

Process Id# :: 0012 (Draft – not active)
Process Name :: Data belonging to deceased person
Date Last Updated :: 6/5/2021

Description ::

As per [Policy 0011](#) the NSSO normally engages exclusively with the data subject (employee/pensioner) on queries or case processing, with the exception where acting on the request/instruction of the controller (LHR). Occasionally instances arise where it may be appropriate for other individuals to act as an agent or advocate 'on behalf of' the data subject and be provided with information. One of those scenarios is where the data subject is deceased. This gives rise to difficult issues for a processor as data protection law no longer applies ([recital 27](#)) and there is a need to carry out certain processes for the estate/next-of-kin at what is a difficult time for relatives.

As part of our remit the NSSO provides a service to data subjects (customers), and therefore to persons acting on the authority of those customers where the person is unable to act on their behalf, including on behalf of their estate.

Principles to guide decisions ::

While data protection law does not apply here, the NSSO remains under contract as part of a binding 'data processing agreement' that places restriction on how data can be disclosed to. While this policy is a guide, the NSSO will ultimately be guided by the 'owners'/controllers of the data. In the case of current employees, that body will be the employer and in the case of retired or former staff (resignations etc) that may be the body with the legal obligation to ensure that pension benefits are paid out. In all circumstances the NSSO reserves the right to consult with such controllers on the release of data.

As the GDPR does not apply in this circumstance, the NSSO has researched what would be an efficient, effective and empathetic solution in balancing the needs to deliver a customer based resolution with the right to privacy of the deceased. This policy in particular looks to the Freedom of Information laws for guidance in this area.

[SI 218/2016](#) (Regulations under section 37(8) FOI Act 2014) – provide for a right of access to information relating to deceased individuals where the requester is

- (i) a personal representative of the individual acting in due course of administration of his or her estate or any person acting with the consent of a personal representative so acting,*
- (ii) a person on whom a function is conferred by law in relation to the individual or his or her estate acting in the course of the performance of the function, and*
- (iii) the spouse or a next of kin of the individual or such other person or persons as the head considers appropriate*

Access & Control ::

- Upon receipt of a request from a person/family member who suggests they are acting on behalf of a deceased customers the NSSO will firstly check its own files to establish who is listed as 'next of kin'
- Customers who are employees and use the HRMS have an option on the HRMS homepage to update their emergency contacts/ next of kin at anytime. This facility is not accessible to some customers who only avail of the Pay Shared Service and pensioners. It is important employees keep their records up to date.
- As some of queries come through channels (email, phones messages), the NSSO may unfortunately need to ask the next of kin for some form of identification/verification for our records.
 - This is to avoid difficult situations where potentially one or more relatives purport to be acting on behalf of the deceased's estate.
- Personal data **will not** be given to family members, including children, who are neither the spouse or who cannot satisfactorily establish they are the next of kin.
- Personal data will be disclosed to the personal representative of the individual acting in the administration of the estate or acting officially on their behalf, examples being solicitors or Executors.
- While recognising the professional obligations on legal actors not to seek documentations under false pretences, where a request is received from someone purporting to be acting in such a capacity the NSSO **may** seek verification of that authority if the information in the request is not sufficiently comforting.
- For the purpose of clarity, where a person requesting data is **both** a family member and a solicitor, the NSSO will seek to establish the precise capacity the requester is seeking the information in.

