| Police Scotland logo | Freedom of Information Response Our reference: FOI 25-2239  Responded to: 25 August 2025 |
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Your recent request for information is replicated below, together with our response.

**We strongly disagree with the carve out in the policy that provides for opposite sex searches, based on nominal “consent” of the searching officer, and that of the duty officer and detainee.**

**We note that Police Scotland took advice on its interim policy from ‘our legal team and independent Human Rights Advisor, Jane Gordon’.**

**We wish to request sight of the advice she has provided related to this policy, under the Freedom of Information (Scotland ) Act 2000.**

A search of our systems has identified 17 emails/ documents which are relevant to your information request.

The information sought is therefore held by Police Scotland, but I am refusing to provide it in terms of section 16(1) of the Act on the basis that the following exemptions apply:

## Section 36(2)(b) – Confidentiality

Information is exempt information if its disclosure (otherwise than under this Act) would constitute a breach of confidence actionable by that person or any other person.

This is an absolute exemption and, as such, does not require the application of the Public Interest Test.

## Section 30(b)(i)&(ii) & (c) - Prejudice to the Effective Conduct of Public Affairs.

Disclosure would inhibit substantially the free and frank provision of advice, the free and frank exchange of views, and would otherwise prejudice substantially the effective conduct of public affairs, by negatively impacting on the operational effectiveness of Police Scotland.

It is essential that Police Scotland can consult, in confidence, with necessary experts/ partner agencies etc. in the formulation of policy and procedure.

Disclosure of such engagement would discourage such individuals from engaging with Police Scotland in the future, and/ or would temper the views they were prepared to provide.

Whilst we accept that there is a public interest in better informing the public as to the rationale behind Police Scotland policies and procedures, there can be no public interest in disclosing information which would make it more difficult to offer an efficient and effective service.

**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 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.

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](https://www.foi.scot/appeal), by [email](mailto:enquiries@foi.scot) 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.