| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 23-1511Responded to: 23rd June 2023 |
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Your recent request for information is replicated below, together with our response.

**Under the freedom of Information Act I am seeking the following FIVE ITEMS of information Under FOI:**

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**1)**

**Please may I have ALL information you hold on ALL DNA samples detected on and taken from the body of Jodi Jones after her dead body was discovered on Roans Dyke Path on night the 31st of June 2003.**

**2)**

**Please confirm, under FOI, the ACTUAL address where Jodi Jones was murdered.**

In relation to questions 1 and 2 of your request, in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information requested.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

* states that it holds the information,
* states that it is claiming an exemption,
* specifies the exemption in question and
* 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:

Section 34(1) & (b) – Investigations

Section 35(1)(b) – Law Enforcement

Section 38(1)(b) - Personal Data

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

**Section 34(1)(b) – Investigations**

**Section 35(1)(b) – Law Enforcement**

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

Section 34(1)(b) of the Act provides 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.

The matter you are enquiring about was subject to a police enquiry. Any disclosure under FOI legislation is a disclosure to the world at large and any information released at this time could jeopardise or prejudice police enquiries.

**Public Interest Test**

I do appreciate that there is a degree of interest in the release of the information you have requested and that to do so would help inform public debate on policing in Scotland.

However it is essential that any release of information does not interfere or prejudice ongoing enquiries. To do so would put the enquiries at risk and to do so would be vastly against the public interest.

The balance lies in withholding the information requested at this time.

In regards to Section 35(1)(a)(b) and 39(1), as per the above, release of this information would be likely to prejudice substantially the ability of the police to investigate and detect crime, and would have a similar detrimental impact on the apprehension or prosecution of offenders.

It would provide an insight into murder investigations and would be extremely useful for criminals and those intent on wrongdoing and would assist them in circumventing the efficient and effective provision of law enforcement by the police service, which in turn would have an adverse impact on the safety of the officers involved and the general public.

This would increase the risk to the personal safety of individuals and also the safety of the police officers responding to incidents.

These are non-absolute exemptions and requires the application of the public interest test.

**Public Interest Test**

Public awareness would favour a disclosure as it would contribute to the public debate surrounding a high profile murder investigation and the police handling of such an enquiry.

I would, however, contend that the efficient/effective conduct of the service and public safety favours retention of the information as it cannot be in the public interest to release information that would prejudice law enforcement or which is likely to have an adverse impact upon public safety.

Accordingly, at this time the public interest lies in protecting the integrity of investigative and criminal justice procedures by refusing to provide the information sought.

I appreciate that there is a public interest in relation to police investigations and in particular murder investigations. That said, it is essential that neither the investigation nor the potential for proceedings to be brought against an individual are put at risk.

**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 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.

**3 )**

**Please confirm, under FOI, that Jodi Jones was murdered elsewhere AND that her body was dumped at Roans Dyke Path by her assailants in order that some other poor unfortunate person would find her body.**

**4)**

**Please confirm, under FOI, that JOSEPH JONES, Jodis brother, remains high on the list of the CURRENT chief suspects of Jodi's murder.**

**5)**

**Please confirm, under FOI, that the murder of Jodi Jones is an OPEN ongoing police investigation**

In relation to your next 3 questions, I must conclude that as they do not seek a copy of recorded information, they are not valid request in terms of Section 8 of the Freedom of Information (Scotland) Act 2002.

By way of explanation, your questions are seeking yes/no answers or confirmation of points rather than recorded information as per the Act.

I would normally advise that a revised request was considered that asked for recorded information rather than the confirmations you have asked for. In this case however, it is almost certain that the exemptions applied to questions 1 and 2 of your request would also apply.

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 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 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.