

Our Ref: IM-FOI-2022-1292
Date: 06 July 2022



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

- 1. How many i) cars and ii) officers were in the immediate vicinity of Styx nightclub, Caskieberran Road, Glenrothes, on November 3 2013 from 01.00 to 03.00**
- 2. What time each i) car and ii) officer arrived and departed the vicinity.**
- 3. The i) name and ii) badge number of each officer from question 1.**

I can confirm that the information requested directly relates to a live police enquiry and accordingly 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.

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

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 General Data Protection Regulation (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, in particular where the data subject is a child'

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.

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

Furthermore, the following exemptions are also applicable:

Section 34 (1) (b) – Investigations

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.

There are no time limitations in this respect and this is particularly pertinent where an ongoing missing person investigation will remain open until that person is traced.

Section 35(1) (a) & (b) – Law enforcement

Information is exempt information if its disclosure under this Act would, or would be likely to prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders.

Section 39(1) - Health & Safety

The information requested is exempt as its disclosure would or would be likely to endanger the health or safety of an individual(s).

These exemptions are non-absolute and subject to the public interest test required by section 2(1) (b) of FOISA.

Public Interest Test

On the basis that the requested information relates specifically to a live missing person enquiry, I appreciate there is a degree of 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.

OFFICIAL

Information relating to investigations will rarely be disclosed under the Act, and only when there is a very compelling public interest consideration supporting disclosure.

I acknowledge there is a public interest in disclosing operational information that would inform members of the public regarding the efficiency and effectiveness of the procedures followed by the Service in missing person cases. Where public funds are being spent on investigations, there is also a public interest in accountability and justification.

Nevertheless the process of conducting a missing person's investigation is, in the main, a confidential process.

The process of investigating missing person cases is an obligation placed upon the police service by statute and this is heavily reliant upon the co-operation of many individuals to provide evidence during such investigations.

Witnesses and other sources of information do so on the understanding that the information provided will remain confidential unless they are required to give evidence in court. There is no public interest in the release of information into the public domain that could compromise the future flow of information to the police and, in turn, compromise the ability of the force to effectively fulfil its statutory obligations.

Further, and perhaps most crucially, as investigations are still ongoing, Police Scotland may, depending on the outcome of a missing person's case, have to provide documents to the Crown Office and Procurator Fiscal Service. To that end, Police Scotland will not release any data about an investigation that could prejudice the statutory function of this public authority.

On balance, whilst I appreciate that there is a public interest in regard to how missing persons' cases are investigated, this is outweighed by the necessity to ensure that ongoing investigations are not compromised, impeded or prejudiced by the release of the data you have requested.

Finally, updates in relation to Missing Person enquiries can be found at the following link:

<https://www.scotland.police.uk/whats-happening/missingpersons/>

If you require further assistance or are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions.

Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to foi@scotland.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that 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.

OFFICIAL

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.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.