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Our Ref: IM-FOI-2022-0183
Date: 23rd February 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.

I am looking for the criminal data sourced by Police Scotland using body-worn cameras during COP 26.

Clarified as:

Is the footage recorded in written form? If so I'd like to see this.

Was there a report written after COP26 on the outcome of the cameras?

If so, I'd like to see it.

Can I see any information that isn't considered exempt.

Further clarified as:

Can I request any reports then on BWCS over the past two years?

I'm guessing this is a waste of time but I'll request video footage too that is able to be disclosed.

In relation to your request seeking to be provided with footage captured by Police Scotland I would first of all reiterate that the only footage held at this point is footage required for evidential purposes.

Any other footage captured will have been deleted after 31 days in line with our retention policies.

There are a total of 39 pieces of footage held which are arguably covered by the terms of your request.

On assessment, none of the incidents captured could be said to specifically *relate to* COP 26 but the footage was nonetheless captured during the relevant period.

I am refusing to provide you with copies of the footage.

Section 16 of the Freedom of Information (Scotland) Act 2002 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

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- (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 and the exemptions that I consider to be applicable are as follows:

Section 34(1)(b) - Investigations

First and foremost, the footage is held for the purposes of an investigation which, in the circumstances, may lead to a decision to report the matter to COPFS. The absolute exemption at section 34 of the Act therefore applies.

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

It is assessed that disclosure of the information would prejudice the detection of crime and the apprehension/ prosecution of offenders. Any criminal proceedings which result from the incidents captured would be substantially prejudiced by disclosure of evidence into the public domain.

Whilst we accept that there is a public interest in greater informing the public as to how the COP 26 event was policed, there can be no parallel interest in compromising investigations, prejudicing the integrity of the criminal justice process and breaching individual's rights to privacy.

Section 38(1)(b) - Personal Information

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'

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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.

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

The personal data in question would also reveal information about an individual's alleged criminality.

Whilst that does not in itself render the information *special category* personal data, it is our view that section 10 of the Data Protection Act 2018 makes clear that such information should be treated in a very similar way.

Article 9 of the GDPR only allows special category data to be processed in very limited circumstances and it is assessed that none of those circumstances are relevant here.

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

In relation to your request for '*reports on BWCs*' I regret to advise you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations.

As you may be aware the current cost threshold is £600 and I estimate that it would cost well in excess of this amount to process your request.

As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

By way of explanation I'm afraid this request is too wide and far reaching as it could cover reports on particular investigations, briefing documents, procurement materials etc.

I would reiterate that Body Worn Video has been used by Police Scotland for 10 years in our North East division and so although rolled out more widely in advance of COP 26 to our Armed Policing colleagues (who continue to use it) it was not new technology for the force.

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.

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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.