

Subject: Access to Curator Bonis records.

FOI reference: FOI/18/03156

Date received: 30 October 2018

Date responded: 07 December 2018

Information requested:

Access to Curator Bonis records.

NRS Response:

A sensitivity review has been undertaken on these files by the Scottish Courts and Tribunals Service (SCTS). As a consequence of this review, two of the files are now open in full for public inspection in digital format, four have been redacted and can be accessed by the public in digital form. Two of the requested files remain closed.

The following two files have been opened in full:

SC1/11/1929/24 Barbara SL Stewart

SC1/11/1940/10 Williamina Leys

The following four files have been partially redacted:

SC1/11/1921/42 Edward B Hogan

SC6/23/1951/2 Hugh Hewitson McFadzean v William Hunter McFadzean

SC1/11/1981/290 Mrs Grace Anne Gordon or Cameron v William Cameron

SC6/23/1991/13 The Strathclyde Regional Council

Some names and personal details involved in the cases have been redacted as it is not possible to determine whether these individuals are alive or deceased, as death certificates could not be found in the statutory registers of Scotland. The redactions were necessary as some of the information contained in these files is subject to an exemption under section 38(1)(b) (personal information of third parties) of FOISA. Personal data of third parties is exempt from release under FOISA as disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

In addition, these files also contain information relating to deceased persons' health records and an exemption under section 38 (1)(d) of FOISA applies to this information. There is a common law duty of confidence to patients and these ethical obligations extend even after the patient's death. The exemption under section 38(1)(d) is time limited to 100 years. This exemption is not subject to the 'public

interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

The open and redacted files are available to view in digital format in the Historical Search Room at General Register House, 2 Princes Street, Edinburgh, EH1 3YY. Further information is available on our website at:
<https://www.nrscotland.gov.uk/research/visit-us/historical-search-room>.

Under section 25(1) of FOISA, we do not have to provide information if it is already reasonably accessible by inspection or copying, even if a payment has to be made for it.

The following files two remain closed:
SC6/23/1961/1 Mrs Agnes Gillian or Hainey
SC6/23/1971/57 Mary Hamilton Reid or Barclay

Extensive sensitive personal information of people involved in the cases is disclosed in the files. These files remain closed as the information contained is exempted under section 38 (1)(b) (personal information of third parties). To disclose this information would contravene the General Data Protection Regulation and Data Protection Act 2018, as explained above.

There are also extensive health records contained in the files, which are exempt under section 38 (1)(d) (deceased person's health record) of FOISA. As explained above, there is a common law duty of confidence to patients and these ethical obligations extend even after the patient's death. These medical reports take up the bulk of the files and SCTS felt that no meaningful insight could be gained by the applicant after heavy redaction.