| Police Scotland logo | Freedom of Information Response Our reference: FOI 25-0742  Responded to: 26 March 2025 |
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Your recent request for information is replicated below, together with our response.

## According to a [story](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.largsandmillportnews.com%2Fnews%2F20519774.largs---two-men-charged-hate-crime-posters%2F&data=05%7C02%7Cfoi%40scotland.police.uk%7Ce08e07067c9b4ffa41d108dd56a8be24%7C6795c5d3c94b497a865c4c343e4cf141%7C0%7C0%7C638762004938064527%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=jsmCz8x%2B%2B20MtcUzg%2BwsmpNAq13igl6rwj19s5ATahQ%3D&reserved=0) that appeared on the *Largs and Millport Weekly News* website on 25 July 2022, "two males aged 22 and 30 have been charged in relation to offences relating to distribution of offensive written material". The report went on: "Several posters offensive in nature had been placed around the town centre..."

## I would like to know:

## 1. How many posters were discovered?

## 2. Did the posters all contain the same material?

## 3. Were the posters removed by police?

## 4. Precisely what material did each poster contain?

The information sought is 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 34(1)(b) - 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.

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

*Public Interest Test*

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

That said, when the Freedom of Information Bill was considered by the Scottish Parliament, the then Lord Advocate stated that the exemptions detailed in section 34(1) were essential for an effective justice system.

Section 34 has no harm test, and information will be exempt from disclosure simply because it has, at some point, been held by an authority for any of these purposes listed.

Accordingly, I can find no public interest in the disclosure of the requested information.

## 5. What were the names of the defendants?

The information sought is 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 exemption set out at section 38(1)(b) of the Act applies - 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, I do not agree that disclosure could be considered necessary in the circumstances.

Notwithstanding, I am further of the view that your interests are overridden by the interests or fundamental rights and freedoms of the data subjects.

On that basis, it is considered that disclosure of the information sought would be unlawful.

## 6. Were the defendants convicted?

## 7. If the answer to 6 is 'yes', what were their sentences?

The case is still live at this time.

Notwithstanding, assuming COPFS prosecute the case, and an individual is found guilty, sentencing information would be held by COPFS and the Scottish Courts Service.

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.