



LETTER SENT BY E-MAIL ONLY

22 September 2023

2023/24-040

Freedom of Information (Scotland) Act 2002

Request

Please find below our response to your correspondence dated 15 September, in which you made the following request under the Freedom of Information (Scotland) Act 2002:

To request the following documents from the recent meeting of the Exceptional Circumstances Committee, which was held on August 28, 2023.

1. Standing items
 - 1.1 Welcome
 - 1.2 Apologies
 - 1.3 Declarations of interest and connections
 - 1.4 Decision on taking business in private (item 2)
2. Senior officer matter

The documents

Your request for information has been considered and the Scottish Police Authority is able to provide the following.

The Exceptional Circumstances Committee met on Monday 28 August to consider a senior office matter. The agenda for this meeting is publicly available. The documents considered by the Committee related to a specific case, and included individuals' personal data and legal advice.

Applicable exemptions

Whilst we aim to provide information wherever possible, in some instances, information is exempt in terms of the Act.

The information contained in the documents requested are considered to be exempt from disclosure under the following provisions of the Act.

- Section 38(1)(b) Third party personal data. Disclosure would contravene the data protection principle in Article 5(1)(a) of the General Data Protection Regulation: personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject. Most of the documents contain individuals' personal data. This exemption is absolute and therefore does not require the application of the public interest test.
- Section 36(1) Confidentiality of communications. Some of the documents contain legal advice to the Authority, which is subject to legal privilege. This exemption is subject to the public interest test considered below.
- Section 35(1)(g) Law enforcement. Disclosure would be likely to prejudice substantially exercise of the Authority's legislative functions for one of the purposes listed in section 35(2). All of the documents contain information on the exercise of the Authority's function in relation to this matter. This exemption is also subject to the public interest test considered below.

Public Interest Test

The public interest factor in favour of disclosure is that:

- It could contribute to transparency and allow scrutiny of matters considered by the Exceptional Circumstances Committee.

The public interest factors in favour of maintaining the exemptions are:

- There is a strong inherent public interest in maintaining the right to confidential communications between a legal adviser and client.
- If the Authority's legal advice in individual cases were to be publicised, it would prejudice substantially its ability to perform its legislative functions.
- Those with a direct interest in this aspect of the Authority's functions may lose confidence if the information requested were to

be disclosed publicly, when the current legislation provides for privacy, and makes no provision for publication.

On balance, our conclusion is that maintaining the exemptions outweighs the public interest in disclosure.

Right to Review

If you are dissatisfied with the outcome of your request you can ask for a review. You must specify the reason for your dissatisfaction and submit your request by email to foi@spa.police.uk or by letter to Scottish Police Authority, 1 Pacific Quay, Glasgow, G51 1DZ.

After review, if you remain dissatisfied, you can appeal to the Scottish Information Commissioner within six months. You can apply [online](#), by email to enquiries@itspublicknowledge.info or by letter to Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Commissioner's decision, you can appeal to the Court of Session, only if you think the law has not been applied correctly.

An anonymised version of this response will be posted to our [Disclosure Log](#) in seven days' time.