| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-2332  Responded to: 18th September 2023 |
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Your recent request for information is replicated below, together with our response.

In follow-up to FOI request 23-1416

**One of the requests was:**

1. **The exact circumstances of how and when Police Scotland came into possession of the government issued diary/journal of Scottish Government civil servant Michael McElhinney.**

**Your official response in FOI 23-1416 was:**

**The diary/journal was provided to Police Scotland as a production in February 2019. It was forwarded to the Crown Office and Procurator Fiscals Service (COPFS) and was then later returned to Police Scotland. Police Scotland then returned the diary/journal to the Scottish Government on 1st May 2020.**

**I sent in a similar request to the Scottish Government and they provided a different date for when the diary/journal was provided to Police Scotland. They stated it was 15 November 2018 as shown in an extract from their response below:**

**From FOI 202300369934**

**In relation to the first part of your request, the answer to your question is that the author of the notebook. Scottish Government HR and Police Scotland had access to the notebook before February 2019. Outwith FOISA, it might help if I clarify that what is referred to as a ‘diary/journal’ is more accurately described as a notebook containing work notes.**

**In relation to the second part of your request, the answer to your question is that the notebook was handed to the police by Scottish Government HR as part of the criminal investigation. Outwith FOISA, please note that this took place on 15 November 2018 and not in February 2019 as specified in your request.**

**Later on, in the Scottish Government response the following is also stated:**

**As noted above, the notebook was provided to Police Scotland at their request on 15 November 2018.**

**And this:**

**As noted above, Scottish Government provided the notebook to Police Scotland at their request.**

**Now could you please provide more information on this as clearly both dates cannot be accurate. Was the diary/journal/notebook provided to Police Scotland on 15 November 2018 or February 2019? Also, was it provided at the request of the Police and if so how had they become aware of it?**

**Lastly, could you please provide clarification as to whether this should be viewed as a brand new request or should be viewed as a review request of the original FOI request?**

I will address your last point first. We have dealt with your correspondence as a new request under the Act. You have 40 working days from a response being issued in order to request a review and you are outside this period.

In regards to your query about the two conflicting dates you have received, your request to Police Scotland asked for “The exact circumstances of how and when Police Scotland came into possession of the government issued diary/journal of Scottish Government civil servant Michael McElhinney”.

At the time of your request, this was interpreted as the date Police Scotland came into possession of the physical diary/journal. I have checked this for you and confirmed Police Scotland formally took possession of the diary/journal as a police production on 13th February 2019.

I note you have been advised by Scottish Government that the diary/journal was provided to Police Scotland on 15th November 2018. I can confirm that on 15th November 2018, Scottish Government provided Police Scotland with redacted photocopies of the diary/journal and not the physical diary/journal itself.

It appears that the different answers you have received are down to how your initial question was interpreted by each organisation. I would maintain our position that we did not come into possession of the government issued diary/journal of Scottish Government civil servant Michael McElhinney until February 2019.

To be of some assistance and in order to be as transparent as possible I can confirm that prior to Police Scotland being provided with redacted photocopies of the diary/journal on 15th November 2018, Police Scotland had been afforded access to/sight of the diary/journal by Scottish Government on 7th September 2018.

In relation to your additional questions, I can confirm that as part of its investigation Police Scotland sought to speak with officials and staff at Scottish Government.

The existence of the diary came to light during the course of those investigations. Police Scotland then sought access to the diary/journal.

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.