

**OFFICIAL**

Our Ref: IM-FOI-2022-0287  
Date: 22 February 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.

**In today's Times online it says**

**"The founder of a charity supporting women who have suffered domestic violence has been interviewed by police after she was reported for hate crime after stressing its female-only services.**

**Nicola Murray was left "shocked and panicky" when detectives arrived at her door after an online announcement by Brodie's Trust that it would no longer refer women to Edinburgh Rape Crisis Centre (ERCC).**

**Talking to the officers, Murray, from Stanley, near Perth, was taken aback when she said they told her: "We need to speak to you to ascertain what your thinking was behind making your statement."**

**<https://www.thetimes.co.uk/article/police-interview-charity-chief-nicola-murray-after-tweet-ending-referrals-to-edinburgh-rape-crisis-centre-plwqxfjfv>**

**I would like all information held relating to your decision to make the visit described above.**

**This includes but is not limited to the purpose of the visit. Who ordered the visit?**

**I would like all information recorded during the visit.**

Firstly, It is worthy of note, that following the published news article, Police Scotland contacted the publisher regarding concerns of inaccuracies within the media report you have cited. The publisher then printed a correction and issued an apology.

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,

## OFFICIAL

- (c) specifies the exemption in question and
- (d) states, if that would not be otherwise apparent, why the exemption applies.

The exemptions I believe apply in this instance are Section 34(1)(b), Section 35(1)(a) and (b), and Section 38(1)(b).

### Section 34(1) – Investigations

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).

### Section 35(1)(a)&(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.

Disclosure of the requested information would impact on the process of investigating this case. One of the main purposes of the Police Service is to prevent crime but to release this information would be contrary to that purpose.

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 Service. Likewise, disclosure of the information would also inform the public debate on the issue of policing and contribute to the accuracy of that debate.

## OFFICIAL

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.

### Section 38(1)(b) – Third party 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.

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.

## OFFICIAL

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.