

Our Ref: IM-FOI-2022-0784  
Date: 03 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.

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

**I would like the police logs/reports of the following three incidents: The men died whilst hillwalking, according to media reports.**

I can first confirm that the following two cases were investigated by the former Northern Constabulary:

- **The death of Mr Daniel McGeehan in Sutherland in September 2005**
- **The death of Mr James Baillie near Stob Dubh in September 2012**

Police Scotland holds information in relation to the incidents detailed above but, in accordance with Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to disclose the incident log(s) / reports to you.

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 information requested is held and the exemptions applicable are as follows:

- Section 38(1)(b) Personal Information

The information requested is exempt from disclosure as it contains personal data relating to *living* individuals including their names. To clarify, much of the information held within operational logs relates to third parties and therefore the considerations in terms of Section 38 applies.

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'

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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, 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 relevant to the requested information;

- Section 34(2)(b) Investigations by a Scottish Public Authority

The information was gathered and is held by Police Scotland as part of the investigation into a sudden death. Consequently, the information requested falls within this class based exemption. This is a non-absolute exemption and requires the application of the public interest test.

- Section 39(1) Health, Safety and the Environment

Information is exempt if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

Whilst I appreciate the reasons why you might require the reports outlined in your request, I also have to consider the wider implications of the public release of such wholesale information.

Release of information under this Act is, essentially, a release of sensitive information into the public domain and may have an adverse effect on the family and friends of the deceased. This is a non-absolute exemption and requires the application of the public interest test.

### Public Interest Test

It could be argued that the public interest would be served through disclosure of the information requested as it would provide additional information relating to the circumstances surrounding a sudden death. That said, it has always been the case that

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limited information may be disclosed as part of an investigative strategy and decisions to disclose this information are taken by the Senior Investigating Officer (SIO) in consultation with the Crown Office and Procurator Fiscal Service (COPFS). Any such releases are also undertaken with due care and consideration and are mindful to the potentially detrimental effects any associated media attention would bring to the family of the recently deceased.

As the Freedom of Information (Scotland) Act 2002 gives a right to information (not to documents) I have gone on to consider whether *any* of the information held is suitable for disclosure and whether publication would meet any public interest in this respect.

With this in mind, the information held can be summarised as follows:

### **1. The death of Mr Daniel McGeehan in Sutherland in September 2005**

Police Scotland received a call at approximately 21:05 on 08/09/05 raising concerns about the non-return of Daniel McGeehan from climbing Ben Kilbreck.

Officers initially attended at the locus to check the climber's vehicle was still in situ and after his description, establish any sightings etc. were undertaken.

As all of the police enquiries above were unable to establish the whereabouts and wellbeing of Mr McGeehan, Assynt Mountain Rescue Team (MRT) were contacted by officers and advised of the situation at approximately 21:55 hours.

Assynt MRT and Northern Constabulary officers commenced their search at approximately 0630 hours on 09/09/05 with assistance from two police search dogs / handlers and helicopter support from Stornoway Coastguard. Weather in the area was good with cloud base above the hills.

On the afternoon of 09/09/05 at around 1255 hours, a rucksack and casualty was located by MRT in an inaccessible area about 300 feet below crags on the west side of Ben Kilbreck.

Further assistance was requested from RAF Kinloss mountain rescue personnel, who attended and subsequently conveyed the deceased to Raigmore Hospital.

### **2. The death of Mr James Baillie near Stob Dubh in September 2012**

Police Scotland received a report in the early hours of 13/09/12 raising concerns about the non-return of a lone climber (James Baillie) who was believed to be climbing either Buachaille Etive Beag or Buachaille Etive Mor or alternatively Ben Starav.

Following initial enquiries, officers traced Mr Baillie's vehicle eight miles along the Glen Etive Road, and although Northern Constabulary had primacy for the enquiry, due to the locus being close to the divisional border, police colleagues in Strathclyde were alerted. They subsequently assisted along with two police search dogs / handlers, Oban MRT, Glencoe MRT, Lochaber MRT (R177) and a team of 10 from Leuchars RAF.

Coordinated planning and searches were commenced at 0800 hours on 13/09/12 and as officers were unable to establish which mountain Mr Baillie had decided to climb the search was wide ranging and summarised as follows:

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- OMRT and Strathclyde concentrated their search within the Glen Kinglass area.
- GMRT Team conducted extensive route searches of their area as follows; Summit of Ben Starva, 3 Corries west of Ben Starva leading to Loch Etive, Stob Coire Dheirg, Glas Bheinn Chaol, Glas Bheinn Mhor, Beinn Ceitlein, Stob Dubh, Beinn Chaorach and Coire Glas
- Search & Rescue Dog Associations (SARDA) were also in attendance with three units, concentrating their search on the lower levels of Beinn Chaorach, north face.
- The search was also assisted by 10 members of RAF Mountain Rescue Team, Leuchars who concentrated their search within two gullies on Stob Dubh and Beinn Chaorach.

Due to failing daylight and heavy rainfall causing dangerous conditions underfoot the search was discontinued at around 2030 hours and was recommenced at 0800 hours the following morning.

At about 1410 hours on 14/09/12, a casualty was found located in a gully on the west face of Stob Dubh and was subsequently confirmed as deceased.

### 3. The death of Mr John Anderson on Cairn of Barns in June 2010

I must advise you that Police Service of Scotland does not hold any of the information requested by you. In terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

I can advise you that a check of legacy Tayside systems has revealed no trace of any report / material relevant to your request.

You may also wish to contact the National Records of Scotland who hold information on all deaths in Scotland, via the following link: [www.nrscotland.gov.uk](http://www.nrscotland.gov.uk)

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](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.

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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.