

Our Ref: IM-FOI-2021-0265  
Date: 22 February 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.

[https://www.firescotland.gov.uk/media/2383608/glasgow-school-of-art-fi-report\\_final\\_25jan21.pdf](https://www.firescotland.gov.uk/media/2383608/glasgow-school-of-art-fi-report_final_25jan21.pdf)

***Mention is made in the above report of CCTV footage showing a 'lone figure' at St Aloysius College watching fire crews for 78 minutes. Please provide me with this footage or the relevant still images.***

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 exemptions that I consider to be applicable the information requested by you are;

### **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.

### **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.

### **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.

Disclosure of the requested information would impact on the investigative process. It would be likely to prejudice substantially the ability of the police to investigate and detect crime and would have a similar detrimental impact on the apprehension or prosecution offenders

This is a non-absolute exemption and requires the application of the public interest test.

### **Public Interest Test**

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.

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It is in the public interest that an understanding exists as to the processes involved in police investigations and in their relative success. This is particularly true in investigations. Therefore, accountability and transparency relating to the actions of the Service and our officers would favour disclosure of the information.

That said, a decision for non-disclosure would follow consideration of ongoing or likely criminal investigations and the efficient and effective conduct of the service in relation to such investigations.

Disclosure of the information you have requested would be detrimental to the investigation. It is essential that information pertaining to investigations is disclosed at the correct time, where appropriate, to ensure that neither the investigation nor the potential for proceedings to be brought against an individual(s) are put at risk. Where a case has not yet come to a conclusion, the release of specific details could prejudice any future enquiries into the case and as a result, affect the administration of justice.

Accordingly, at this time the public interest in the disclosure of the requested information is outweighed by the harm that could be created by revealing information.

To explain whilst no evidence of criminality was established there always remains a possibility that new information or intelligence could be received resulting in criminal proceedings.

Should you require any further assistance please contact Information Management – Glasgow at [foi@scotland.pnn.police.uk](mailto:foi@scotland.pnn.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.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.