

Our Ref: IM-FOI-2022-1854  
Date: 27<sup>th</sup> September 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.

**Please supply the information sharing agreement, appropriate policy document including any data protection impact assessment for multi-agency data sharing between Police Scotland Constables and embedded Mental Health Practitioners working for NHS or the West Lothian NHS and Social Care Partnership on the morning of a specific date and time in August 2018.**

I can confirm that after a review conducted of our records, no information relevant to your request was found.

As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

By way of some context, whilst we do have a number of current information sharing agreements in place where the NHS is the partner, none of these were in place in August 2018.

**Please advise the name of an individual working within the custody suite on the same date. female individual (MHP, ethnicity was black) doing business as the agent (of NHS) to the principle (Police Scotland)**

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the name of the individual requested.

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.

**OFFICIAL**

The exemption that I consider to be applicable to the information requested by you is 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.

**Police Scotland have stated that mental health practitioners embedded into local custody suites are clearly employed by the NHS, however given the IJB arrangements the MHP could well be employed direct by West Lothian NHS and Social Care Partnership, please clarify who the actual employer is?**

I can confirm that Custody Forensic Nurse's used by Police Scotland will be employed by the NHS.

**Please advise the on whose orders would a mental health practitioner be instructed to become involved particularly, if I was asked to speak to the MHP on a voluntary basis?**

**Would that instruction come from a senior Police Scotland Inspector i.e., \*name of individual removed\*, or the on-duty custody sergeant or would that instruction come from the MHP's actual employer.**

**OFFICIAL**

I must conclude that as it does not seek a copy of recorded information, both of these questions are not a valid request in terms of Section 8 of the Freedom of Information (Scotland) Act 2002.

By way of explanation, your questions are hypothetical in nature which is not considered a request for recorded information under the Act.

**Please advise if per your health and safety SOP's Police Scotland have a duty of care to your 'service users' under vicarious liability**

Police Scotland do not have a Health and Safety Standard Operating Procedure. As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

**In relation to a specific incident, provide me with all risk assessments carried out regarding myself.**

Having considered your request in terms of the Freedom of Information (Scotland) Act 2002, I am refusing to confirm or deny whether the information sought exists or is held by Police Scotland in terms of section 18 of the Act.

Section 18 applies where the following two conditions are met:

- It would be contrary to the public interest to reveal whether the information is held

Whilst we accept that you may have a particular personal interest in being informed as to whether or not the information sought is held, the overwhelming public interest lies in protecting individuals' right to privacy and the expectation of confidence that the public have in Police Scotland as regards their information.

If the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act

In this instance, section 38(1)(a) of the Act applies insofar as you have requested your own personal data which is exempt from disclosure in all circumstances.

You do however have a right to access any information Police Scotland holds about you in terms of Article 15 of the General Data Protection Regulation and/ or section 45 of the Data Protection Act 2018 - further details can be found on our website.

Your request has therefore been passed to our Data Protection team and they will be in touch in due course.

**I require your risk assessment regarding this malicious incident that adheres to <https://www.gov.scot/publications/works-collaborative-police-health-interventions-mental-health-distress/pages/6/>**

**Which ultimately puts the Police Service of Scotland in the position of being libel to vicarious liability, Common Design and apparent authority in your breach of cruel, inhuman and degrading treatment by service providers who allegedly take an oath to provide public protection.**

## OFFICIAL

The Police Service of Scotland must provide me with their SOPS regarding the following:

- **Vicarious Liability is where the primary liability is automatically passed through to the employer: THE PRINCIPLE it is a form of secondary liability THE AGENT.**
- **Common Design attracts is primary liability. It is a form of conspiracy, where the participant is liable for participating in the common design – co-joined.**
- **An employer is liable for the apparent authority given to an agent or employee when they say or imply that the agent is entitled to act on its behalf.**

Police Scotland do not hold any of the Standard Operating Procedures mentioned in this question. As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

**IF there is no Scots citizen STATUS, how come the STATUS of a Scots Constable is SO Special? Do you have any recorded information regarding such differences or is there not actually anything special about the STATUS of a Scots Constable?**

Police Scotland do not hold any recorded information in regards to this question. As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

Should you require any further assistance please contact Information Management 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.police.uk](mailto:foi@scotland.police.uk) or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, 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](mailto: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.