| Police Scotland logo | Freedom of Information Response Our reference: FOI 24-0088  Responded to: 12 January 2024 |
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Please first of all be advised that we have not recorded of having received a request form you in 2021. Please accept our apologies that your original submission was not passed to our department for action.

Your request for information is replicated below, together with our response.

## Citation Reference Number [redacted]

## Dear Constable [redacted] and Constable [redacted]

## I am writing with regards to paperwork I received ref: [redacted], Legal Post Ref. [redacted] from the Procurator Fiscal Depute regarding the case against me based on information provided by you Constable [redacted].

## Before we can proceed and in accordance with the Freedom of Information Act GDPR/Data Protection Act 2018 and the key principles, I [redacted] require that you answer the following questions for information which I am entitled to: -

## DSAR/FOIR Request to the Data Controller(s) and Data Processor(s).

## 1: In your witness statement you claim to be Police Constables, but as no crime was committed as there was no injury, loss or harm to any man or woman and no charges have been laid, please provide me with copies of your Warrant Cards to support your claim to act as Constables.

## 2: Please provide me with notarised copies of your Oaths of Office as Police Constables and a copy of same for Ian Livingston Chief Constable.

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,

(c) specifies the exemption in question and

(d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested.

The exemption(s) that I consider to be applicable to the information requested by you is/are as follows:

**Section 38(1) (b) - 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.*

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). On that basis, it is my view that disclosure of the information sought would be unlawful.

## 3: Please provide me with copies of your Professional Indemnity Bonds/Public Liability Insurance bonds to operate in the public arena.

The Scottish Police Authority, a body corporate established under Section 1 of the Police and Fire Reform (Scotland) Act 2012 is subject to the provisions of the Scottish Public Finance Manual and as such, the organisation self-insures and does not hold any public liability insurance.​

As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information you seek is not held by Police Scotland.

## 4: Please provide all personal data about me pertaining to Citation No [redacted] i.e. Caseman files, digital files, bodycam videos, handwritten notes, statements, photographs and all other data pertinent to the claim against me.

## Failure to provide all the information requested may be considered data blocking and will be reported to the Information Commissioner’s office

This part of your request is technically a Subject Access Request(SAR)and it will therefore be considered in terms of the Data Protection Act 2018/ GDPR as explained on our [website](http://www.scotland.police.uk/access-to-information/data-protection/subject-access-requests).

Our Data Protection team will contact you separately in relation to your SAR.

In terms of section 18 of that Act, I am therefore refusing to confirm or deny whether Police Scotland holds information about you.

The public interest overwhelmingly lies in protecting your right to privacy and an individual’s own personal information is exempt from disclosure in terms of the exemption at section 38(1)(a).

I understand that the statement above may seem confusing and/ or unhelpful in the circumstances but I would stress once again that this is the response to your FOI request only - a SAR will be progressed separately.

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.