| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0699  Responded to: 28 March 2023 |
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Your recent request for information is replicated below, together with our response.

We have been instructed to investigate the fire incident which occurred at 14 Kilmarnock Road, Crosshouse, KA2 0HA on or around 18th August 2022. We would be grateful for the provisions of the incident report and/or any confirmation of PS attendance**.**

I can confirm that police attended a report of a fire at the locus on the morning of 19 August 2022.

The incident report 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:

(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 are as follows:

**Section 38 (1) (b) – Personal Information**

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).

To explain, the release of personal information, either directly or inadvertently is exempt under the Freedom of Information (Scotland) Act 2002.

Specifically there is an increased chance that individuals would speculate and at worst, potentially target individuals whom they believe to be linked to the case based on the locus.

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

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

**Section 35 (1) (b) – Law Enforcement**

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.

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

These exemptions are non-absolute and require the application of the public interest test.

**Public Interest Test**

It could be argued that it is in the public interest that an understanding exists as to the processes involved in police investigations. Accordingly, it could be argued that accountability and transparency relating to the actions of the Service and our officers would favour disclosure of the information.

That said, disclosure must be tempered against what is *of interest to the public* and what is *in the public interest*. Disclosure of information pertaining to investigations has to be disclosed appropriately, to ensure that neither the investigation, nor the future potential for proceedings to be brought against an individual(s) are put at risk. To that end, Police Scotland will not release any information that could prejudice any investigation or put individuals at risk.

Accordingly, at this time the public interest in the disclosure of the requested information is outweighed by the harm that could be created by revealing information.

You may wish to consider requesting an abstract report. Further information including fees and how to make payment are available on our website: [Provision of Reports - Police Scotland](https://www.scotland.police.uk/access-to-information/provision-of-reports/)

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.