

Our Ref: IM-FOI-2021-2801  
Date: 13<sup>th</sup> January 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.

**I wanted to make an enquiry regarding accessing any Executive Summaries of case reviews or reports, undertaken in regards to the homicide of 4 named individuals.**

You later added:

**Could I add to my request the full review reports for the 4 named cases (in addition to the Executive Summaries)?**

The cases referred to in the request are classified as unresolved homicides/unexplained deaths by Police Scotland.

Unresolved homicides/unexplained deaths are considered those where:

- (a) No suspect has been identified
- (b) A suspect has been identified but not charged (no proceedings)
- (c) A suspect has been identified and charged but not placed on petition (no proceedings)
- (d) A suspect has appeared on petition but no indictment served due to there being considered an insufficiency of evidence at that time (no proceedings)
- (e) A suspect has been indicted and a trial concluded which has resulted in an acquittal (Not Guilty/Not Proven)
- (f) A suspect has been convicted but acquitted on appeal and no fresh prosecution has been authorised by the Appeal Court (Not Guilty)
- (g) A suspect has committed suicide prior to trial and no other person is being sought in connection with the case.

If a crime is considered to be unresolved it is considered to be under investigation until it is considered resolved.

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,

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- (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.
- The relevant exemptions in this case are Section 34, Section 38(1)(b), Section 39.

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

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

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

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.

Furthermore, in the course of investigations the police interview and obtain evidence from persons who are in a position to assist them. The co-operation of witnesses is vital to policing and witnesses assist in this process, in the belief that not only their identities, but also the information that they provide will remain confidential.

There is an understanding that any statements given, or other evidence obtained will not be disclosed to third parties other than in the course of criminal proceedings.

Anything that undermines this expectation of confidentiality is likely to impact on the willingness of victims or witnesses to report matters to, or assist the police.

This, in turn, would be likely to prejudice substantially the ability of the police to investigate and detect crime, and in turn would have a similar detrimental impact on the apprehension or prosecution of offenders - making the information exempt from disclosure in terms of Section 35(1)(a)&(b).

In addition, it would provide an insight into homicide 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 – making the information exempt from disclosure in terms of Section 39(1).

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 homicide investigations and the police handling of such enquiries.

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.

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I appreciate that there is a public interest in relation to police investigations and in particular homicide investigations. That said, it is essential that neither the investigations 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 the deceased is no longer considered a “data subject” and as such details could be disclosed via Freedom of Information it is necessary to recognise that members of the deceased’s family may be identified, and potentially targeted and emotionally affected by the disclosure of data of their loved one.

I understand 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.

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.

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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](mailto:foi@scotland.pnn.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.