I can state that the Council does hold information relevant to your request, however I consider that the information is exempt from disclosure under sections 40(2), 41 and 31 of the FOIA respectively. It is important to state at this stage that any response given under the FOIA is a response into the public domain, and not merely to the applicant. When considering exemptions and reliefs it is this perspective which must be taken into account.

Section 40(2) – Personal information

You have requested information which is personal data, being the contact name & correspondence address of the Executor or Solicitors. It is accepted that some executor/solicitors will not be individuals but companies; therefore this exemption only applies to that data which relates to living individuals.

While considering this part of your request I have had regard to the following guidance documents:

- Information Commissioner’s Office Guidance on the exemption for personal data.
- Information Commissioner’s Office Update Note – Applying the exemption for third party personal data: the Tribunal’s approach in House of Commons v IC & Leapman, Brooke and Thomas.

All of the above documents can be accessed at the Information Commissioner’s Office website at www.ico.gov.uk

So far as is relevant, section 40 states:

“(2) Any information to which a request for information relates is also exempt information if—
(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or
(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and…"

To satisfy this exemption it is necessary to consider whether any of the data protection principles of the Data Protection Act 1998 (DPA) would be contravened by disclosing the requested information.

The data protection principles are contained within Schedule 1 of the DPA. The first principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

Schedule 2 of the DPA contains a number of conditions, at least one of which has to be met in order that the processing (in this case disclosure) becomes lawful.
The only condition contained within Schedule 2 of the DPA which may be of relevance to your request is condition 6(1), which states:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

The ICO guidance states that I am required to balance the legitimate public interest in disclosure against the interests of the executor/solicitor to whom the personal data relates. In following the High Court decision in Corporate Officer of the House of Commons v Information Commissioner and Leapman, Brooke and Ungoed Thomas [2008] EWHC 1084 (Admin), a copy of which can be found at www.bailii.org, the Information Commissioner has recommended that public authorities approach Condition 6 as a three-part test:

1. there must be a legitimate public interest in disclosure;
2. the disclosure must be necessary to meet that public interest; and
3. the disclosure must not cause unwarranted harm to the interests of the individual.

Is there a legitimate public interest in disclosure?

It is accepted that you, as the applicant, have an interest in the personal data requested. In deciding whether there is a legitimate interest, it is the collective public interest which must be taken into account and not the specific interest of the applicant. The guidance further states that there must be a genuine public interest, and not merely public curiosity.

Is disclosure necessary to meet that public interest?

What the guidance does make clear is that personal information should only be released if there is a genuine reason to disclose and it would not involve unfairness to the individual.
Examples of a genuine reason could be where there are controversies or credible allegations, a lack of safeguards against corruption or failure to follow normal procedures. In essence what is required is more than a mere suggestion of wrong-doing or malpractice. There is certainly no such allegation against the Council.

The Council have in place adequate safeguards, policies and procedures to regulate the administration of council tax. There are also relevant provisions within the Council’s Constitution, and the Council’s Monitoring Officer is responsible for ensuring that the Council and its officers act within the law. The Local Government Ombudsman and the Audit Commission also externally regulate the Council’s activities. I consider that these established means of check and balance satisfy any public interest in ensuring transparency and accountability, and it is not necessary to disclose the personal data concerned to meet the public interest.

Would disclosure cause unwarranted harm to the interests of the individual?

In dealing with the third consideration, persons supplying the Council with personal data for the purpose of administering council tax have a legitimate expectation to privacy, and protection from harm or distress. It would be unwarranted and contrary to those persons’ expectations and legitimate interests for the Council to disclose their personal data. When supplying their personal data those persons are aware that it will be used to administer council tax and any applicable rebate, but would not expect that their personal data would be released into the public domain.

It is also of relevance that the second data protection principle contained within Schedule 1 of the DPA states:

“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”

The personal data in question was obtained by the Council for the purposes of the administration of council tax and the necessary processing this involves. It was not specified to the persons in question that their data may be disclosed into the public
domain. Indeed it is possible that some of the persons in question may not have supplied full information if they were aware that their personal data may be disclosed into the public domain. In any case I consider that a disclosure would also breach this second principle as it would be incompatible with the purpose for which the personal data was obtained.

For completeness, I must consider whether disclosure would be fair and lawful in accordance with the first data protection principle. The guidance states that for practical purposes, disclosure will generally be fair if Schedule 2 Condition 6 has been satisfied. As it has not in my opinion, it follows that a disclosure would not be fair under the first principle.

For these reasons I am satisfied that disclosure of personal data would not comply with the first or second DPA principle, and therefore the absolute exemption at section 40(2) of the FOIA is engaged.

Section 41 – Information provided in confidence

Section 41 of the FOIA states:

1) Information is exempt information if-

a) it was obtained by the public authority from any other person (including another public authority), and

b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.
I have taken into account the following documents and decisions relevant to this exemption:

1. Information Commissioner's Decision Notice Ref: FS50121245
2. Information Commissioner's “Freedom of Information Act – Awareness Guidance 2 – Information provided in confidence”
3. Information Commissioner’s “Freedom of Information Act – The duty of confidence and the public interest”

All of the above documents and decisions can be found at the Information Commissioner’s website www.ico.gov.uk

Section 41(1)(a) requires that the information in question was obtained from any other person. The Commissioner's Guidance listed at 2 above states at page 1:

A person may be an individual, a company, a local authority or any other “legal entity”

The information in question was obtained by the Council from both individuals and non-individuals such as a company. This part of the exemption is therefore satisfied.

Section 41(1)(b) requires the disclosure by the Council to constitute an actionable breach of confidence by that person. The information must therefore have the necessary quality of confidence.

In my opinion the information does have the necessary quality of confidence. It is recognised in English law that an important duty of confidentiality is owed to taxpayers. This is what is known as “taxpayer confidentiality”. This is a long established principle of common law, protecting taxpayers’ affairs against disclosure to the public, and has been recognised to be of the utmost importance when dealing with the administration of tax and rates.
I am satisfied that the requested information is not trivial, nor is it available by any other means. If the Council were to disclose the requested information the personal representatives of the deceased could issue legal proceedings.

The Information Commissioner is also aware of the common law duty of taxpayer confidentiality, as noted in paragraph 17 of the Decision Notice listed at 1 above, which states:

The Council sought to ensure that the Commissioner was aware of the long-standing principle of taxpayer confidentiality, which protects the tax arrangements of taxpayers from release to the public. The principle of taxpayer confidentiality exists, in part, to prevent prejudice to the commercial interests of taxpayers.

The duty of confidence is not absolute, and the courts recognise three circumstances under which confidential information may be disclosed:

- Where the person to whom the duty of confidentiality is owed consents to the disclosure.
- Where the disclosure is required by law.
- Where there is an overriding public interest in disclosure.

In the context of this request, no consent has been obtained from the individual taxpayers, nor is the disclosure required by law.

Of more relevance is whether there is an overriding public interest. The Information Commissioner states in his guidance listed at 2 above, that “the courts have taken the view that the grounds for breaching confidentiality must be valid and very strong. A duty of confidence should not be overridden lightly.”

The Information Commissioner has produced further guidance upon the duty of confidence and the public interest test, listed at 3 above. I have had particular regard to the content of this guidance in dealing with your request.
It is stated at page 2 of this guidance that “the public interest test within the duty of confidence assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence.”

It is appreciated that there may be a public interest in scrutinising how the Council administers council tax, however this interest is vastly reduced in the absence of any allegations of serious misconduct, wrongdoing or risks to the public.

Ratepayers provide information (including names and addresses) to the Council in confidence, and have a legally supported expectation that this confidence is maintained, as do their personal representatives. Disclosure of any rate or tax related information may discourage rate and taxpayers from providing full information to the Council if there were not a degree of certainty that such confidences would be respected. Furthermore, there is a public interest in maintaining trust and preserving a free flow of information to the Council where this is necessary for the Council to perform its statutory functions relating to the administration of council tax. Such functions are undertaken for the benefit of the public.

I consider that it would be excessive to override the duty of taxpayer confidentiality and disclose information relating to the affairs of business ratepayers. Your request for disclosure is therefore refused under section 41 of the FOIA.

Section 31 – Law Enforcement

The Council is of the view that the information on closed/ended council tax accounts as detailed in your request is exempt from disclosure under section 31 of the Freedom of Information Act 2000 which states that information is exempt if its disclosure would, or would be likely to prejudice the prevention or detection of crime.

There are genuine concerns to be raised about disclosing addresses of the deceased, as the property is potentially unoccupied and may also still contain the deceased’s personal papers and assets.

Empty properties attract criminal activity which includes, for example, opportunistic crime, and planned criminal activity. We also believe that if the list of empty
properties were to be disclosed, the properties would be more vulnerable to potential squatting and associated crime resulting from this, such as fires, criminal damage and anti-social behaviour. There is a real risk that once the information is in the public domain it could also be sought and used by individuals or organised gangs for criminal purposes. If the information were disclosed there could be a significant negative impact on the prevention of crimes, the most likely of which include theft, criminal damage, arson and illicit practices within the properties such as drug dealing and prostitution.

Any criminal activity at an empty property would undoubtedly have a considerable impact upon property owners, occupiers, neighbours and the neighbourhood in general. Criminal activity would likely cause distress and have a detrimental effect upon property value, causing loss and damage. The efficient deployment of police resources would be affected and would therefore be likely to be prejudicial to the prevention or detection of crime.

If the Council were also to disclose details of credits which exist on Council Tax accounts, this would further assist criminals in locating assets and would make the estates more vulnerable to fraud. Disclosure would also impact upon the Council’s efforts to prevent and detect criminal activity. It would increase the requirement for anti-fraud measures and consume resources which could be better utilised elsewhere.

This exemption is also subject to a public interest test. The following public interest arguments have been considered by the Council when deciding whether or not in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Factors in favour of disclosure:

There is a general public interest in the promotion of transparency, accountability, public understanding and involvement in the democratic process. It is appreciated that the public may have an interest in this information, however this interest is more akin to public curiosity. It is acknowledged that you have an interest in, and there is a commercial use for the information.
The public have an interest in empty residential properties being brought back into use. Disclosure of information which highlights empty property may result in those properties being brought back into use more quickly. That said, no disposal can be made until the property is transferred to either a next of kin who has been located, or to the Crown. Disclosure of last known address would not therefore have the effect of the property being brought back into use any sooner than would ordinarily be so.

The public have an interest in ensuring that the Council deal with the administration of Council Tax in a proper manner, however disclosure of the requested information is unlikely to assist in satisfying this interest. The Council have proper procedures, policies and scrutiny functions in place to ensure propriety, and in any case there are no credible allegations of misconduct or wrongdoing which may increase the public interest.

Factors against disclosure:

There is a strong public interest in avoiding likely prejudice to the prevention of crime.

There is a public interest in avoiding damage to property and the costs of repair and for obtaining possession. In addition, vandalised properties have an effect upon degeneration of a community and future criminal activity has effects on the environment.

There is a public interest in reducing the indirect consequences of crime, which in this instance would be the impact on property owners, occupiers, neighbours and the neighbourhood in general (as set out above), and upon bodies such as the Council and the Land Registry. There would also likely be an impact upon the value of the estate in question and therefore a corresponding loss for the ultimate recipient.

There is a public interest in reducing the impact of crime upon individuals. Again, crime resulting from any disclosure of the requested information would likely impact upon those in the vicinity, and the ultimate recipient of the estate.

There is a public interest in ensuring the efficient use of police resources.
The Council acknowledges the public interest in disclosure, but considers that in all the circumstances of the case, the public interest in maintaining the prevention of crime exemption outweighs the public interest in the information’s disclosure.

The Council is aware of the recent decision of the First Tier Tribunal EA/2011/0007 which was referred back to the FTT by the Upper Tribunal. The decision, made in January 2013, was to dismiss the appeal and allow the exemption under Section 31(1) (a). The Tribunal concluded that public interest in maintaining the exemption outweighed the public interest in disclosure.

Where information relevant to your request falls outside of this exemption, it remains the Council’s position that the information is exempt from disclosure under the other exemptions set out within this response.