| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-2567  Responded to: 2nd November 2023 |
| --- | --- |

Your recent request for information is replicated below, together with our response.

Please accept our apologies for the delay in responding.

**I understand that during the Fatal Accident Inquiry into the 21st December 1988 bombing of PA 103 over Lockerbie, Scotland, Sergeant David Johnston from Strathclyde Police's "F-Branch" confirmed that two unidentified bodies had been recovered from the crash site but as of the day of the hearing remained unidentified despite attempts to link them with known missing passengers and other leads. It appears that DNA analysis was considered but ultimately abandoned.**

**I would like to know the following:**

* **Since the inquest date of 16th Oct 1990, was further investigation carried out to confirm their identities?**
* **The names of these victims if they have been identified.**
* **What happened to the bodies.**
* **If the bodies remain unidentified, whether Police Scotland still believes the total number of victims to still be 270 or should it be revised to 272.**

**I've attached relevant extracts from the FAI touching with this aspect of the case and the investigators attempt to try and resolve this issue. Both victims were unidentified white males, one was in his 30's and the other in his 20's.**

Having considered your request in terms of the Act, section 18 is assessed to apply on the basis that it cannot be in the public interest for Police Scotland to confirm or deny what information is held in circumstances where a live investigation is ongoing.

The exemptions that I consider to be applicable to any information held are set out below.

Section 34(1)(b) of the Act applies insofar as:

*‘Information is exempt information if it has at any time been held by a Scottish Public Authority for the purposes of an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the Procurator Fiscal to enable it to be determined whether criminal proceedings should be instituted’*

This exemption however only applies to the extent that the public interest in maintaining the exemption is not outweighed by that in disclosing the information.

We fully accept that this investigation is high profile and consequently of significant interest to the public.

The bombing of Pan Am 103 remains the deadliest terrorist attack on UK soil and the largest homicide case Scotland's prosecutors have ever encountered in terms of scale and of complexity.

We fully accept that disclosure of any information connected to the initial and/ or subsequent related investigations would add to and inform any public debate on the matter.

We also accept that there is an argument in terms of accountability - Police Scotland is a publicly funded organisation and therefore it is right that our actions are subject to appropriate scrutiny.

However, that must be balanced against the fact that investigative information should only ever be released where there are overwhelming public interest considerations for doing so.

Furthermore, it cannot be in the public interest to disclose information where disclosure could be argued to be potentially prejudicial - in particular to any associated criminal justice procedures.

Section 35(1)(a)&(b) of the Act applies insofar as:

*“Information is exempt information if its disclosure under this Act would, or would be likely*

*to, prejudice substantially the prevention or detection of crime and the apprehension or*

*prosecution of offenders.”*

The information is of potential relevance to ongoing investigations and disclosure at this time would be likely to substantially prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.

I would refer you to a recent statement (12 December 2022) by Lord Advocate Dorothy Bain KC following the United States Department of Justice taking a former Libyan intelligence officer into custody on charges including destruction of an aircraft resulting in death:

*“The steps taken by the US justice authorities are significant and progress towards a legal breakthrough is welcomed by Scottish prosecutors and police. The tragic events of December 1988 have bound Scotland and the US together in deep loss and steadfast determination that all those who committed this atrocity should be brought before a court.*

*The destruction of Pan Am 103 over Lockerbie was a crime on a scale never seen before in Scotland. More than 400 parents lost a son or a daughter, 46 parents lost their only child, more than 140 people lost a parent and seven children lost both parents.*

*After Abdelbaset Al-Megrahi was convicted in 2001 my predecessor as Lord Advocate, Lord Boyd of Duncansby, confirmed to the Scottish Parliament that the investigation into the involvement of others in this terrible crime would continue.*

*For more than 20 years the Crown Office and Procurator Fiscal Service has maintained a case team working on this investigation, bringing together a range of prosecutorial expertise in counter-terrorism, major crime investigations, forensic analysis, international co-operation and mutual legal assistance.*

*The recent developments demonstrate that there can be no time limits placed on the pursuit of justice. Scottish prosecutors and officers of Police Scotland have remained committed to the case and for decades have worked closely with US Department of Justice attorneys and FBI case agents on the investigation.*

*I am going to Washington DC next week where I will have meetings with US prosecutors and attend commemorative events to mark the anniversary of the tragedy. Ongoing engagement here and in the US between law enforcement authorities, and with families who lost loved ones, is an important feature of this case.*

*Scottish prosecutors and police, working with UK Government and US colleagues, will continue to pursue this investigation, with the sole aim of bringing those who acted along with Al Megrahi to justice.”*

As outlined above, both Police Scotland and COPFS remain committed to the pursuit of justice as regards the case and this can in no way be regarded as a historic matter.

Police Scotland hold all of the evidence in relation to the case and will be supporting the

US prosecution at the direction of the Lord Advocate.

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.