

Tameside Local Studies and Archives Policy on Access Restrictions

1. Introduction

1.1 Tameside Local Studies and Archives is committed to making the archives in our care accessible to as wide an audience as possible. We recognise, however, that in some cases we are prohibited from making records available for research due to restrictions set out in legislation (particularly legislation relating to the privacy of personal data).

1.2 This statement of policy is intended to regulate the access by researchers to records held by Tameside Local Studies and Archives where restrictions on access apply. This policy statement supersedes all existing policies.

1.3 This Policy sets out the reasons for restricting access to records in our care, the closure periods, during which access is restricted, and ways in which researchers can obtain information from such records.

1.4 This policy will be reviewed at least once every twelve months, and more frequently if there are significant changes, to keep abreast of legal developments in the area.

2. 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, although information may be extracted on request.

Personal data

Information about any living individual who can be identified from the data itself, or from other information in possession of the data controller.

Sensitive personal data

As defined by the Data Protection Act 1998 this constitutes 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.

Data Controller

The person who determines the purposes for, and the manner in which personal data is processed.

Subject Access Request

A request by an individual for personal data held about them.

Absolute exemption

An exemption under the Freedom of Information Act 2000 for which there is no duty to disclose the information nor to confirm or deny that it is held, nor is there any need to consider whether there might be a stronger public interest in making the disclosure despite the existence of an exemption.

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3. Statutory Position and Obligations

3.1 Tameside Local Studies and Archives endeavours to abide by all current legislation impacting on the administration of Archives. It adheres to *The National Archives Standard for Record Repositories*. As far as is currently possible it aims to store its holdings in accordance with *British Standard 5454 Standard for the Storage and Exhibition of Archival Material*.

3.2 *Public Records Acts, 1958 and 1967*: Section 4.1 of the Act of 1958 provides for the storage of public records over 30 years in an appointed place of deposit outside the Public Record Office. Tameside Local Studies and Archives is appointed such a place of deposit by the Lord Chancellor.

Places of Deposit must be approved by The National Archives (TNA), which has a scheme of accreditation for places of deposit, indicating not only that they are broadly satisfied that the repository meets the required Standard, but also that it has in place a satisfactory long-term strategy to care for, and make available, the archives in its charge.

3.3 *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”

3.3.1 *Law of Property Act, 1922 and Law of Property (Amendment) Act 1924, sch. 2, s. 2*: the Master of the Rolls may direct the transfer of manorial documents to a record repository willing to receive them.

3.3.2 *Manorial Documents Rules 1959 (S1 1959/1399) as amended by the Manorial Documents (Amendment) Rules 1963 (S1 1963/976) and 1967 (S1 1967/963)*: Section 6 of the 1959 rules requires the controlling authority to provide the Historical Manuscripts Commission with details of the manorial documents in its custody

3.4 *Data Protection Acts 1984, 1998, 2018* Section 28 of the Data Protection Act 2018 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. This is provided that not doing so would prevent or seriously impair the achievement of those purposes.

3.5 *Freedom of Information Act 2000*: the Freedom of Information Act 2000 applies to all information held by or on behalf of a public authority, and includes all records held by Tameside Local Studies and Archives. Requests for information from archive collections which are open for research in the public searchroom can generally be refused using the exemption under section 21 of the Act (information already reasonably accessible). This exemption does not apply to records which have closure periods applied.

4. Access restrictions for uncatalogued collections

4.1 Some archive services do not allow access to archive collections until they have been catalogued. Tameside Local Studies and Archives do not allow access to uncatalogued collections without special arrangement with the Archivist.

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5. Access restrictions for specific records

5.1 Listed below are details of access restrictions for many types of records held at Tameside Local Studies and Archives. This list does not cover every type of record, but deals with those most commonly requested.

5.2 Public Records: Court Records

Court records less than 20 years old are subject to an absolute exemption under section 32 of the Freedom of Information Act 2000; no access to records less than 20 years old will be given. Once adult court registers are 20 years old, they are considered to be open, as the personal data they contain is not subject to data protection restrictions because the information was provided in open court.

Where a court register identifies victims of sexual offences, however, access will be 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. This is because they contain sensitive information about children, including information about adoptions. Access to such records will be restricted for 100 years.

Other court records, such as case files, calendars of prisoners, and recorders' notebooks, are not automatically open after 20 years as they contain sensitive personal data additional to what was heard in open court. Access to such records will be assessed on a case by case basis and restricted for a maximum of 100 years.

5.3 Public Records: Health and Hospital Records

Access to patient information in health and hospital records is restricted as the information includes sensitive personal data which has been given in confidence. A recent ruling (*Bluck v ICO and Epsom & St Helier University NHS Trust [EA/2006/0090]*) by the Information Tribunal has confirmed that the duty of confidentiality continues after death. For this reason access to hospital records containing clinical patient information will be restricted for 100 years. The Health Archives & Records Group are currently developing guidelines for release of personal data from hospital records. Tameside Local Studies and Archives' policy on access to patient information will be reviewed once the guidelines have been published.

5.4 Public Records: The Duty to Consult

Under Freedom of Information legislation, for public records Tameside Local Studies and Archives is required to consult with the depositing body or relevant authority on requests for information in restricted records. Experience has shown that the consultation process can significantly delay the release of information when the depositing body is requested to make the decision as to whether the material should be released. The problem chiefly arises in the depositing body failing to identify an individual to make the decision, and this problem becomes more difficult where there is no obvious successor to a defunct body. In such cases it can take a long time to find an individual willing to take institutional responsibility for access requests. Accordingly, Tameside Local Studies and Archives will make every effort to come to an arrangement with the relevant authority on how consultation will be handled. Tameside Local Studies and Archives' default approach will be to make the decision

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regarding access, and write to the relevant authority informing them of the decision and giving them the opportunity to comment within a set time period. If no reply is received within the timescale, Tameside Local Studies and Archives will abide by the original decision and release the information or send a notice of refusal.

5.5 General Access to Local Authority Records

In general, the only restriction on access to the records of Tameside Metropolitan Borough Council and its predecessor authorities applies where they contain personal data and / or sensitive personal data about individuals. Records containing personal data are many and varied, and include Council and Committee minutes (particularly committees relating to the care or education of children or adults), and registers of all types, such as staff registers.

- Committee minutes for Education, Childrens' Homes, Social Services, Personnel, Adult Social Care or similar committees: Restricted for 75 years (if the committee relates to, and the minutes name, adults) or 100 years (if the committee relates to, and the minutes name, children) under Data Protection Act 1998 (if living) and FOI s40 – personal information
- Other committee minutes: No restriction unless volume of minutes contains sensitive personal data

5.6 Local Authority Records: School Records

Following the issue of a decision notice, dated 5 April 2011, from the Information Commissioner's Office, the Greater Manchester Archivist Group (GMAG) produced an access to school records policy and risk assessment in April 2012. This has been applied to the school records held by Tameside Local Studies and Archives. A copy of this is appended to this policy (Appendix D).

School registers, such as admission registers, punishment registers and school log books contain personal data, such as 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:

- No access restrictions will apply to any school records over 100 years old.
- Admission registers: Restricted for 30 years for reasons of Child Protection, while a child may reasonably still reside at the specified address
- Log books: Restricted for 30 years for reasons of Child Protection. Note that log books containing sensitive personal data about staff or pupils will be subject to longer restrictions (restricted for 97 years if Primary school [infants 97 years, juniors 93 years], 90 years if Secondary school, or 75 years, if only staff, not pupils, are identified by name).
- Punishment books, pupil records/cards, accident books, contagious illness records: Primary school - restricted for 97 years [infants 97 years, juniors 93

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years]; Secondary school - restricted for 90 years under the Data Protection Act 1998 (if living) and Freedom Of Information Act s40 – personal information

- Staff records: Restricted for 75 years under the Data Protection Act 1998 (if living) and Freedom Of Information Act s40 – personal information
- Industrial school records: Restricted for 100 years under Data Protection Act 1998 (if living) and FOI s40 – personal information

5.7 Local Authority Records: Records of Adoptions and Children in Care

Access to records of adoptions and children in care is restricted for 100 years. No records of adoption are held at Tameside Local Studies and Archives. All requests for information are referred to the Children's Social Care as appropriate, who manage access to the records along with the relevant counselling for people tracing birth parents.

5.8 Local Authority Records: Poor Law Union Records

Many of these records contain sensitive personal data relating to children and adults, including information about health or religion. Access may therefore be restricted.

- Guardian's minutes: No restriction unless sensitive personal data about named children or adults (including staff) is included. If such data is contained, the records are restricted for 100 years under Data Protection Act 1998 and FOI s40 – information provided in confidence.

5.9 Access restrictions to privately deposited records

Before the enactment of the Freedom of Information Act 2000, depositors of private collections could choose to close their records for a limited period, usually 30 or 50 years. Since the Freedom of Information Act came into force, privately deposited records are considered to be 'held by or on behalf of' a public authority, and therefore come under the Act. This means that access to the records is generally open. Most of the privately deposited records at Tameside Local Studies and Archives do not have closure periods. Where a depositor has expressed (in a stipulation within the original terms and conditions of the deposit) the wish that records be closed, Tameside Local Studies and Archives is reviewing whether the closure period stands in the light of Freedom of Information.

- Club / Society Membership records: restricted for 30 years unless otherwise stipulated by the depositing organisation under the Data Protection Act 1998
- Business records: restrictions of between 30-100 years may apply to employee records where they contain personal information, such as National Insurance numbers, records relating to dismissal, personal injury claims etc. Where a 75 year access restriction is applied, it has been assumed that the individual to whom the record relates was at least 15 years old at the time the record was created.

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6. Applying for access to restricted records

6.1 Record searches

If you are the person named in a restricted record, the Data Protection Act recognises you as the 'Data Subject' and you have legal rights to the information held about you. Many of the access restrictions that apply to records are due to the fact that in searching for information to which a customer has a right of access (as the 'Data Subject') they will necessarily become privy to information which should remain confidential - examples would be hospital, school and court registers, which contain personal data relating to many individuals on the same page. Tameside Local Studies and Archives will be required to provide relevant information to the Data Subject, but is not required to allow access to the original record. In order to comply with the legislation, therefore, Tameside Local Studies and Archives may withhold access to the original records, but instead must extract information on behalf of a legitimate data subject seeking information relating to themselves.

Freedom of Information legislation permits Tameside Local Studies and Archives to charge for carrying out searches in closed records on behalf of enquirers. There is no time limit on the length of search carried out for this service.

By law Tameside Local Studies and Archives may charge a £10 fee for carrying out a record search for a Subject Access Request under the Data Protection Act. In practice, Tameside Local Studies and Archives usually waives this fee if it feels that the nature of the case would make charging a fee inappropriate.

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 access to closed records for the purpose of historical research using one of the application forms shown in the Appendices to this policy:

Appendix A: Third Party Data Subject Access Request Form

Appendix B: Researcher Access Request Form
(An undertaking concerning access archives that would otherwise be closed)

Appendix C: Data Subject Access Request Form

Appendix D: Greater Manchester Archivist Group – Access to School Records Policy and Risk Assessment

The final decision as to whether to allow permission to use the records will be made by the Data Controller, who will usually be the Tameside Local Studies and Archives department, public or private body that deposited the records concerned.

Permission to use the records for academic research will normally be granted, providing that Tameside Local Studies and Archives and the Data Controller are

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satisfied with the research methodology and ethics, and the researcher undertakes to anonymise all personal data.

Use of records for non-academic research encompasses a broader range of potential uses and granting permission may be more complex. Tameside Local Studies and Archives and the Data Controller must be satisfied that the purpose and outcomes of the research will not breach any of the data protection principles before granting permission.

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Appendix A

Third Party Data Subject Access Request Form

Tameside Local Studies and Archives

1. Details of the person requesting the information:

Full Name:

Address:

Telephone Number:

Fax Number:

Email Address:

2. Name and details of the data subject? (Please include, where possible, a date of death and proof of death.)

3. Please describe the information that you seek together with any other relevant information. (Including reference numbers of relevant archives will help to speed up this process but is not compulsory.)

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DECLARATION

To be completed by all applicants.

Please note that any attempt to mislead may result in prosecution.

I.....
certify that the information given on this application form to Tameside Local Studies and Archives is correct and that the data subject is deceased. I understand that it may be necessary for Tameside Local Studies and Archives to confirm that the data subject is deceased.

Signature.....Date.....

Note: The period of 20 days in which Tameside Local Studies and Archives must respond to the request will not begin until it is satisfied on these matters.

Please return completed form to:
Tameside Local Studies and Archives Centre, Cotton Street East,
Ashton-under-Lyne, OL6 7BY

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Appendix B

Researcher Access Request Form

(An undertaking concerning access archives that would otherwise be closed)

Tameside Local Studies and Archives

DECLARATION

To be completed by all applicants.

Please note that any attempt to mislead may result in prosecution.

I.....of.....

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request permission to consult (please give archive reference Number).....

.....

and agree to make use of any personal data contained their in compliance with the Data Protection Act 2018. My research will not be used to support measures or decisions with respect to particular individuals and will not cause or be likely to cause substantial damage or distress to any person who is the subject of the data while he or she is alive or likely to be alive (assuming a life span of 100 years).

I will not make the results of my research available in a form that identifies any data subject without consent in writing of the data subject or the data controller.

I understand that I shall become responsible for compliance with the Data protection Act 1998 in relation to any processing by me of personal data obtained from the above records.

Signature.....Date.....

Please return completed form to:
Tameside Local Studies and Archives Centre, Cotton Street East,
Ashton-under-Lyne, OL6 7BY

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Appendix C

Data Subject Access Request Form Tameside Local Studies and Archives

1. Details of the person requesting the information:

Full Name:

Address:

Telephone Number:

Fax Number:

Email Address:

2. Are you the data subject?

Yes: Please supply evidence of your identity i.e. copy of birth certificate, current driving licence or passport (Proceed to question 4)

No: Are you acting on behalf of the data subject with their written authority? If so that authority must be enclosed. If not what other legal justification have you for obtaining access to the data? (Note that appropriate identification as above must be provided) (Proceed to question 3)

3 Details of the data subject (if different from question 1)

Full Name:

Address:

Telephone Number:

Fax Number:

Email Address:

4. Please describe the information that you seek together with any other relevant information. (Including reference numbers of relevant archives will help to speed up this process but is not compulsory.) Additional space provided overleaf

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Currently Tameside Local Studies and Archives carry out this service for free, please note that in the future there may be a charge.

DECLARATION

To be completed by all applicants.

Please note that any attempt to mislead may result in prosecution.

I.....
certify that the information given on this application form to Tameside Local Studies and Archives is true. I understand that it is necessary for Tameside Local Studies and Archives to confirm my/the data subject's identity and it may be necessary to obtain more detailed information in order to locate the correct personal data

Signature.....Date.....

Note: The period of 40 days in which Tameside Local Studies and Archives must respond to the request will not begin until it is satisfied on these matters

Please return completed form to:

Tameside Local Studies and Archives Centre, Cotton Street East,
Ashton-under-Lyne, OL6 7BY

Documents which must accompany this application:

Evidence of your identity (copies will suffice)

Evidence of the data subjects identity (if different from above)

Authorisation from the data subject to act on their behalf (if applicable)