

Our Ref: IM-FOI-2022-1818  
Date: 13 September 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 people in Scotland are in the protected persons service/protected persons care?**
- 2. Are people categorised according to levels of threat? If so, please provide information on how many people are in each level. (E.g. serious threat etc)**
- 3. How many people in Scotland in protected care are in temporary accommodation?**
- 4. How many people in Scotland in protected care have been in temporary accommodation for more than one year?**
- 5. How many people Scotland in protected care have been permanently rehomed in the last three years?**

Having considered your request in terms of the above Act, I would first of all advise you that Police Scotland's priority is to keep the people of Scotland safe.

The UK Protected Persons Service supports those who help bring criminals to justice. Witnesses and other vulnerable people afforded protection person status due to a real and immediate risk to their lives will receive enhanced UK wide protection and support from the service (see the link below):

<https://www.gov.uk/government/news/national-witness-protection-scheme-announced>

As such, in terms of section 18 of the Freedom of Information (Scotland) Act 2002, I am refusing to confirm or deny whether the information you have requested is held. Section 18 provides that an authority does not have to confirm whether or not information is held where;

- if the information were held, it would be considered exempt from disclosure in terms of any of sections 28 to 35, 38, 39(1) or 41 of the Act; and
- disclosing whether or not information is held would be contrary to the public interest

If the information requested was held, I consider that it would be exempt from disclosure in terms of the following exemptions:

Section 31(1) - National Security  
Section 34(1)(b) - Investigations  
Section 35(1)(a)&(b) - Law Enforcement  
Section 39(1) - Health and Safety  
Section 38(1)(b) - Personal Data.

### **Overall Harm**

Modern-day policing is intelligence led and the protection of witnesses plays an important role in tackling organised crime and securing convictions in a number of the most serious and violent crimes.

Confirming or denying whether any information is held relevant to the request would show where policing interest has or has not occurred in any specific area which would enable those engaged in criminal or terrorist activity to identify the focus of policing targets.

Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

Any information identifying the focus of this activity could be used to the advantage of terrorists or criminal organisations to plan an attack on the more vulnerable parts of the UK.

Police Scotland works in partnership with other agencies in order to combat issues such as terrorism and organised crime. Disclosure of the information requested, if held, would seriously undermine this partnership approach, both in the UK and through international cooperation.

Section 2(1)&(2) of the Act provide that information can only be considered exempt in terms of the exemptions set out above to the extent that the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

### **Public Interest**

The key test when considering where the balance of public interest lies is to establish whether, in all the circumstances of the request, the public interest in confirming or denying the information is held is not outweighed by maintaining the exemption(s).

I can confirm that I have considered the public interest with regards disclosure of the information requested if it were held, and I am of the view that whilst accountability for public funds and better informing the public debate on a matter of significant concern may favour disclosure, ensuring the integrity of the police response to serious criminal activity and ultimately, keeping people safe from harm is paramount.

Such measures are put in place to protect the communities that we serve. As additional information is disclosed over time, a more detailed account of the tactical infrastructure of not only a force area such as Scotland, but also the UK as a whole, will emerge. The risk of harm to the public would be elevated as whilst the public will be aware that witness protection/relocation schemes are in operation, the Police Service would not wish to tell the public how many people they have in witness protection as this could then start revealing the extent, reasons or locations where such activity may/may not take place.

Such action is only taken in highly sensitive cases and could potentially identify vulnerable persons within the Criminal Justice System and substantially put them at risk as evidenced below:

[http://en.wikipedia.org/wiki/Kenneth\\_Noye](http://en.wikipedia.org/wiki/Kenneth_Noye)

Further to the above, referring back to the requirements of section 18, I also consider that it would be contrary to the public interest to reveal whether or not the information requested by you is held by Police Scotland and the considerations, for and against disclosing whether or not the information is held are as follows:

### **Harm in Confirming or Denying that Information is held**

Any release under the Freedom of Information Act is a disclosure to the world, not just to the individual making the request. By merely neither confirming nor denying whether information is held could aid in the location of individuals who may have been placed into protective custody. Any information relating to a person or person(s) who have been placed in protective custody which may compromise their protection will obviously place those people in grave danger.

The impact of providing intelligence which aids in the location or identity of those persons could include the diverting of additional police resources, and the costs of having to potentially relocate people, which would need to be carried out promptly and covertly for their own safety. This would lead to an undermining of the culture of mutual trust and security which underpins witness protection schemes.

Also, there will inevitably be a link between the persons on any scheme and an investigation. All these factors will in turn be likely to have a negative effect on the community, be it in the diversion of resources from other areas, the collapse of ongoing cases or appeals and an increase in crime as people are unwilling to come forward as witnesses fearing the police will not be able to protect them.

The public interest considerations are summarised below:

### **Factors favouring disclosing whether information is held**

#### **Section 31(1): National Security**

Confirmation or denial of whether information is held may aid public debate on appropriate information sharing techniques between the Police Service as well as other agencies. Additionally the public are entitled to know how public funds are spent and resources distributed within an area of policing. In the current climate of cuts and with the call for transparency of public spending this would enable improved public debate.

#### **Section 34(1)(b): Investigations**

Confirming or denying that information exists relevant to this request would lead to a better informed public improving their knowledge and understanding of how the Police Service deal with their responsibility in line with the UK Protected Persons Service. To confirm whether or not information is held would enhance public knowledge of the effectiveness of

information sharing with other agencies as well as provide reassurance that public funds are being spent appropriately.

Section 35(1)(a)&(b): Law Enforcement

By confirming or denying that information relevant to the request exists, would lead to better public awareness into Police Scotland's responsibility to protect witnesses and other vulnerable people. This awareness may lead to more information (intelligence) being submitted from the public which may culminate in a reduction of crime.

Section 39(1): Health and Safety

Confirmation of whether information is or isn't held would provide reassurance to the general public that information is shared between different agencies who have a duty to protect vulnerable individuals. This awareness could be used to improve any public consultations/debates in relation to this subject.

**Factors against disclosing whether information is held**

Section 31(1): National Security

Any information shared between agencies (intelligence) has the potential to cover all aspects of criminal activity, be it threats to life, future planned robberies or intelligence relating to terrorist activity. Confirmation or denial could highlight to those intent on seeking out protected individuals whether or not information has been shared. Confirming such would dramatically weaken the effectiveness of intelligence led policing. The public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with any information, no matter how generic that is.

Section 34(1)(b): Investigations

By its very nature, information relating to witness protection schemes is highly sensitive in nature. Under FOI(S)A there is a requirement to confirm what information is held. In some cases it is that confirmation, or not, which could disclose facts harmful to witness protection schemes and in such cases Police Scotland takes advantage of its ability under FOI(S)A legislation to, where appropriate, neither confirm nor deny that the information requested is or is not held. In some cases witnesses are being protected due to ongoing investigations. Information which could be used to undermine prosecutions or aid offenders is not in the public interest.

Section 35(1)(a)&(b): Law Enforcement

Police Scotland has a duty to protect and defend vulnerable persons and part of this process is carried out in conjunction with receiving and sharing information from other partnership agencies. Members of the public are entitled to know that information about them is handled sensitively, confidentially and appropriately. People willing to give information or evidence which places them, and/or their families in grave danger do so on the understanding that the protection will be provided in an environment of absolute confidentiality. Any disclosure which undermines this trust and confidence means it is likely that people will be less willing to come forward and provide information to the police, which will impact on our ability to detect and prevent crime.

The Police Service will never disclose information which could undermine the partnership approach to law enforcement. Confirmation or denial that information is held would seriously undermine Police Scotland's ability to deliver effective law enforcement by impacting on police resources as frontline police officers will have to be removed from their duties and resourced to police the relocation of individuals into other protective custody.

In some cases witnesses are being protected due to ongoing investigations. Information which could be used to undermine prosecutions or aid offenders is not in the public interest.

#### Section 39(1): Health and Safety

Confirming or denying this information exists could lead to the loss of public confidence in Police Scotland's ability to protect the wellbeing of the community. In circumstances such as this, information sharing is a vital tool in ensuring the safety and anonymity of individual(s) who may require protective custody. Any disclosure which could place the safety of an individual at increased risk is not in the public interest. Disclosure of this information cannot only lead to individuals being targeted and caused physical harm but also other members of the public in the vicinity, or police officers trying to protect people. Also, information that causes speculation has in the past caused innocent people to be targeted following rumour and speculation.

#### Section 38(1)(b): Personal Data

Finally, in terms of the associated Section 38 (Personal Data) considerations your request raises, I believe 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.

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.

#### **Balance Test**

The Police Service is tasked with protecting the public and undertaking the prevention and detection of crime. A disclosure under Freedom of Information is a release of information to the world in general. In relation to this request the Police Service will not disclose any information which would confirm or not whether an individual has been provided with witness protection, as to do so would compromise the health and safety of those individuals.

The Police Service has a duty of care to the public in general, which includes individuals who provide information in confidence to assist the police in their law enforcement role. Police Scotland will not release information, no matter how generic, which could place the safety of an individual at risk or undermine the effective delivery of day-to-day law enforcement.

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The public also entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with any information that is released. In this case, and irrespective of what information is or isn't held, to merely confirm or deny that information is held would provide information which would assist those intent on causing harm. Any incident that results from confirmation or denial would, by default, affect national security.

**No inference should be taken from this response as to whether the information you have requested does or does not exist.**

Should you require any further assistance please contact Information Management - Dundee 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.pnn.police.uk](mailto: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](mailto: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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