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Our Ref: IM-FOI-2022-1268
Date: 06 July 2022



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response with the exception of several parties named, who have been replaced with 'A', 'B', 'C' etc - noting that you, the applicant, are person 'A'.

This request relates to the Edinburgh Employment Tribunal between Rhona Malone and The Chief Constable of the Police Service of Scotland.

Can you kindly share with me all documentation, correspondence and emails between Clyde & Co Solicitors (including individual employees) and Police Scotland Legal Services Department (including individual employees) that makes any reference to;

- **Police and civilian employee witnesses assessed as required on behalf of the Chief Constable**
- **Police and civilian employee witnesses assessed as not required on behalf of the Chief Constable**
- **Any meeting minutes, policy or decision logs that relate to the selection of witnesses on behalf of the Chief Constable**

In response to the three questions above, I am refusing to provide you with the information sought in terms of section 16 of the Freedom of Information (Scotland) Act 2002.

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 sought are:

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Section 38(1)(b) - Personal Data

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 I do not agree that disclosure is necessary.

Furthermore, I am of the view that any interest you may have is overridden by the interests or fundamental rights and freedoms of the data subjects.

On that basis, it is my view that disclosure of the information sought would be unlawful.

Section 36(1) - Confidentiality of Communications

Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

Whilst we accept that there is a public interest in better informing the public as to matters concerning Police Scotland - particularly in regard to well publicised and/ or high profile matters, there can be no parallel interest in irrefutably damaging the expectation of confidence that exists in relation to the provision of legal advice.

The public interest therefore overwhelming lies in engaging the exemption and refusing to provide the information sought.

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- **A “light touch” approach in the formulation and presentation of the Chief Constables evidence**

In response to the question above, section 17 of the Act applies - the information sought is *not held* by Police Scotland.

- **Concerns raised by ‘A’ and/or ‘B’ with Stuart Healey from Clyde & Co Solicitors regarding the lack of Police witnesses in the Chief Constables case**
- **Concerns raised by ‘A’ and/or ‘B’ with Stuart Healey from Clyde & Co Solicitors regarding the need to meaningfully cross examine witnesses appearing on behalf of Rhona Malone**
- **Concerns raised by ‘A’ and/or ‘B’ with Stuart Healey from Clyde & Co solicitors regarding the integrity/behaviours of ‘C’ and ‘D’ which was documented internally by Armed Policing**

In response to the three questions above, I am refusing to confirm or deny whether the information sought exists or is held by Police Scotland in terms of section 18 of the Act.

Section 18 applies where the following two conditions are met:

- It would be contrary to the public interest to reveal whether the information is held

Whilst we accept that you may have a particular personal interest in being informed as to whether or not the information sought is held, the overwhelming public interest lies in protecting individuals’ right to privacy and the expectation of confidence that the public have in Police Scotland as regards their information.

- If the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act

The exemptions that I consider *would be* applicable to the information sought are:

Section 38(1)(a) - Personal Data - In respect of person ‘A’

Your own personal data is exempt from disclosure in all circumstances.

You do however have a right to access any information Police Scotland holds about you in terms of Article 15 of the General Data Protection Regulation and/ or section 45 of the Data Protection Act 2018 - further details can be found on our [website](#).

Your request has therefore been passed to our Data Protection team and they will be in touch in due course.

Section 38(1)(b) - Personal Data - In respect of Person ‘B’

Section 36(1) - Confidentiality of Communications - In respect of both parties

I would refer you to the rationale above as regards the applicability of the exemptions set out at sections 38(1)(b) and 36(1) of the Act.

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- **Any correspondence that makes any reference to including or precluding the following as witnesses;**
 - 'E'
 - 'F'
 - 'G'

In response to the three questions above, I am refusing to confirm or deny whether the information sought exists or is held by Police Scotland in terms of section 18 of the Act.

I would refer you to the rationale above as regards the applicability of the exemptions set out at sections 38(1)(b) and 36(1) of the Act.

- **Method of Entry training instructors**
- **Firearms Licensing**

In response to the two questions above, section 17 of the Act applies - the information sought is *not held* by Police Scotland.

Should you require any further assistance please contact Information Management quoting the reference number given.

If you are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions.

Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to foi@scotland.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision. You can apply [online](#), by email to enquiries@itspublicknowledge.info or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.