name and contact details)  
Mrs Mary Moran, Cash Management, Royal Devon & Exeter Hospital, Barrack Road, Exeter EX2 5DW. 01392 403960.
12. Is the trust responsible for selling the assets in order to compensate for the funeral costs?  
Yes if necessary.
13. Does the trust have an Empty Homes department? (name, contact details)  
No.
14. What is the role of the Empty Homes department?

Not applicable.

**Exemption 41:**

The Trust considers that the information is exempt under section 41 (a+b) of the Freedom of Information Act.

Section 41 states:

*41: Information is exempt information if –*

*(a) It was obtained by the public authority from any other person (including another public authority), and*

*(b) The disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

Section 41 of the Freedom of Information Act sets out an exemption from the right to know information, where the information requested was provided to the public authority in confidence with the expectation that the information would only be used/disclosed in accordance with the wishes of the confider. With specific regards to the date of death, the Trust recognises that this particular information would not be provided to the Trust by the patient concerned (as it concerns their date of death), but the information would have been collected by the Trust in the course of the patients treatment and would form part of their health record, and the information contained within the health record would have been created as a result of information gathered with an expectation by the patient that it would be held in confidence.

The ICO (Awareness Guidance 2 Information Provided in Confidence) and Department of Health (Guidance for Access to Health Records Requests) recognises that there may be circumstances where information should be disclosed to individuals who do not have a statutory right of access to a deceased patient's record; where there are grounds for breaching confidentiality, however, the reasons must be valid with a strong public interest justified. The ICO and Department of Health advises public authorities to look at the circumstances on a case by case basis, and the public interest in disclosure must be weighed against both the wider public interest in preserving the principle of confidentiality, the privacy rights of individuals and the impact that disclosure would have. The public good that would be served by disclosure must outweigh both the obligation of confidentiality owed to the deceased individual and the overall importance placed in the health service providing a confidential service.

On considering this, the Trust believes that in the context of health records, the responsibility of confidentiality is vital, as it reinforces and underpins the commitment of trust between patients and doctors, without which public confidence in the Trust may be damaged. Patients have a reasonable expectation that any information they provide is only used to enable effective delivery of care and is held under a duty of confidence. The ICO recognises in its guidance 'Practical Guidance: Information about the Deceased' that section 41 will be particularly relevant to authorities holding information such as health records. It has also been confirmed by the Information Tribunal that the duty of confidentiality continues after the death. Furthermore, the Department of Health document 'Guidance for Access to Health Records Requests' states that "Current legal advice is that the Courts would accept that confidentiality obligations owed by health professionals continue after death."

The ICO, within Awareness Guidance 2 Information Provided in Confidence, site examples of situations where courts have required disclosure in the public interest, these include cases where information concerns illegal activity or misconduct; your request however would not fall into such categories.

If there is a breach of confidence the confider **or any other party affected** may have the right to take action through the courts. The Trust recognises that your request concerns deceased patients with no **identified** next of kin, this however does not mean that other family members do not exist.

On considering the above points, the Trust has reached the conclusion that it will not divulge such information when there is no legal obligation to do so.

**Exemption 44:**

The Trust considers that the information requested is exempt under section 44 (a) of the Freedom of Information Act, which states:

*44: Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –*

- (a) Is prohibited by or under any enactment*
- (b) Is incompatible with any Community obligation, or*
- (c) Would constitute or be punishable as a contempt of court*

The Trust considers that the release of the information requested would be prohibited under the Access to Health Records Act 1990, which states:

*1. (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) has been made by or on behalf of a health professional in connection with the care of that individual;*

*5. (3) Where an application is made under subsection (1)(c), (d), (e) or (f) of section 3 above, access shall not be given under subsection (2) of that section to any part of the record which, in the opinion of the holder of the record, would disclose—*

- (a) information provided by the patient in the expectation that it would not be disclosed to the applicant;*

The Trust can confirm that any information held regarding a patient was collected as part of their medical care, and the patient would have understood that this information was to be held in confidence by the Trust; and patients would have had the expectation that it would not be disclosed, even after death. Therefore, as identified above in exemption 41, the Trust deems that the duty of confidence will continue to apply between hospital and patient after death, and as such the information within your request would fall within section 5 (3)(a) of the Access to Health Records Act 1990, and is therefore exempt under the Freedom of Information Act.