

Our Ref: IM-FOI-2022-1685
Date: 24th August 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.

All information held by your organization in reference to police reference [Incident Report reference number]

Including but not limited to interdepartmental emails regarding above reference and its outcome.

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with information relating to this specific incident report.

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 by you are:

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

The information requested is exempt, as its disclosure would or would be likely to prejudice substantially the prevention or detection of crime and apprehension or prosecution of offenders.

Disclosure would have an adverse impact on the ability of the Police to carry out its law enforcement role effectively, and thereby prejudice substantially the prevention and detection of crime.

Section 34(1)(b) – Investigations

Information is exempt if it is held for the purposes of an investigation which in the circumstances may lead to a decision to report a matter to the Procurator Fiscal.

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Public awareness would favour a disclosure as it would contribute to the public debate surrounding the use of police resources and provide additional transparency in how Police Scotland deal with matters.

I would, however, contend that the efficient/effective conduct of the service and protecting the integrity of investigations favours retention of the information as it cannot be in the public interest to release information that would prejudice law enforcement.

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'

I appreciate that this response may be disappointing; however, I feel that it is important to emphasise to you that the Act is in essence, applicant and purpose blind. By this I mean that any information disclosed under the Act would be available to any person requesting it and in addition, that all responses under the Act are published on our website.

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

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:

[Subject Access Requests - Police Scotland](#)

You will have to provide identification and requests should be sent to:

DataProtectionSubjectAccess@Scotland.police.uk

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If you require a crime report for insurance purposes etc. then further information, including fees is available on our website:

www.scotland.police.uk/access-to-information/provision-of-reports/

Should you require any further assistance please contact Information Management Dundee, 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.