| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 23-2295Responded to: 18 October 2023 |
| --- | --- |

Your recent request for information is replicated below, together with our response.

## Please send me all reports and correspondence pertaining to these incidents, and also on the previous incidents related to charge plugs.

## ▪ Following a further incident involving a charger plug malfunctioning, Police Scotland has informed the suppliers that it no longer has confidence in the devices. The suppliers have agreed to replace the VEO charger plugs with an alternative.

In response to this question, please see the three attached documents, titled Applicant data 01, Applicant data 02 and Applicant data 03. Please note that these documents have been redacted.

With respect to the redactions, in terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought. 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.

Regarding the content redacted, I believe exemptions Section 33(1)(b) Commercial Interests, Section 35(a) and (b) Law Enforcement and Section 38(1)(b) Personal data apply.

**Section 33(1)(b) Commercial Interests**

It is expected that specific details/negotiations of product or service delivery by a contracted company will be considered commercially sensitive, the information will be held by Police Scotland and not disclosed publicly or to another organisation which may gain a competitive advantage in receiving this information.

If Police Scotland did disclose commercially sensitive information, it may reduce the number of companies tendering for the supply of goods and services. This will negatively impact on relationships between Police Scotland and providers and the tendering process used by the service to ensure it purchases the most efficient and cost-effective services in the future and will therefore prejudice the commercial interests of organisation.

This is a non-absolute exemption which requires the application of the Public Interest Test.

## Public Interest Test

I can see that there are several Public Interest arguments in support of disclosure including that to disclose the required information would allow greater scrutiny of the way public funds are spent, it would increase accountability and transparency in terms of this spending and that it is in the public interest for Police Scotland to procure services competitively, to ensure best value for money.

Likewise, I can see several Public Interest arguments in support of withholding the information including that it would be commercially unfair to our current suppliers, it could damage Police Scotland’s relationship with our suppliers and that the purpose of the tender process is to ensure that all options are presented to Police Scotland and from there the best option in terms of service and cost is selected.

Police Scotland is a publicly funded organisation and therefore the organisation has an obligation to obtain best value for money with services. To do this, it is essential to maintain working relationships with these companies that tender their services.

As such, Police Scotland will not disclose any information that would impact on the ability to do both. The public interest would not be served if it were no longer possible to engage companies in a tender offer if they believed that conducting business with Police Scotland would result in their confidential information being released.

**Section 35(a) and (b) Law Enforcement**

Information is exempt information if its disclosure under this Act would or would be likely to prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders.

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

**Public Interest Test**

I would suggest that public accountability may favour disclosure, given that the information concerns the efficient and effective use of resources by the organisation. Likewise, disclosure of the information would also inform the public debate on the issue of policing and contribute to the accuracy of that debate.

However, any disclosure under FOI legislation is a disclosure to the world at large and any information identifying the focus of policing activity could be used to the advantage of criminals.

Consequently, in terms of the applicability of the exemptions listed above, the need to ensure the effective conduct of the service in relation to prevention and detection of crime and the public safety considerations involved in the delivery of operational policing clearly favour non-disclosure of the information requested.

Accordingly, I would argue that the need to ensure the efficient and effective conduct of the service favours non-disclosure of the information redacted and on balance is significantly in the public interest. I cannot identify any corresponding viewpoint in disclosing the requested information and therefore the exemptions are upheld.

I must advise you that it is doubtful it could ever be in the public interest to disclose information which would jeopardise the delivery of policing and prejudice the prevention or detection of crime.

**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, I do not accept that disclosure is necessary for that purpose.

Further, I am of the view that any 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.

## ▪ CJSD recently reported a chemical leak linked to volatile chemicals that were being stored as productions. This resulted in a multi-agency incident. Following a Health and Safety investigation, a short life working group has been established with CBRN and CJSD to review the learning from this incident and consider any required policy changes.

## [https://www.spa.police.uk/spa-media/0acaypob/item-5-1-q1-health-safety-report.pdf](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.spa.police.uk%2Fspa-media%2F0acaypob%2Fitem-5-1-q1-health-safety-report.pdf&data=05%7C01%7Cfoi%40scotland.police.uk%7C065b1b639f4340df013908dbaecaf7c4%7C6795c5d3c94b497a865c4c343e4cf141%7C0%7C0%7C638295959852127830%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=GaEBrQ7ly7GLbw7sFWRUPalRAlScYDlEjdnbf3Nd0oQ%3D&reserved=0)

**Section 34(1)(b) Investigations**

In terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought. 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.

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.

The matter you are enquiring about is subject to a live police enquiry.

**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 enquiries or risk such enquiries in the future. 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.

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.