



## **SOMERSET ARCHIVES AND LOCAL STUDIES**

### **STATEMENT OF POLICY FOR ACCESS TO RESTRICTED RECORDS UNDER THE DATA PROTECTION ACT, 1998 AND FREEDOM OF INFORMATION ACT, 2000**

#### **1. Introduction**

- 1.1 The South West Heritage Trust: Somerset Archives and Local Studies [the service] is committed to making the 10 million original, printed, microform and digital records in our care accessible to as wide an audience as possible. However, in some cases we are prohibited from making records available for research due both to restrictions set out in legislation (particularly legislation relating to the privacy of personal data) and to the physical condition of the record.
- 1.2 This statement of policy is intended to regulate the access by researchers to records held by the service where restrictions do apply.
- 1.3 This policy sets out the reasons why some records are under restricted access, the closure periods applied and ways to apply for access to such records.
- 1.4 This policy will be reviewed at the beginning of each year, to take into consideration changes to legislation and developments in case law.

#### **2. Statutory Position and Obligations**

- 2.1 A variety of legislation governs the care and access to archives held by the service. We adhere to The National Archives Standard for Record Repositories and all archive items are stored in accordance with British Standard 5454:2000 Standard for the Storage and Exhibition of Archival Material.
- 2.2 Public Records Acts, 1958 and 1967: In section 4.1 the Public Records Act provides for the storage of public records (the records created by central government or government bodies) over 20 years in an appointed place of deposit outside the Public Record Office (now The National Archives). The Somerset Heritage Centre is a designated place of deposit for public records.
- 2.3 Local Government Act 1972 (ss.224-229): Section 224 states “A principal council shall make proper arrangements with respect to any documents that belong to or are in the custody of the council or any of their officers”.
- 2.4 Data Protection Act 1998: The Data Protection Act 1998 regulates the processing of information relating to individuals and restricts access to personal data. Section 33 of the Data Protection Act 1998 permits personal data to be processed for research purposes, including statistical or historical purposes, in compliance with the relevant conditions, and to be kept indefinitely. The Data Protection Act also grants a right of access to an

individual, to any information held about them (known as a Data Subject Access Request) and to request a copy of this information in a permanent legible form.

The Data Protection Act restricts access to records for the lifetime of a person. A lifetime is assumed to be 100 years, therefore if the record relates to an adult, a closure period of 84 years will be applied (assumed age of 16 to be classed an adult), for children a closure period of 96 years will be applied (assumed age of 4 to be classed a child) and for infants a 100 year closure period will be applied (assumed age of 0). Once an individual is deceased, their personal data is no longer covered by the Data Protection Act. However, the impact on living relatives should be considered prior to disclosure.

When assessing if personal information contained in a record may be considered sensitive or liable to cause distress, we need to take into consideration the implications associated with that data. For example, a medical record stating that person broke a leg is unlikely to cause distress, whereby a mental health assessment could, or attending a Sunday School as a child may have little impact, but the knowledge of a birth in workhouse may cause distress.

Under the Data Protection Act sensitive personal data is information which provides details on: racial or ethnic origin, political opinions, religious beliefs, membership of a trade union, a physical or mental health condition, their sexual life, committing or alleged committing by them of any offence or any proceedings detailing that offence.

- 2.5 Freedom of Information Act 2000: This applies to all information held by or on behalf of a public authority, such as Somerset County Council, district or parish councils or the NHS. Requests for information from archive collections which are open for research in the searchroom are covered by the exemption under section 21 and section 22 of the Act. This means that the request does not need to follow Freedom of Information procedure as the information is already reasonably accessible, either in person or through a relevant research service. These exemptions do not apply to records which have closure periods applied. Other exemptions also apply to archival holdings, namely section 32, information created or held by a court; section 40, personal data and section 41, information provided in confidence.

### 3. **Access restrictions for specific records**

- 3.1 Listed below are details of access restrictions for commonly requested classes of records held at the Somerset Heritage Centre.

At times other records containing personal data may be subject to closure. Closure periods are detailed in our catalogues, which can be consulted in the searchroom or viewed at [www.swheritage.org.uk/somerset-archives/dp-foi](http://www.swheritage.org.uk/somerset-archives/dp-foi).

#### 3.2 **Court Records (Magistrates and Petty Sessions)**

Court records less than 20 years old are subject to an absolute closure under section 32 of the Freedom of Information Act 2000.

Where a court register identifies victims of sexual offences, access is restricted for 100 years. This is because releasing information about victims of sexual offences is prohibited under the Sexual Offences (Amendment) Act 2003.

Juvenile court registers, and any other registers recording cases relating to juveniles will also be closed for a period of 100 years, this is because they contain sensitive information about children, and can include information about adoptions.

Other court records containing sensitive information are not automatically open after 20 years as they contain sensitive personal data not necessarily released in open court, these records will be closed for 84 years where they relate to adults and 100 years if they relate to children. Examples of these records are case files, court recorder's note books or adoption registers.

### **3.3 Health and Hospital Records**

Patient records containing clinical information: Access to these records is restricted for 100 years under the Data Protection Act 1998 (if living) and FOI s40 - personal data and s41 - information provided in confidence.

Death/Mortuary registers: These records are open for consultation as they usually contain the same information as shown on a death certificate. If further sensitive medical information is included, then as with any other medical records a 100 year restriction applies under the Data Protection Act 1998 (if living) and FOI s40 - personal data and s41 - information provided in confidence.

Maternity registers, Midwife's registers or case books: Access to these records is restricted for 100 years under the Data Protection Act 1998 (if living) and FOI s41 – information provided in confidence. Please note that the maternity register is the patient record of the mother, not of the baby, and so the child does not have automatic right of access to the record as a data subject under the Data Protection Act.

Staff records: Restricted for 84 years under the Data Protection Act 1998 (if living) and FOI s40 - personal data and s41 - information provided in confidence.

With medical records the 100-year closure applies from the birth of the patient, not necessarily the last date in the record.

### **3.4 Records of Somerset County Council, District Councils and their predecessor bodies**

Restriction on access to the records of Somerset County Council, the District Councils and their predecessor authorities only apply where they contain personal data and / or sensitive personal data about individuals, for example Social Services files or personnel registers. A closure period of 84 years, when relating to adults or 96 years when relating to children has been applied to these records. Other classes of Local Authority records have restriction applied as follows.

#### **3.4.1 Coroners' Inquest files**

The inquest and natural causes files of the Somerset Coroners are subject to a 100 year closure period, due to the need to protect third parties named in the files. Records relating to Treasure Trove discoveries are closed for 30 years under the Public Record Act, 1958.

#### **3.4.2 School Records (both Local Authority and private deposit)**

School registers, such as admission registers, punishment registers and school log books contain personal data, including names, addresses and dates of birth, and sensitive personal data, such as transfer to approved schools, misdemeanours, punishments received, and health problems. The following closure periods and restrictions apply to school records:

Admission registers: These records are subject to a 96 year closure due to the Data Protection Act 1998 (if living) and Freedom of Information Act s40 – personal information.

Log books: These records are subject to a 96 year closure due to the Data Protection Act 1998 (if living) and Freedom of Information Act s40 – personal information.

Punishment books, pupil records/cards, accident books, contagious illness records: These records are subject to a 96 year closure due to the Data Protection Act 1998 (if living) and Freedom of Information Act s40 – personal information.

Staff records: These records are subject to an 84 year closure period under the Data Protection Act 1998 (if living) and Freedom of Information Act s40 – personal information.

### **3.4.3 Adoption and Children's Care records**

Records relating to adoption, foster care or Children's Homes are closed for 100 years under the Data Protection Act 1998. The adoption records for Somerset County Council are still held by the Children and Young People Directorate. Please contact 0300 123 2224 or [childrens@somerset.gov.uk](mailto:childrens@somerset.gov.uk) for more information.

### **3.5 Guardian and Public Assistance records**

The records created by the Poor Law Unions and their successor bodies the Public Assistance Institutions which contain personal information are subject to a 100 year closure period under the Data Protection Act 1998 (if living) and Freedom of Information Act s40 – personal information. In most of these records the entries relating to adults, children and infants are mixed, leading to the longer closed period. Those records under restricted access are the admission and discharge registers, registers of birth, offences and punishment registers, adoption and fostering registers, any containing medical details, such as medical examination books, registers of lunatics, medical staff report books and any register providing evidence of occupation of the Workhouse.

### **3.6 Other records**

There are other classes of records which are also subject to restricted access as follows:

Building control plans: Sensitive buildings such as banks, courts, police stations, prisons, etc., are subject to an absolute closure, unless a change to a non-sensitive use or major renovation can be proved. For those records held in either the County Council or District council collections then a FOI s24 – National Security, exemption applies.

Citizen Advice Bureaux: Access to records created by the Citizen Advice Bureaux are subject to an 84 year closure period under the Data Protection Act 1998 and Freedom of Information Act s40 – personal information.

Other Personnel/Staff Registers: Access is restricted for 84 years under the Data Protection Act 1998 and Freedom of Information Act s40 – personal information.

Methodist Records: At the request of the Methodist Church their records are subject to a 30-year closure period. This closure period does not apply to baptism, marriage and burial registers, pulpit notices or other records previously on public access in the church.

#### **4 Privately Deposited Collections**

On occasion individuals choose to apply closure periods when they deposit records at the Somerset Heritage Centre. Application to view these records should be made in writing to the Service, citing the reason for research, and we will contact the depositor to request permission for the records to be accessed. Privately deposited records on long-term loan to the Service are not subject to the Freedom of Information Act, 2000 as they are only held in custodianship and access is at the depositor's discretion.

#### **5. Restricted access due to condition**

At times a record may be under restricted access due to its condition. If this is the case the catalogue and item will be labelled "Too Fragile for Research" (the term "Not Fit For Production" or "NFFP" has been traditionally used and may occur in some of the older catalogues). These items are part of a conservation programme, and are prioritised according to use and historical value. Where possible the service will endeavour to assist you to view these records, either with an archivist or conservator present, or after remedial conservation has been carried out. At the discretion of the service and senior conservator an item can be sponsored for conservation, please ask staff for details. It must be noted that if a document can be made fit for access it does not mean that all the information will be retrievable.

#### **6. Applying for access to restricted records**

##### **6.1 Records concerning living named individuals**

The Data Protection Act, 1998 grants the right of access to an individual's personal information, and the service is required to provide a permanent copy of this information. On many occasions the information on different individuals will be found together and South West Heritage Trust staff will have to extract or redact the relevant information in order to maintain the confidentiality of third parties.

To obtain copies of information, a data subject access request form: Living Individuals needs to be submitted with current proof of identity. There is no charge for this service. The Act allows 40 calendar days for a response, but we will try to provide one in 10 working days once we are satisfied with the application and information provided. All requests will be retained for a 7-year period.

##### **6.2 Historical or statistical research**

Section 33 of the Data Protection Act permits use of personal data for research purposes, including statistical or historical purposes, providing that the data is not used to support decisions with respect to particular individuals and will not cause substantial damage or distress to any data subject.

A researcher may request in writing access to closed records for the purpose of historical research. Each application will be accessed on a case-by-case basis, depending upon

the subject matter, research topic and outcome. If access is granted a Data Access Form for historical research needs to be completed, and the researcher will have to undertake to comply with section 33 of the Data Protection Act and anonymise all personal data. These records will need to be consulted in the searchroom. Copies cannot be provided through the Research Service and photography/photocopying of them is not allowed.

### **6.3 Records concerning deceased persons**

Although the Data Protection Act, 1998 does not apply to deceased persons, at times information concerning them will be contained in a restricted record, such as in hospital registers. To access these records a Data Access Request Form: Deceased Individuals will need to be completed and proof of death, such as a copy death certificate, obituary or burial record, needs to be provided. Where possible we will allow the researcher to view the record, but at times the research service will need to extract this information to maintain confidentiality of third party information. This will be charged at the usual hourly research rate.

### **6.4 Third party information**

There is no right of access to personal information of living third parties. If you require access to the personal information of a third party please make written application to the Service, detailing which records you wish to view and reason for request. Each case will be considered on a case-by-case basis.

### **6.5 Freedom of Information requests**

For access to other records under restricted access held by the Service application needs to be made in writing. These requests need to provide the applicant's address and full details of the information required. The Act allows the Service twenty working days in which to respond, but we will try to provide one in 10 working days once we are satisfied with the application and information provided.

6.6 The decision on the release of information will be made by the Duty Archivist at the Somerset Heritage Centre, in consultation with senior managers if necessary. Where appropriate the depositor of the records will be consulted. At times, we may forward your request to the owner of the records, if the decision for access has to be made by them. You will be provided with written notification of any decisions made.

### **6.7 Requests for information in connection with official investigations**

Where access to records is required for official or criminal investigations, the investigating officers are encouraged to visit the Heritage Centre to conduct the research in person. We require an appointment to be made at least one day in advance, that the documents be pre-ordered and that official ID be produced. A record of the documents consulted will be retained. Any copies of restricted documents taken become the responsibility of the investigating officer.

If there is a request for research to be undertaken by a member of South West Heritage Trust staff, we require the request in writing (either in letter or in email), to include checkable information as to the sender's identity. We will charge the Research Service hourly rate (non-commercial) to answer these enquires and will answer them within ten working days. The research will be carried out as accurately as possible, but the Trust cannot be responsible for the legal validity of the information.

On occasion we may need to contact the owner of the records before we can grant access to them, when this occurs we will notify the requester that this is the case. For access to Magistrates Records, applications need to be made in the first instance to the HMCTS, SW Region Support Unit (email: [swregionsupport@hmcts.gsi.gov.uk](mailto:swregionsupport@hmcts.gsi.gov.uk), telephone: 01392 331751).

## 7. **Data collected by The Service**

The Service abides by the Data Protection Act, 1998 in relation to information which we collect for the purposes of administration and statistical analysis. We will never disclose or transfer your details to third parties without your explicit consent.

## 8. **Definitions**

**Closure period:** The number of years during which access to the record is restricted. During the closure period, the record will not be available to the public for research in the searchroom, although information may be extracted on request in accordance with the Data Protection Act, 1998 or the Freedom of Information Act, 2000.

**Data Subject Access Request:** A request by an individual for personal data held about them. The request can also be made by a third party, with permission from the individual concerned.

**Personal data:** Information about any living individual who can be identified from the data itself.

**Sensitive personal data:** As defined by the Data Protection Act 1998 sensitive personal data is information which provides details on racial or ethnic origin, political opinions, religious belief, trade union membership, physical or mental health, sexual life, offences committed or alleged to have been committed.

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