| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0913  Responded to: 30 May 2023 |
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Your recent request for information is replicated below, together with our response. Please accept my apologies for the delay in responding.

**Any internal correspondence held around Operation Branchform, specifically within or involving the communications side of Police Scotland on how to announce the arrest of xxxxx xxxxxx the communication plan around that, and how to deal with the media.**

I regret to inform you that I am unable to provide you with all the correspondence held around Operation Branchform, as it would prove too costly to do so within the context of the fee regulations. As you may be aware the current cost threshold is £600/40 hours and I estimate that it would cost well in excess of this amount to process your request. As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought. By way of explanation, there are large numbers of files containing thousands of emails and documents which would need to be checked. If it takes 5 minutes to examine 1 email/document, we have assessed that this would take a considerable amount of time and therefore would be in excess of the £600 and 40 hours prescribed by the Scottish Ministers under the Act.

In relation to your request for **information involving the communications side of Police Scotland on how to announce the arrest of xxxxx xxxxxx, the communication plan around that, and how to deal with the media,** your request for information has been considered, however, a decision was made not to grant your request.

In this instance all of the above information is considered to be exempt from disclosure 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 are as follows:

## Section 26 (c) – Prohibitions on disclosure

Information is exempt information under this section, if its disclosure would constitute, or be punishable as, a contempt of court.

Disclosure would substantially risk prejudicing what is an ongoing and live investigation. This includes an increased risk of a breach Contempt of Court legislation which is active in this case

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

**Section 30(b) – Free and frank provision of advice or exchange of views**

Information is exempt under section 30(b) if disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.

The exemptions in section 30(b) focus on the effect that disclosure of information would have (or would be likely to have) on the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation

The information held details Police Scotland’s thinking and deliberation on the matter of a live investigation. If released, this information would substantially inhibit future enquiries, prejudicing the ability to respond effectively to sensitive issues and require the Service to assess correctly the harm in any potential future disclosure.

Pre-empting these decisions by releasing information into the public domain is likely to frustrate this process and would inhibit the manner in which those issues are debated, effectively undermining the ability to ensure that there is sufficient opportunity to ensure all potential concerns and viewpoints are accurately identified and addressed by those involved for fear that their comments would be released.

This is a non absolute exemption and requires 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.

## Section 35 (1) (b) – Law enforcement

Information is exempt information if its disclosure would, or would be likely to, prejudice substantially the prosecution of offenders.

Disclosure of the requested information would impact on the live investigation and any ongoing and/or subsequent legal proceedings.

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

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

Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

Whilst I appreciate the reasons why you might wish this information, I also have to consider the wider implications of the public release of such documents as a release of information under this Act is, essentially, a release of sensitive information into the public domain.

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

**Public Interest Test**

I appreciate there is an interest in the release of such information, however this must

be tempered against what is of interest to the public and what is in the public interest.

The Act does not define the public interest, however, it has been described as “something which is of serious concern and benefit to the public”, not merely something of individual interest. It has also been described as “something that is “in the interest of the public”, not merely “of interest to the public.” In other words, it serves the interests of the public.

It is in the public interest that an understanding exists as to the processes involved in police investigations, therefore, accountability and transparency relating to the actions of Police Scotland and its officers would favour disclosure of the requested information.

That said, a decision for non-disclosure follows consideration of ongoing or likely criminal investigations and the efficient and effective conduct of Police Scotland in relation to such investigations.

It is essential that information pertaining to investigations is disclosed at the correct time and where appropriate, to ensure that neither the investigation nor the potential for proceedings to be brought against an individual(s) are put at risk.

Further, disclosure of investigative processes, strategies used or guidance given would, due to this being a live investigation, prejudice the ongoing investigation and as a result, affect the administration of justice and increase the risk of a breach of Contempt of Court legislation, which is active in this case.

Finally, if individuals were unwilling to contribute to such deliberations or put forward proposals in the future fearing their initial views were publicly attributable, or in case any non-factual information was disclosed prior to matters being finalised, any efforts to achieve honest opinions, would be hindered. Accordingly, in this instance, the balance of the public interest test favours retention of the requested information.

**Section 38(1) (b) of the Act - 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 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.*

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.

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.