

Our Ref: IM-FOI-2022-2307
Date: 25 November 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.

Following on from the response to Freedom of Information request 22-2043.

Building Craftsmen Dumfries Ltd - Fire: 09/08/2022 - Corbelly Hill Convent, 28 - 30 Maxwell Street, Dumfries, Dumfriesshire, DG2 7AW

I would be obliged if you could provide me with the detail surrounding these recorded incidents.

This would include the time and dates of each incident, together with the incident/crime reference numbers where available. Any further information you can provide in relation to the outcome of the calls, in other words if arrests were made/numbers of people involved would also be appreciated.

With regards to details of recorded incidents I can advise Section 16 of the Act requires Police Scotland 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. 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.

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:

'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'

The information requested is exempt from disclosure as it contains data which could identify an individual through the location of the crime. 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(s).

This is an absolute exemption and does not require the application of the public interest test.

Section 34(1) (a) (i) & (b) – Investigations by a Scottish public authority and proceedings arising out of such investigations

Information is considered exempt information if it has, at any time, been held by a Scottish public authority for the purposes of an investigation which may lead to a decision to report the circumstances to the Crown Office and Procurator Fiscal Service to enable a determination on whether criminal proceedings should be instigated and to determine whether a person should be prosecuted for an offence.

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

Finally and in relation to arrests, I can advise that Police Scotland does not hold the requested information. In terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

By way of explanation, the police in Scotland have the power to arrest an individual where there is sufficient evidence to support a charge against them. The power of arrest should be exercised only if it is necessary in the interests of justice that the offender should be taken into custody. If citation will prove equally effectual, an arrest may not be made. Not all offenders are routinely arrested when they commit crimes, and some may be subject of a report to the Procurator Fiscal, without ever having physically been arrested, as explained above.

Should you require any further assistance please contact Information Management – Glasgow at foiglasgow@scotland.police.uk 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 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 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.