

Our Ref: IM-FOI-2022-0762
Date: 05 May 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.

Please, first of all, accept my sincere apologies for the delay in providing a response to your request.

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

Provide me with all correspondence, including notes of any telephone conversations, between Police Scotland and the Sunday Times about the newspaper's report of Police officers' contact with Nicola Murray.

In accordance with section 16 of the Freedom of Information (Scotland) Act 2002 I am refusing to provide you with the information sought.

Section 16 of the Act requires Police Scotland, when refusing to provide such information because the information 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.

The exemptions considered applicable are:

Section 38(1)(b) - 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:

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'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 I do not agree that disclosure is necessary in the circumstances.

I am further of the view that any interest you may have in the subject matter are overridden by the interests or fundamental rights and freedoms of the data subject.

On that basis, disclosure is deemed to be unlawful.

I accept that the individual named in your request has been named by the media in various publications in relation to this matter.

That said, Police Scotland, with due regard to data privacy principles, *have not* named the individual and have stated:

"On 4 November 2021 detectives from Police Scotland's Anti-Corruption Unit attended an address in Stanley, Perthshire, as part of an investigation into allegations about the conduct of police officers which had been made on social media.

A woman, aged 43, was spoken with as a potential complainant however to date no complaint has been made.

The woman was herself not subject of a complaint or investigation and it is inaccurate and misleading to report otherwise."

Section 30(b)(ii) – Inhibition of exchange of views

I can confirm that Police Scotland entered into correspondence with the publication mentioned in your request to dispute the accuracy of their reporting of the matter.

This resulted in the removal of some online articles and the publication of a correction.

Police Scotland values robust scrutiny from a free media and our constructive relationship with publishers and broadcasters.

Where inaccurate or misleading reporting regarding Police Scotland occurs we take steps to address it, including seeking clarifications, corrections or removal of news items.

The content of the emails necessarily includes detail of the incident, including personal data as alluded to above, but also correspondence back and forth between staff members of both agencies.

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The exchange of views between Police Scotland and other organisations in relation to a specific subject matter takes place routinely for much of our policing business.

It documents the thoughts and opinions of officers and staff members as regards the issues raised as well as any conclusions drawn and or actions deemed necessary.

Such consultations are undertaken in confidence to discuss, and on occasion speculate about any potential issues which may arise.

Where such exchanges take place, there is no reasonable expectation that those conversations are made public - particularly where one of the organisations is not subject to Freedom of Information legislation.

It is of course true that all information generated by Police Scotland is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and officers and staff are aware of that.

However, there are some discussions which must necessarily take place, the content of which are not suitable for public disclosure.

If this information were disclosed, the frank exchange of views would be substantially inhibited, prejudicing our ability to participate effectively in such discussions - particularly those which involve particular police investigations and particular individuals.

Provision of these emails would inhibit substantially the free and frank exchange of views as Police Scotland staff (and organisations we liaise with) would correspond less freely, conscious that their correspondence could be publicly disclosed.

Should you require any further assistance please contact Information Management - Dundee on foidundee@scotland.police.uk quoting the reference number given.

If you 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.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.

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.

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