| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-1954  Responded to: 16 August 2023 |
| --- | --- |

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

## Any note, record, recording, minutes or other documentation of the Chief Constable’s call with the Permanent Secretary on the 11 June 2023. This should also include the exact timing of this call

I can advise that a record of the call is held and is provided below. You will note that some information has been redacted and in in terms of section 16 of the Freedom of Information (Scotland) Act 2002 (the Act), I am refusing to provide you with the redacted information.

Section 16 of the Act 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 and the exemptions that I consider to be applicable are detailed below:

The exemptions that I consider to be applicable to the above requested information are as follows:

## Section 26 (c) – Prohibitions on disclosure

Information is exempt information under this section, if its disclosure would constitute, or be punishable as, a contempt of court.

Disclosure would substantially risk prejudicing what is an ongoing and live investigation. This includes an increased risk of a breach Contempt of Court legislation which is active in this case.

This is an absolute exemption and does not require the application of the public interest test.

**Section 30(b) – Free and frank provision of advice or exchange of views**

Information is exempt under section 30(b) if disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.

The exemptions in section 30(b) focus on the effect that disclosure of information would have (or would be likely to have) on the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation

This is a non absolute exemption and requires the application of the public interest test.

**Section 34(1) (a) (i) & (b) – Investigations by a Scottish public authority and proceedings arising out of such investigations**

Information is considered exempt information if it has, at any time, been held by a Scottish public authority for the purposes of an investigation which may lead to a decision to report the circumstances to the Crown Office and Procurator Fiscal Service to enable a determination on whether criminal proceedings should be instigated and to determine whether a person should be prosecuted for an offence.

This is a non absolute exemption and requires the application of the public interest test.

## Section 35 (1) (b) – Law enforcement

Information is exempt information if its disclosure would, or would be likely to, prejudice substantially the prosecution of offenders.

Disclosure of the requested information would impact on the live investigation and any ongoing and/or subsequent legal proceedings.

This is a non absolute exemption and requires the application of the public interest test.

**Section 39(1) – Health, safety and the environment**

Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

Whilst I appreciate the reasons why you might wish this information, I also have to consider the wider implications of the public release of such information as a release of information under this Act is, essentially, a release of sensitive information into the public domain.

This is a non-absolute exemption and requires the application of the public interest test. .

**Public Interest Test**

I appreciate there is an interest in the release of such information, however this must be tempered against what is of interest to the public and what is in the public interest.

The Act does not define the public interest, however, it has been described as “something which is of serious concern and benefit to the public”, not merely something of individual interest. It has also been described as “something that is “in the interest of the public”, not merely “of interest to the public.” In other words, it serves the interests of the public.

It is in the public interest that an understanding exists as to the processes involved in police investigations, therefore, accountability and transparency relating to the actions of Police Scotland and its officers would favour disclosure of the requested information.

That said, a decision for non-disclosure follows consideration of ongoing or likely criminal investigations and the efficient and effective conduct of Police Scotland in relation to such investigations.

It is essential that information pertaining to investigations is disclosed at the correct time and where appropriate, to ensure that neither the investigation nor the potential for proceedings to be brought against an individual(s) are put at risk.

Further, disclosure of the redacted information would, due to this being a live investigation, prejudice the ongoing investigation and as a result, affect the administration of justice and increase the risk of a breach of Contempt of Court legislation, which is active in this case.

Accordingly, in this instance, the balance of the public interest test favours retention of the requested information.

**Section 38(1) (b) of the Act - 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 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.*

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(s).

This is an absolute exemption and does not require the application of the public interest test.

The redacted extract held by Police Scotland is provided below:

11:05 - Phone call from CC who advised that he has just phoned the Perm Sec for SG, JP Marks (at 1042 hours), he used the following script:

I wish to advise you that Police Scotland have taken further action in relation to Operation Branchform this morning, following consultation with the Crown Office and Procurator Fiscal Service.

You will recall that this investigation relates to the funding and finances of the Scottish National Party.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Our activity this morning has been to arrest xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxx,as a suspect xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Xxxxxxxxx

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

As this is a live investigation, I cannot discuss this matter further.

FOR PERM SECRETARY ONLY:

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

## and whether anyone else other than the Chief Constable or the Permanent Secretary was on this call or would have been able to hear this call.

In terms of the Freedom of Information (Scotland) Act 2002 a public authority is only obliged to provide recorded information.

Under Section 8 of the Act, information which requires opinion or a yes/no response is not in essence a valid request.

If you wish to refine your request to seek recorded information your request will be considered and an appropriate response provided.

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.