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Our Ref: IM-FOI-2022-0108
Date: 14th March 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.

Can you please provide me with the following details: How many independent advisory groups (IAG) does your force have?

I can confirm that Police Scotland has 4 active independent advisory groups/independent review groups. In addition we have 1 group that has concluded but where the report has not yet been published. As this group has not yet reported, I have elected to include it within the scope of your request.

I have not included any groups that are similar in nature but are not independent, i.e. are Police Scotland chaired.

What areas do they provide advice upon?

The 4 active groups provide advice on the following:

Group 1 – Equality, Diversity, Inclusion and Human Rights Independent Review Group

Reviewing Equality, Diversity, Inclusion and Human Rights

Group 2 – Professional Reference Group

A Professional Reference Group offering advice relating to Equality, Diversion and Inclusion matters.

Group 3 – National Independent Strategic Advisory Group

Provide advice on Equality and diversity issues in all aspects of Police Scotland's activities, including recruitment, operational procedures, community safety, and hate crime, to assist Police Scotland to ensure the safety and wellbeing of diverse groups throughout Scotland.

Group 4 – Border Policing Command Independent Advisory Group

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Provide advice and “a critical friend” around our use of Terrorism legislation at Ports and Airports.

The concluded group provided advice on the following:

Group 5 – Operation Urram Independent Advisory Group

The planning and policing of the COP26 climate conference.

Who sits (name, organisation) on your IAGs for hate crime, race, LGBT, women, and disability? (assuming such groups exist)

Please note that I have used the numbering quoted above.

Whilst none of the groups directly relate to the subjects listed, groups 1, 2 and 3 do cover aspects of these topics as part of their remit and therefore I deem them to be within the scope of your request.

Group 1 – Equality, Diversity, Inclusion and Human Rights Independent Review Group

Please be advised that the requested information is publicly available.

As such, 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.

I can confirm that Police Scotland holds the information that you have requested and the exemption that I consider to be applicable is set out at Section 25(1) of the Act - information otherwise accessible:

“Information which the applicant can reasonably obtain other than by requesting it under Section 1(1) is exempt information”

I can confirm that the information requested is available through the Scottish Police Authority website. I have attached a direct link to the relevant document below:

<https://www.spa.police.uk/spa-media/gp2jpg0f/rep-b-20210921-item-11-police-scotland-equality-diversity-inclusion-and-human-right.pdf>

Group 2 – Professional Reference Group

The requested information is considered to be exempt in terms of the Freedom of Information (Scotland) Act 2002 (the Act). Section 16 of the Act requires Police Scotland to provide you with a notice which:

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- (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.

Where information is considered to be exempt, this letter serves as a Refusal Notice that information is held and an explanation of the appropriate exemption is provided.

The exemptions that I consider to be applicable to the information requested by you are:

Section 30(c) - Prejudice to the Effective Conduct of Public Affairs
Section 38(1)(b) – Personal Information

Section 30(c) - Prejudice to the Effective Conduct of Public Affairs.

The Reference Group relates to an ongoing Public Inquiry governed by the Inquiries Act 2005. A Public Inquiry is a major investigation called where there is public concern around a specific event.

There are concerns that should the names of the individuals involved in the Inquiry be made public, they may become subject to media or further public interest which may have a detrimental impact on the Public Inquiry. If members of the group become aware that their personal information will be published by Police Scotland, this may cause members to withdraw or otherwise disengage from the process. This can only hinder the group and wider Public Inquiry in relation to this matter.

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. Release of the information would increase transparency around the process.

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

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

Section 38(1)(b) – Personal Information

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:

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'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'

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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'

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.

Group 3 - National Independent Strategic Advisory Group

Please refer to my answer to the question which requests minutes for this group.

Are they paid?

Group 1 – Equality, Diversity, Inclusion and Human Rights Independent Review Group

Yes - Members can claim payment for their time spent at an agreed day rate and all reasonable expenses are reimbursed. I would however advise that not all members claim payment.

Group 2 – Professional Reference Group

Yes - Members can claim payment for their time spent at an agreed day rate and all reasonable expenses are reimbursed. I would however advise that not all members claim payment.

Group 3 – National Independent Strategic Advisory Group

No

Group 4 – Border Policing Command Independent Advisory Group

No

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Group 5 – Operation Urram Independent Advisory Group

Yes – The chair only.

Can you provide me with copies of the minutes of the most recent meetings of the IAGs for hate crime, race and LGBT? (again assuming such groups exist).

Group 1 – Equality, Diversity, Inclusion and Human Rights Independent Review Group

Please be advised that the requested information is publicly available.

As such, 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.

I can confirm that Police Scotland holds the information that you have requested and the exemption that I consider to be applicable is set out at Section 25(1) of the Act - information otherwise accessible:

“Information which the applicant can reasonably obtain other than by requesting it under Section 1(1) is exempt information”

I can confirm that the information requested is available through our disclosure log. I have attached a direct link to the relevant page of our website below:

<https://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log/2021/november/21-2351-minutes-equality-diversity-inclusion-human-rights-independent-review-group/>

I can confirm that whilst there have been meetings of this group since the above FOI response was drafted, these have not been minuted and so do not fall within the scope of your request.

Group 2 – Professional Reference Group

Whilst this meeting is subject to note taking rather than being minuted, I have reviewed the information and believe that under the spirit of the Act, they would fall within the scope of your request.

I would however advise that on review of the documents concerned, the requested information is considered to be exempt in terms of the Freedom of Information (Scotland) Act 2002 (the Act). Section 16 of the Act requires Police Scotland to provide you with a notice which:

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- (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.

Where information is considered to be exempt, this letter serves as a Refusal Notice that information is held and an explanation of the appropriate exemption is provided.

The exemptions that I consider to be applicable to the information requested by you are:

Section 30(b) – free and frank provision of advice or exchange of views
Section 30(c) - Prejudice to the Effective Conduct of Public Affairs
Section 34(1)(a)&(b) – Investigations
Section 35(h) – Law Enforcement
Section 38(1)(b) – Personal Information

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

The Professional Reference Group relates to an ongoing Public Inquiry governed by Inquiries Act 2005. A Public Inquiry is a major investigation called where there is public concern around a specific event.

Information is exempt under sections 30(b) if disclosure would, or would be likely to, inhibit substantially:

- (i) the free and frank provision of advice (section 30(b)(i)) or
- (ii) the free and frank exchange of views for the purposes of deliberation (section 30(b)(ii)).

The provision of advice between members of the group in relation to a specific subject matter, as well as the exchange of views on both operational and corporate considerations take place routinely for much of our policing business and in particular is the essence of the independent advisory group process. This documents our thinking and deliberation on the issues raised and our final decision making.

If released, those deliberations, including the subject matter discussed would be substantially inhibited, prejudicing the ability to respond effectively to sensitive issues and require the Service to assess correctly the harm in any potential future disclosure.

Pre-empting these decisions by releasing information into the public domain is likely to frustrate this process and would inhibit the manner in which those issues are debated, effectively undermining the ability to ensure that there is sufficient opportunity to ensure all potential concerns and viewpoints are accurately identified and addressed.

In regards to Section 30(c), there are concerns that should the notes which include the names of the individuals involved be made public, the members of the group may become subject to media or further public interest which may have a detrimental impact on the Public Inquiry. If members of the group become aware that their personal information will be published by Police Scotland, this may cause members to withdraw or otherwise disengage from the process. This can only hinder the group and wider Public Inquiry in relation to this matter.

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This is a non-absolute exemption and is subject to a public interest test.

Section 34(1)(a)&(b) – Investigations

Section 34(1)(a) 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 the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence.

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.

It should be noted that whilst the current Public Inquiry is civil rather than criminal in nature, much of the information and circumstances was collected for reasons of a police investigation. It should be noted that the exemptions under Section 34 apply if the information was at any time held for the reasons of investigation and therefore still apply currently.

Section 35(h) – Law Enforcement

Section 35(h) of the Act provides an exemption from disclosure in that information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially any civil proceedings brought; and arising out of an investigation conducted, for any such purpose by or on behalf of any such authority, by virtue either of Her Majesty's prerogative or of powers conferred by or under any enactment.

As previously stated, the Public Inquiry into this matter is governed under the Inquiries Act 2005 and release of the request information would likely hinder the ongoing Public Inquiry.

This is a non-absolute exemption and is subject to a public interest test.

Public Interest Test

I do appreciate that there is a large 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 and in particular into a high profile matter of public interest. Release of the information would increase transparency around the process.

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

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

Section 38(1)(b) – Personal Information

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The notes contain the names of those involved and as stated in my answer above to your request for the names of the group members, this information would be classed as 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'

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'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'

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.

Group 3 - National Independent Strategic Advisory Group

Please find the requested information in the attached document. I can confirm that whilst the minutes do refer to other meetings of the group, Police Scotland do not hold a copy of these.

I must advise that it has been necessary to withhold some of the information requested, therefore, in terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought.

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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.

I can confirm that Police Scotland holds the information you have requested and the exemption that I consider to be applicable is set out at:

Section 30(b) – free and frank provision of advice or exchange of views

Section 35(1)(a)&(b)

Section 38(1)(b) – Personal Information

Section 30(b) – free and frank provision of advice or exchange of views

Information is exempt under sections 30(b) if disclosure would, or would be likely to, inhibit substantially:

- (i) the free and frank provision of advice (section 30(b)(i)) or
- (ii) the free and frank exchange of views for the purposes of deliberation (section 30(b)(ii)).

The provision of advice between senior officers and partner agencies in relation to a specific subject matter, as well as the exchange of views on both operational and corporate considerations take place routinely for much of our policing business. This documents our thinking and deliberation on the issues raised and our final decision making.

If released, those deliberations, including the subject matter discussed would be substantially inhibited, prejudicing the ability to respond effectively to sensitive issues and require the Service to assess correctly the harm in any potential future disclosure.

Pre-empting these decisions by releasing information into the public domain is likely to frustrate this process and would inhibit the manner in which those issues are debated, effectively undermining the ability to ensure that there is sufficient opportunity to ensure all potential concerns and viewpoints are accurately identified and addressed.

Public Interest Test

It could be argued that there is a public interest in disclosure of such information as it would contribute to greater transparency and openness.

That said, disclosure would harm the efficiency and effectiveness of the Service and the flow of information to the Service would be harmed by release of such information. If individuals were unwilling to contribute to such deliberations or put forward proposals in the future fearing their initial views were publicly attributable, or in case any non-factual information was disclosed prior to matters being finalised, any efforts to achieve honest opinions, would be hindered and as such the balance of the public interest test favours retention of the information.

Section 35 (1)(a)&(b) – Law Enforcement

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The information requested is exempt, as its disclosure would or would be likely to prejudice substantially the prevention or detection of crime and apprehension or prosecution of offenders. The request minutes contain tactical and resource information that if disclosed, experience has shown that it would allow those intent on committing crime or causing disorder to gauge the likelihood of detection or to take measures to negate the likelihood of detection. It would allow criminals to plan how best to engage or occupy existing police resources in an effort to maximise their chances of committing serious crime, therefore harming the efficient and effective conduct of the service.

Such information would prove extremely useful information for persons involved in criminality as they would be able to plan and conduct their activities to avoid detection. In turn this would prejudice substantially the ability for our officers to prevent and detect crime and apprehend or prosecute offenders.

Disclosure would have an adverse impact on the ability of the Police to carry out its law enforcement role effectively, and thereby prejudice substantially the prevention and detection of crime.

This is a non-absolute exemption 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 resources and tactics used by the Police.

I would, however, contend that the efficient/effective conduct of the service 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.

Section 38(1)(b) – Personal Information

Any information that could lead to the identification of individuals has been redacted. This is in accordance with Section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 – Personal Information.

This mainly relates to the names of persons who are outside Police Scotland and any staff member within Police Scotland of a more junior role (below the rank of Superintendent or Head of Department). Those of a more senior rank have been included as it is deemed within the public interest to do so.

As such, the processing would be unfair and unlawful in respect of the individuals concerned and would therefore be in breach of the first principle of the Data Protection Act 2018. This is an absolute exemption, which does not require a public interest test to be conducted.

Should you require any further assistance please contact Information Management quoting the reference number given.

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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, Dalmarock, 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.