

Our Ref: IM-FOI-2022-0112
Date: 04 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.

Did Police Scotland ever interview Stewart Dixon under caution about any aspect of Stefan's case?

Police Scotland did not interview Stewart Dixon under caution. For clarity, no criminality was established therefore interviewing under caution was not appropriate.

Was he ever asked to explain how Stefan's blood ended up on the wall of his living-room?

I can confirm that Stewart Dixon was asked about the blood on the wall of his living room.

A 'comprehensive review' lasting 16 months and led by Det.Supt Graeme Mackie was discussed with Stefan's family in September. It concluded that there was no criminality. It was also full of errors with supposedly experienced detectives apparently unable to distinguish between Stefan's father Sandy Sutherland and his older brother of the same name. I have asked whether the many errors flagged to the police by the family have been corrected and this has been ignored.

To be of assistance, it is Police Scotland's understanding that the document which you refer to here is a letter which was sent to Stefan's family from the Crown Office and Procurator Fiscal Service (COPFS) and accordingly any related enquiries should be directed to them at: foi@copfs.gov.uk.

For absolute clarity, Police Scotland do not hold a copy of said letter from COPFS and for this reason I must respond in terms of Section 17(1) of the Act: Information not held.

Given that there is 'no criminality' and therefore no live investigation and given that Stewart Dixon, the only man suspected by Stefan's family and the wider community of murdering Stefan is now dead, I would like a copy of the full report of the review, and I can add that the family would appreciate sight of it too.

This case is still subject to review by COPFS and the review process has not yet been concluded.

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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 as follows:

Section 34(1)(b) of the Act provides an absolute exemption from disclosure in that information is exempt information if it has at any time been held by Police Scotland for the purposes of an investigation which may lead to a decision to make a report to the Procurator Fiscal to enable it to be determined whether criminal proceedings should be instituted.

Furthermore, in the course of investigations the police interview and obtain evidence from persons who are in a position to assist them. The co-operation of witnesses is vital to policing and witnesses assist in this process, in the belief that not only their identities, but also the information that they provide will remain confidential.

There is an understanding that any statements given, or other evidence obtained will not be disclosed to third parties other than in the course of criminal proceedings. Anything that undermines this expectation of confidentiality is likely to impact on the willingness of victims or witnesses to report matters to, or assist the police.

This, in turn, would be likely to prejudice substantially the ability of the police to investigate and detect crime, and in turn would have a similar detrimental impact on the apprehension or prosecution of offenders - making the information exempt from disclosure in terms of Section 35(1)(a)&(b).

In addition, some of the information you have requested could be classed as personal data which I consider exempt from disclosure in terms of Section 38(1)(b) - particularly the statements made by individuals linked to the case.

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 the information sought is held by Police Scotland and the exemption that I consider to be applicable to the information requested by you is section 38(1)(b) - Personal Data

Personal data is defined in Article 4 of the General Data Protection Regulation (GDPR) as:

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'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'

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.

In summary, I appreciate that there is a public interest in relation to the outcome of the review. That said, it is essential that neither the review process nor the potential for proceedings to be brought against an individual are put at risk.

On balance I believe our due process would be hindered and as such the public interest test favours retention of the information at this time.

If you require further assistance or 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.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.

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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.