

# Freedom of Information

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## Headlines:

- Local authorities—performance assessment affected by FOI, p.14
- Wartime records to be released, p.14
- Surgeons' mortality rates—accessible under FOI?, p.16

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## FOI may allow access to records of the deceased

Considerable disquiet has been expressed in some quarters at the prospect of records relating to deceased persons being made public, not least because this would lead to the press being able to gain access to the medical records of famous persons after their death.

It is far from clear whether public authorities, notably NHS Trusts and other bodies, are required to disclose information relating to deceased persons.

The loophole in the law occurs because the Data

Protection Act 1998—which allows an exemption for FOI requests where the information sought amounts to 'personal data,'—only applies where the relevant individual is alive. It has no application to records relating to deceased persons, so there is no FOI exemption from disclosure.

Unlike Scottish FOI law, the English Freedom of Information Act does not have a specific exemption for records relating to deceased persons.

Public authorities would naturally prefer not to

disclose information relating to dead people, not least due to the potential negative headlines this might generate—but lack of a clear legal basis for refusal remains.

It appears that common law confidence will not apply. According to current guidance from the Department of Health, "Health records relating to deceased people do not carry a common law duty of confidentiality. However, it is Department of Health and General Medical Council policy that records relating to de-

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## 40% of NHS Trusts fail to respond to FOI requests

In a survey conducted by Manchester University, only 60% of NHS Trusts responded to an FOI request.

The survey, commissioned by the software group Sibilo, aimed to "ascertain how NHS bodies are coping with the demands of information disclosure as required by the Freedom of Information Act, Data Protection Act and Environmental Information Regulations."

The Centre for Research in Information Management,

part of Manchester University, stated that, "the fact that such a high proportion (40%) of the questionnaires sent as FOI requests were not responded to raises serious questions about how a significant number of NHS bodies are actually coping with requests."

According to Sibilo spokesperson, "Public bodies have had nearly 4 years to prepare to handle Freedom of Information requests yet our survey shows that most of them have done nothing

to date. In those 4 years, the government came up with a £2.3bn national programme for IT (NPfIT) in the NHS. In December 2003, Computer Sciences Corporation (CSC) won a 10-year NPfIT contract, worth £973m, for the North West and West Midlands regions.

"Despite passing deadlines, NHS Trusts in these regions still haven't received compliance solutions, for instance, and their response to our sur-

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