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Our Ref: IM-FOI-2022-1987
Date: 20 October 2022



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent subject access request, a small part of which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

I note that you did not reference FOI specifically, but as a written request for access to recorded information, I am compelled by law to treat your request as an FOI request and I cannot treat it differently because you are a police officer. I can only consider whether the information sought is suitable for *public disclosure*.

Please accept our apologies for the delay in providing a response, unfortunately your request was not passed on to the FOI team immediately.

For ease of reference, your request is replicated below together with the response.

SOPs or guidance on toxic gas or noxious substances or chlorine gas or chloramine gas covering the period 01/05/2014 to 06/09/2022

I note first of all that as a serving police officer you would, ordinarily have access to the full suite of Police Scotland SOPs and Guidance as part of your role.

As the information requested is *otherwise available* to you, section 25(1) of the Act would exempt it from disclosure on that basis.

I note however that you commented you don't currently have access to work emails - and so I can only assume that similarly, you don't currently have access to the force intranet where such documents are available.

Taking that into account, I don't feel that the application of section 25(1) of the Act is fair in the circumstances.

I'm sure you will appreciate that whilst a number of Police Scotland SOPs and guidance documents are suitable for public disclosure, many are not.

In most cases, that is because the content is operationally sensitive and could be used by criminals to their advantage in the commission of crime and/ or the harming of police officers/ members of the public.

The Police Scotland SOPs/ guidance documents we have sourced of potential relevance to your request are as follows:

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- Chemical Fatality & Self Harm Incidents Response Guidance
- Chemical, Biological, Radiological and Nuclear Incidents (CBRN) SOP

This is based on a search for Police Scotland documents specifically which are SOPs (Standard Operating Procedures) and/ or have guidance in their title and include specific reference to gas and or/chemicals.

I'm sure you will appreciate that a wider interpretation results in a substantial volume of information - for example a search on the intranet for 'chemical' results in more than 1,200 hits.

Neither of the SOPs/ guidance listed above are publicly available and so we have assessed whether or not they are disclosable under FOI - again, I would stress that we can only disclose to you that which we would disclose to anyone.

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

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 you have requested and the exemptions that I consider to be applicable are set out at:

Section 31(1) - National Security and Defence
Section 35(1)(a)&(b) - Law Enforcement
Section 39(1) - Health and Safety

The content of the documents is assessed as highly operationally sensitive with the potential to be used to aid criminals in the commission of crime and the creation of harm.

On that basis, it is assessed that withholding the documents from public release is a necessary measure to protect national security, to ensure no prejudice to the prevention and detection of crime and to keep officers and the public safe from harm.

I appreciate that the public have an interest in policing and in particular how the police would approach particular scenarios - in this case an incident involving toxic chemicals/ gas - but, that interest must be balanced with maintaining the operational effectiveness of the force.

Police Scotland publish [SOPs and guidance](#) wherever possible but this is one case where publication or disclosure is clearly not in the public interest and is assessed as likely to result in significant harm.

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Notwithstanding the above your line manager may be able to arrange for you to attend at work to view SOPs/ procedures.

In addition, if the documents are deemed necessary to civil legal proceedings of any type - an employment tribunal/ public inquiry for example - then a request from a legal representative should be made to Legal Services in connection with those proceedings.

In those circumstances, disclosure would not be *public* as it is with FOI and different considerations would apply.

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.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.