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Our Ref: IM-FOI-2021-1328
IM-FOI-2021-1329
IM-FOI-2021-1330
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Date: 2 March 2022



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 - INTERNAL REVIEW

In accordance with the Office of the Scottish Information Commissioner's Decision Notice 11/2022 this is a revised review response in relation to the FOI requests referenced above.

"The Commissioner finds that Police Scotland were not entitled to consider these requests to be repeated in terms of section 14(2) of FOISA and so failed to comply with Part 1 of FOISA. The Commissioner therefore requires Police Scotland to carry out a further review and provide the Applicant with a revised review outcome for those requests, otherwise than in terms of section 14(2) of FOISA (i.e. applying section 21(4)(b) of FOISA), by 7 March 2022."

On that basis I have no alternative but to apply section 21(4)(b) of the Act and substitute the original decisions as set out below.

A problem with your request however remains in the sense that instead of requesting access to recorded information - as you did in your initial request - you are asking that we review the information held and provide subjective answers to your questions based on the content.

I would highlight of course that in any situation, two people could read the same report and answer the same questions differently based on their interpretation.

It may also be the case that some questions simply cannot be answered in definitive terms.

I note the Commissioner's comments that you should not be expected to know what information is and is not included in the incident and death reports but whilst we have tried where possible to assist in your understanding of that in the responses below, it has been decided in respect of some of your questions that to do so would in itself provide a level of detail regarding the events that transpired inappropriate for public disclosure.

An individual died and whilst we appreciate said individual was a public figure, they are entitled to privacy and dignity in death and the details of what happened that day are a matter for Police Scotland and the Crown Office and Procurator Fiscal Service - with due consideration of the impact public disclosure might have on the deceased's friends and family.

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21-1334 - ... what the weather was like from the time Mr Cook collapsed to the time he was flown by search and rescue to Raigmore Hospital (i.e., a clear day, foggy, sunny, rainy?, etc.)

I can confirm that in terms of section 17 of the Act, Police Scotland do not hold the information sought - there is no reference to weather of any kind in either of the reports held.

21-1328 - ... if the hillwalker who assisted Gaynor Cook gave their name to the Northern Constabulary. Please note that I am not asking you to reveal the individual's name, but rather, to confirm whether or not a name was given. Words to the effect of "Yes, the hillwalker gave their name" or "No the hillwalker did not give their name will suffice." If the latter, I would also like to know why the Northern Constabulary did not order the individual to give their name.

In response to these questions, I would stress first of all that the Freedom of Information (Scotland) Act 2002 provides a right of access to *recorded information*.

There is no provision in the Act or elsewhere in law that compels Police Scotland to provide yes/ no answers to a questionnaire type request.

Requests that seek yes/ no answers are not 'invalid' as such but can only be answered with reference to any information held by Police Scotland that relates to the question posed.

The first step in that process is therefore determining whether any information is held by Police Scotland in the context of this sudden death investigation, regarding the individual referred to in your request.

On that basis, I can confirm that that Police Scotland holds recorded information of relevance - ie a name for the witness we believe you are referring to.

**21-1332 - ... if you could confirm the exact times of the following:
At what time the Northern Constabulary were first alerted to Mr Cook having fallen,
Whether the Northern Constabulary first alerted the Scottish health authorities or whether the parties originally at the scene first alerted them,
At what time the Scottish Ambulance service was first alerted,
At what time the search and rescue helicopter was dispatched,
At what time the search and rescue helicopter arrived at Ben Stack.**

In response to these questions, I am refusing to provide you with the information sought in terms of section 16 of the Freedom of Information (Scotland) Act 2002.

I can confirm that the information sought is held by Police Scotland and the exemptions that I consider to be applicable are as follows:

Section 34(2)(b)(ii) - Investigations
Section 38(1)(b) - Personal Information
Section 39(1) - Health and Safety

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21-1331 - ... if the Northern Constabulary (now Police Scotland) interviewed Mr and Mrs Klein (spelled Clyne in media reports) who were the owners of the Scourie Lodge in which the Cooks were staying. If interviews were not conducted, I would like to know the reason. If interviews were conducted, I would like to know whether the Northern Constabulary was aware that Mr Klein had suggested to Mr Cook that Mr Cook climb Ben Stack, the mountain on which Mr Cook died, and whether the Northern Constabulary thought that this was relevant to the case.

In response to these questions, I would reiterate the comments above regarding yes/ no questions and that they can only be answered with reference to any information held by Police Scotland that relates to the question posed.

The first step in that process is therefore determining whether any information is held by Police Scotland in the context of this sudden death investigation, regarding the individuals named in your request.

It is my decision refuse to confirm or deny whether such information exists or is held by Police Scotland in terms of section 18 of the Act.

Section 18 applies where the following two conditions are met:

- It would be contrary to the public interest to reveal whether the information is held

Whilst we accept that you may have a particular personal interest in being informed as to whether or not the information sought is held, the overwhelming public interest lies in protecting individuals' right to privacy and the expectation of confidence that the public have in Police Scotland as regards their information.

- If the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act

In this instance, sections 38(1)(b) and 38(1)(2A) of the Act apply insofar as you have requested third party personal data which is exempt from disclosure where it is assessed that disclosure would contravene the data protection principles as defined in the Act.

The exemptions set out at sections 34(1)(2)(b)(i), 35(1)(a)&(b) and 39(1) are also assessed as relevant.

21-1329 - ... if media reports from period stating that Mr Cook had fallen into a ravine were accurate or not. Statements to the effect of "Yes, Mr Cook fell into a ravine" or "No he did not" will suffice.

In response to these questions, I would reiterate the comments above regarding yes/ no questions and that they can only be answered with reference to any information held by Police Scotland that relates to the question posed.

The first step in that process is therefore determining whether any information is held by Police Scotland that describes the death of Mr Cook to the extent that an individual could subjectively attempt to answer the questions you have posed.

I can confirm that Police Scotland do of course hold information describing the circumstances of Mr Cook's death.

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I am however refusing to provide you with that information in terms of section 16 of the Freedom of Information (Scotland) Act 2002.

The exemptions that I consider to be applicable are as follows:

Section 34(2)(b)(ii) - Investigations
Section 38(1)(b) - Personal Information
Section 39(1) - Health and Safety

Cognisant of the comments in the related OSIC decision notice I appreciate that the approach articulated above may be seen as unduly broad in terms of our assessment that you are essentially seeking to be informed as to the circumstances of Mr Cook's death to the extent that you could subjectively answer the 'yes/ no' question posed.

I can therefore also confirm, for the avoidance of any doubt, that were we to apply a more narrow interpretation to the request and answer in terms of any information that *specifically* states Mr Cook 'fell into a ravine' then the response we would offer is in terms of section 18 of the Act in conjunction with the exemptions articulated above.

We refuse to confirm or deny whether or not there is any specific mention in the report of Mr Cook having fallen 'into a ravine'.

21- 1330 - ... if media reports from the period were correct, that Gaynor Cook was left to make it down Ben Stack mountain by herself, were accurate.

I would also like to know if anyone, police officers or the hillwalker, accompanied Gaynor Cook back to Scourie Lodge or whether she walked there alone.

In response to these questions, I would reiterate the comments above regarding yes/ no questions and that they can only be answered with reference to any information held by Police Scotland that relates to the question posed.

The first step in that process is therefore determining whether any information is held by Police Scotland that describes Mrs Cook's descent from the mountain and on to the lodge to the extent that an individual could subjectively attempt to answer the questions you have posed.

I can confirm that Police Scotland do hold some information of relevance.

I am however refusing to provide you with that information in terms of section 16 of the Freedom of Information (Scotland) Act 2002.

The exemptions that I consider to be applicable are as follows:

Section 34(2)(b)(ii) - Investigations
Section 38(1)(b) - Personal Information
Section 39(1) - Health and Safety

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21-1333 - ...If Mr Cook had a mobile phone on his person at the time of his collapse, If Gaynor Cook had a mobile phone on her person at the time of Mr Cook's collapse, Whether the hillwalker had a mobile phone or a satellite phone.

In response to these questions, I would reiterate the comments above regarding yes/ no questions and that they can only be answered with reference to any information held by Police Scotland that relates to the question posed.

The first step in that process is therefore determining whether any information is held by Police Scotland that specifically states that these individuals were in possession of mobile/ satellite phones.

It is my decision refuse to confirm or deny whether such information exists or is held by Police Scotland in terms of section 18 of the Act.

Section 18 applies where the following two conditions are met:

- It would be contrary to the public interest to reveal whether the information is held

Whilst we accept that you may have a particular personal interest in being informed as to whether or not the information sought is held, the overwhelming public interest lies in protecting individuals' right to privacy and the expectation of confidence that the public have in Police Scotland as regards their information. We also have a duty to protect the integrity of the investigative processes involved.

In this instance, simply confirming (or otherwise) the existence of information provides a level of insight into the events that transpired that day that is considered highly inappropriate to divulge to a third party not connected in any way to the investigation.

- If the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act

In this instance, sections 38(1)(b) and 38(1)(2A) of the Act apply insofar as you have requested third party personal data in respect of Mrs Cook and the hillwalker which is exempt from disclosure where it is assessed that disclosure would contravene the data protection principles as defined in the Act.

The exemptions set out at sections 34(1)(2)(b)(i), 35(1)(a)&(b) and 39(1) are also assessed as relevant.

Whether the call to the emergency services was made on the phone of the third party (the hillwalker),

In response to these questions, I would reiterate the comments above regarding yes/ no questions and that they can only be answered with reference to any information held by Police Scotland that relates to the question posed.

The first step in that process is therefore determining whether Police Scotland holds information of relevance - ie the identity of the individual who made the call.

I can confirm that Police Scotland do hold information of relevance.

I am however refusing to provide you with that information in terms of section 16 of the Freedom of Information (Scotland) Act 2002.

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The exemptions that I consider to be applicable are as follows:

Section 34(2)(b)(ii) - Investigations
Section 38(1)(b) - Personal Information
Section 39(1) - Health and Safety

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The exemptions set out above in response to your various questions were all relied upon in your original request and so we have not gone into great detail explaining again why they are considered to apply.

For clarify however, I can offer the following in terms of the public interest considerations, where they apply.

Disclosure would arguably increase public awareness as to the handling of sudden death investigations generally and in relation to this case specifically and may also allow greater public scrutiny of same - which we accept is often welcome where public funds are involved.

That said, it is the role of the Scottish Fatalities Unit at the Crown Office to investigate deaths, not the public.

I appreciate that the deceased in this case was, to an extent, a public figure but that does not negate the deeply personal nature of a sudden death investigation.

The Police and COPFS are tasked with this role because they are uniquely equipped to fulfil it due to training and experience.

It cannot be in the public interest for the police service to divulge investigative details, irrespective of the passage of time, simply to satisfy public curiosity.

There are well established, appropriate procedures in place to investigate such matters and public disclosure of information outwith those procedures not only undermines them but also causes untold damage to the individuals involved who then find themselves and their late loved ones subject to discussion and speculation.

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Should you require any further assistance concerning this matter please contact Information Management - Dundee quoting the reference number given.

If you remain dissatisfied following the outcome of this 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.