| Police Scotland logo | Freedom of Information Response Our reference: FOI 24-0303  Responded to: xx February 2024 |
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Your recent request for information is replicated below, together with our response.

**By way of background, I should state that my Freedom of Information (FOI) request concerns the Northern Constabulary investigation into the murder of Shamsuddin Mahmood at the Mumutaz Indian Restaurant in Kirkwall on June 2, 1994, and a cold case review that was undertaken in 2006-7. I'm aware of an FOI exemption regarding law enforcement activity, but since the case closed with the conviction of Michael Ross for the crime at the Glasgow High Court in 2008, I'm hoping the information I seek is available.**

**On June 20, 2022, the campaign group Justice 4 Michael Ross submitted a 360-page complaint about the investigation to Police Scotland's Professional Standards Department. The complaint was then responded to by Chief Inspector Stephen Rosie — of Professional Standards Department (North) — in a letter dated December 13, 2023. The response has a reference number of: CO/1830/22. On the top line of page 4, the response says:**

***"In addition, an independent Chief Inspector reviewed the SIO policies as part of a peer review of the enquiry."***

**By way of the Freedom of Information Act (Scotland) 2002, I would like to request the following information regarding this peer review:**

## I must first advise you I have slightly reordered the questions for ease of response and to avoid repetition:

**1. Who requested that the review take place (please provide their name and rank)**

**2. When was the review started (please provide the month and year)?**

**3. How many weeks did it take for the review to be completed?**

**6. Was a report compiled on the findings of the review?**

## 7. If so, how many pages long is this report?

## 9. Please can you also provide a copy of any and all correspondence regarding the request that the peer review take place (including any attachments to said correspondence).

In terms of Qs 1, 2, 3, 6, 7 & 9, it has been estimated that to accurately provide the requested information will exceed the £600 cost threshold defined in the Act.

To first provide the appropriate context, a full review of all of the points raised by the campaign group was undertaken by Police Scotland, an exercise which took over a year to complete. I can confirm that this assessment resulted in none of the points raised being upheld.

In order to accurately respond to questions regarding any related review of policy, a manual check of all potential files held in respect of this piece of work would be required in order to provide an accurate response.

On this occasion it is assessed that the cost of locating, retrieving and providing the information sought would take over 40 hours and be in excess of the £600 cost limit.

I am therefore refusing to provide the information sought in terms of section 16(4) of the Act, as section 12(1) - Excessive Cost of Compliance - applies.

**4. Who is the independent Chief Inspector who carried out the review, and which force are they from?**

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information requested.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

(a) states that it holds the information,

(b) states that it is claiming an exemption,

(c) specifies the exemption in question and

(d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested.

The exemptions that I consider to be applicable to the information requested is:

Section 38(1)(b) - Personal Data

With regards to the requested name specifically, personal data is defined in Article 4 of the General Data Protection Regulation (GDPR) as:

‘Information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person’

Section 38(2A) of the Act provides that personal data is exempt from disclosure where disclosure would contravene any of the data protection principles set out at Article 5(1) of the GDPR which states that:

‘Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject’

Article 6 of the GDPR goes on to state that processing shall be lawful only if certain conditions are met.

The only potentially applicable condition is set out at Article 6(1)(f) which states:

‘Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child’

Whilst I accept that you may have a legitimate interest with regards the disclosure of this information and that disclosure may well be necessary for that purpose, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject.

**5. How many officers, in total, carried out the review?**

In the absence of being able to identify the details above, I must again respond that any attempt to accurately establish this information would be cost exempt.

Moreover,the nature of policing means that officers are deployed to wherever their services are most required.  The number of officers required throughout an enquiry will fluctuate and officers involved in a particular investigation, or multiple investigations, can be redeployed to other duties at any time.  In practice, officers are drawn from different areas of the Service, based on their skillsets or other factors.

As such detailed records are generally not held in relation to the number of officers deployed to any particular piece of work undertaken by them.

## 8 i) If a report was compiled about the findings of the review, please can Police Scotland provide a copy of it.

## ii) If this is unavailable in its entirety due to one of the exemptions listed in the Freedom of Information Act (Scotland) 2002, then please provide any sections summarising the findings of the peer review, such as an executive summary, introduction, or conclusion.

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with a copy of the requested information.

I can confirm that Police Scotland holds the information that you have requested and the exemptions that I consider to be applicable to the information requested by you are:

Section 34(1)(b) - Investigations

Information is exempt information if it has at any time been held by Police Scotland for the purposes of an investigation and relates to a decision to report to the Procurator Fiscal and determine whether criminal proceedings should be instituted.

Section 35(1)(a)&(b) - Law enforcement

Release of this information would be likely to prejudice substantially the ability of the police to investigate and detect crime and would have a similar detrimental impact on the apprehension or prosecution of offenders.

The information relates to alleged criminality and was recorded for that purpose - as such information is afforded greater protection from disclosure under FOISA.

Section 39(1) - Health & Safety

Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

All of the exemptions above require the application of the public interest test.

Public Interest Test

Whilst I appreciate the reasons why you might wish this information, I also have to consider the wider implications of the public release of such a document as a release of information under this Act is, essentially, a release of such sensitive information into the public domain.

I wholly acknowledge that public awareness may favour disclosure as it would contribute to the public debate surrounding the police handling of the enquiry.

Nevertheless, the efficient and effective conduct of the service and public safety favours retention of the information as it cannot be in the public interest to release information that would prejudice law enforcement.

Information about investigations will only ever be disclosed by Police Scotland where there are overwhelming public interest considerations favouring disclosure.

I can find no corresponding argument in terms of placing this document (either in its entirety or in part) in the public domain and accordingly it is assessed that the public interest lies firmly in refusing disclosure.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.