

Our Ref: IM-FOI-2022-0143
Date: 14 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.

Supply Police Scotland pro-form for Solicitor's attending for interview for suspects

In response to this part of your request, I would advise you that there are three forms of potential relevance:

Police Interview – Rights of Suspects (PIRoS)
Pre-Interview Review of Rights Aide Memoir
16/ 17 Year Old Suspect - Solicitor Waiver

A copy of each form is attached.

Supply Letter of Rights - is this available in braille?

In response to this part of your request, I would advise you that the information sought is available online: www.gov.scot/publications/letter-rights-people-police-custody-scotland/

I am therefore refusing to provide you with the information sought.

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:

- (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 exemption that I consider to be applicable is section 25(1) of the Act - information otherwise accessible.

Guidelines for giving attending Solicitor's information on their client's alleged criminality bringing them into custody.

In response to this part of your request, I can provide you with the following extract from our Solicitor Access Guidance document:

9. Pre-Interview Briefing

9.1 Requirement for Pre-Interview Briefing

- 9.1.1 It is very likely that IOs / SIOs will be asked by solicitors to provide what is termed by some members of the legal community as “pre-interview disclosure”.
- 9.1.2 All police officers and staff should be aware that any reference to pre-interview disclosure is distinct from Disclosure to the Crown, where the police have a duty to reveal all relevant material in an investigation.
- 9.1.3 There is no legal requirement to have a meeting with the solicitor, or to provide information prior to interview. The legal position in Scotland is clear in that an arrested person is innocent until proven guilty and has the right to silence.
- 9.1.4 The following case law is noteworthy:
- In the case of R v Farrell [2004] EWCA Crim 597 it was recognised that the police need not in effect “show their hand”. In that case, the person in police custody made no admissions when interviewed but made a number of statements which were lies and were relied on during the trial by the prosecution. The person in police custody had not been told by the police about all the offences he was to be questioned about. The trial judge in that case drew a distinction between active lying to induce a confession and tactics which involve not disclosing the whole case at the outset, which the appeal court found a useful distinction.
 - In Ward v Police Service of Northern Ireland [2007] UKHL 50, Lord Bingham indicated ‘But there is no rule of law which requires the police to reveal to a person in police custody the questions that they wish to put to him when he is being interviewed. Nor are they required to reveal in advance the topics that they wish to cover, even in the most general terms, in the course of an interview. In some cases providing these details in advance will not prejudice their inquiries. But in others it may well do so. This is a judgment that **must** be left to the police. The interview **must** be conducted fairly. But advance notice of the topics to be covered is not a pre-requisite of fairness.
- 9.1.5 IOs / SIOs may provide solicitors with additional information, or likely questions to be posed during interview, where they consider it appropriate.
- 9.1.6 Whilst there is no requirement to meet or share information with a person in police custody’s solicitor, not doing so may increase the likelihood of a ‘no comment’ interview, or interviews being interrupted for a solicitor to provide further guidance to the person in police custody when unexpected questions arise.
- 9.1.7 Where IOs and SIOs elect to provide a form of briefing to solicitors, they **must**:
- Not deliberately provide misleading information
 - Fully consider the likely effect of the provision of such information, and
 - Record such briefing, where the information extends beyond merely the person’s status, grounds for arrest; where the person is held and that a solicitor’s professional assistance has been requested

9.2 Recording of Pre-Interview Briefing

- 9.2.1 Pre-Interview Briefings should be recorded in the following manner:
- In Summary cases, details should be inserted in the Interview/Text of Admissions sections of the Standard Prosecution Report.
 - In Solemn or complex cases, details should be recorded on the [Pre-Interview Solicitor Briefing Record \(Form 051-008\)](#) or contained within the person in police custody interview plan which must be lodged as a production.

9.2 Recording of Pre-Interview Briefing

9.2.1 Pre-Interview Briefings should be recorded in the following manner:

- In Summary cases, details should be inserted in the Interview/Text of Admissions sections of the Standard Prosecution Report.
- In Solemn or complex cases, details should be recorded on the [Pre-Interview Solicitor Briefing Record \(Form 051-008\)](#) or contained within the person in police custody interview plan which must be lodged as a production.

9.3 Content of Pre-Interview Briefing

9.3.1 Areas for consideration in Pre-Interview Briefings:

- An outline of the offence for which the person in police custody has been arrested;
- The circumstances in which the person in police custody was arrested;
- Any significant comments (or lack of comments), or material recovered, at the time of arrest or stop/search;
- The reasons why it is necessary to interview the person in police custody in the interests of the investigation of what has occurred and the potential for innocent explanations, self-defence, alibi, mitigation, etc.

9.3.2 The following are examples of briefing which may be provided:

- "The person in police custody was found in the rear garden of a dwelling that had been broken into a short time previously. He indicated when stopped by uniformed officers that he had been at a party in the same street and initial enquires have not corroborated the person in police custody's claim. When searched at the locus a screwdriver was found in his back trouser pocket".
- "The person in police custody was driving a car. During a routine stop, grounds for a search became apparent and a package of white powder was discovered in the boot. After being cautioned at the roadside she stated..."

9.3.3 Often in investigations, the information being gathered is fluid and it may be difficult in sufficient time to fully provenance or ascertain its place in the overall context of an investigation. Questions could be put to person in police custody, or information provided to solicitors, based on what the interviewing officers believe, from the information at the time available, to be reasonable and fair.

9.3.4 In the fullness of the investigation, the information on which such questions or briefings were based may be contradicted by other sources as the investigation progresses. Accordingly, IOs should be able to demonstrate questions posed to person in police custody, and information provided to solicitors, were based on the information held by them at the relevant time.

9.3.5 The role of the solicitor is to represent, protect and advance the legal interest and rights of the arrested person. Solicitors should ensure active participation in interviews, be observant and intervene if appropriate, make appropriate representations and objections if necessary. The test of whether questions, or lines of questioning, are fair and/or admissible is one for the courts, not for individual solicitors. As such, interviewing officers should remember their training, use lawful interview techniques and not be deflected from the pursuit of their investigations.

OFFICIAL

Should you require any further assistance please contact Information Management - Dundee 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.

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, Dalrnarnock, 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.

OFFICIAL