



Forbidden Fruit

By Miranda Marshall – Director at Hayes + Storr

You may have seen headlines in the press in August: “Apple tells mourning father to get court order to access late son’s music, photos and ‘memories’”.

The case relates to young man of 20, Morgan Hehir, who was murdered in an unprovoked attack, while out on a Hallowe’en night last year.

Apple said that, due to strict privacy laws, it could not hand over the data to the Hehir family without legal authority. Apple argued, perhaps not unfairly, that some Apple customers may not want their private data transferred to other people, even upon their death; and that therefore Apple could not override password protected data. Apple said that it was not for them to make the decision.

A Grant of Probate of a Will (or Grant of Letters of Administration, where there is no Will) is a Court Order, but that wasn’t specific enough for Apple.

Morgan’s father, Colin was told it wasn’t a legal matter and the Information Commissioner said it wasn’t a data protection issue. Colin pointed out that Morgan owned the computer and the data and that Apple owned only the access.

It is a fair argument that not necessarily everyone would want their executors and/or family to have access to all their private data in the event of their death. Some things are best kept secret and taken to the grave!

On the basis that ‘prevention is better than cure’, what steps should be taken to prevent such a situation arising?

First, the obvious answer; which is to keep the relevant passwords, not just for Apple, but for all online matters such as bank accounts, utilities etc somewhere able to be accessed upon death or incapacity. Several of my clients have already done so using the old-fashioned method of a hard copy letter stored in our strongroom along with their Wills, Deeds and Powers of Attorney.

Secondly, another option, which I am yet to put into being, is a specific statement in the Will and/or Lasting Power of Attorney authorising the release to the executor/attorney of all encrypted data and ordering all providers to grant their executors full access to it.

Best practice would be to do both.

It is doubtful that Morgan, age 20, who died so tragically and suddenly, and who worked as a hospital clerk, but moonlighted as a graffiti artist and musician, was someone who would have made a Will. Apple’s attitude is, however, food for thought for the rest of us.

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If you require advice on this matter please contact Miranda on 01328 710210. If you require advice on any other legal matter please telephone our Fakenham office on 01328 863231 or email law@hayes-storr.com.