



LETTER SENT BY E-MAIL ONLY

21 June 2024

2024/25-032

Freedom of Information (Scotland) Act 2002

Request

Please find below our response to your correspondence dated 28 May, in which you made the following request under the Freedom of Information (Scotland) Act 2002:

"I recieved your response in regards to untested semen samples in the case of Luke Mitchell vs HMA (2024/25-019). Thank you for your helpful response, it really is appreciated.

Can you confirm whether testing of semen samples at the time (2003/04) would have involved looking for DNA matches/profiles in addition to determining that the samples were indeed semen? Is it possible that some samples may not have been tested for DNA?

I appreciate that the next question may not be possible to answer easily, as you have previously and helpfully explained costs involved in recovering information from 2003/4. Are you able to confirm how many full profiles were obtained from the testing of the samples in this case?"

Response

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

Regarding your first request, Forensic Services can confirm that, if semen samples were identified and if they were all sampled, they would have been DNA tested.

Regarding your second request, we are unable to provide you with the information as it would prove too costly within the context of the fee

regulations. The current cost threshold is £600 and we estimate that it would cost more than this amount to process your request.¹

Forensic Services was established in 2013. This was after the case in question. This case was legacy Lothian and Borders Police. As this is an historic case there would be a requirement for case records from legacy Lothian and Borders Police and Tayside Forensic laboratory records. This would require:

- search and source from physical archive store which is offsite. This would require casefiles to be pulled from archive, which would then require Chain of Custody and transportation to Forensic Services laboratory for review.
- search and source from archived legacy IT systems. As the records are from a legacy force and laboratory the format and content may vary and require additional time to interrogate.
- significant review of all casefiles by a scientific specialist to cross reference DNA and biology casefiles in order to be able to provide the information requested.

The Authority has assessed that the £600 cost limit within the Act equates to 40 hours of work and so your request would exceed the cost threshold.

To assist, we note that all DNA work was reported to the Crown Office and Procurator Fiscal Service and will be part of the court record. Information may be available by contacting COPFS at FOI@copfs.gov.uk and the Scottish Courts and Tribunals Service at foi@scotcourts.gov.uk

Right to Review

If you are dissatisfied with the outcome, you can ask us to review our response. If you want us to carry out a review, please let us know within 40 working days. You must specify the reason for your dissatisfaction and submit your request to foi@spa.police.uk or by letter to Scottish Police Authority, 1 Pacific Quay, Glasgow, G51 1DZ.

If you remain dissatisfied after review, 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.

¹ This represents a refusal notice in terms of Section 12 of the Freedom of Information (Scotland) Act 2002 – Excessive Cost of Compliance.

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.

This response will be posted to our [Disclosure Log](#) after seven days.

Yours faithfully

SPA Corporate Management

