

28 September 2022

2022-062

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

REQUEST DETAILS

Please find below our response to your correspondence dated 30 August, in which you made the following request under the Freedom of Information (Scotland) Act 2002:

Please provide me with copies of all of the reports mentioned here.

<https://www.spa.police.uk/meetings/legal-committee/6-september-2022/>

RESPONSE

Your request for information has been considered and the Scottish Police Authority (SPA) is able to provide a partial response to your request at this time. The table below details the reports presented at the Legal Committee on 6 September, and where possible, a decision in relation to each.

Whilst we aim to provide information wherever possible, in some instances, information is exempt in terms of the Freedom of Information (Scotland) Act 2002 and explanation has been provided where this applies.

Furthermore, a number of the reports are provided to the Legal Committee by a third party (Police Scotland) whom we are required to consult regarding disclosure. Consultation in relation to five such reports is ongoing, as indicated in the table, and we aim to communicate a decision in relation to each of these as soon as possible.

Report	Decision
Areas of Business Approved under Delegated Authority of the SPA Chief Executive (Item 3)	This report is provided as Appendix 1.
Legal Services Claims Handling - Quarterly Statistical Information Report - Trends & Analysis in litigation (Item 4)	Third party consultation in progress.
Pension Forfeiture Update (Item 5)	<p>This report is considered to be exempt in its entirety under Section 38(1)(b) Personal data of a third party. Disclosure would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.</p> <p>This report provides an update on pension forfeiture cases which are presently ongoing. Whilst we aim to provide information wherever possible, in this instance, if all personal data was redacted to support disclosure the report would become meaningless.</p> <p>This exemption is absolute and therefore does not require the application of the public interest test.</p>
Operation Iona Update (Item 6)	Third party consultation in progress.
Operation Tarn Public Inquiry (Item 7)	Third party consultation in progress.
Litigation Tables (Item 8)	Third party consultation in progress.

Settlement of Claim Update (Item 9)	<p>This report is considered to be exempt in its entirety under Section 36(1) Confidentiality in legal proceedings. The report refers to legal advice and ongoing negotiations.</p> <p>This exemption is subject to the public interest test and this is detailed below.</p>
Non-Disclosure Agreements – Statistical Update (Item 10)	Third party consultation in progress.
Legal Assistance Appeals (Item 11)	<p>Information for this item is provided, in part, as Appendix 2.</p> <p>The report itself is provided, however, four appendices which are individual appeal submissions are considered to be exempt under the following exemptions:</p> <ul style="list-style-type: none">- Section 36(1) Confidentiality in legal proceedings. The appendices relate to individual cases and detail legal advice throughout regarding the ongoing appeal process, therefore disclosure would breach legal professional privilege;- Section 36(2) Confidentiality - actionable breach of confidence. As the information was obtained in confidence from a third party and relates to the ongoing appeal process, disclosure would constitute an actionable breach of confidence as far as involved parties are concerned;- Section 38(1)(b) Personal data of a third party. Disclosure would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018. The appendices relate to individual cases and detail names and circumstances leading to legal assistance applications. <p>Exemption 36(1) Confidentiality is subject to the public interest test and this is detailed below. Exemptions 36(2) and 38(1)(b) are absolute and therefore do not require the application of the public interest test.</p>

For the reasons set out above, an exemption under section 36(1) Confidentiality in legal proceedings applies to the following information:

- Settlement of Claim Update (Item 9);
- Legal Assistance Appeals (Item 11) – Appeal submissions.

Each item was considered separately and the above exemption applied to all or part of the information contained within each. The exemption applies because, in each instance, the information refers to legal advice and/or ongoing legal proceedings, and disclosure would breach legal professional privilege. Legal advice privilege covers communications in which legal advice is sought or given and where a legal adviser is acting in their professional capacity.

This exemption is non-absolute and requires the application of the public interest test. Therefore, taking account of the items to which this exemption applied to all or part of the information, consideration has been given as to whether the public interest favours disclosing the information or maintaining the exemption.

Public Interest Test

The public interest factors in favour of disclosure is that:

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

The public interest factors in favour of maintaining the exemption being:

- The general public interest inherent in this exemption is strong due to the importance of the principle behind legal professional privilege. Disclosing legally privileged information threatens that principle;
- It is vital to maintain and safeguard legal professional privilege, ensuring the confidentiality of communications between legal advisers and their clients, in order to ensure access to full and frank legal advice;
- The legal advice was obtained recently and the matters remain live, with a real prospect that disclosure of this information could be prejudicial to ongoing negotiations and litigation.
- It is important to ensure that legal matters are allowed to be conducted confidentially with best value considerations in mind.

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

By way of assistance, a link is provided to the [Committee and Oversight Group Reports](#) being presented at the meeting of the Authority on 29 September. This includes an update on business progressed through the Legal Committee meeting held on 6 September (see p.9-10).

RIGHT TO REVIEW

If you are dissatisfied with the way in which your request has been dealt with 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@spa.police.uk or by post to Corporate Management Team, Scottish Police Authority, 1 Pacific Quay, Glasgow, G51 1DZ.

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 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 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 Scottish Police Authority Freedom of Information [Disclosure Log](#) in seven days' time.

Meeting	Legal Committee
Date	6 September 2022
Location	Video Conferencing
Title of Paper	Business Approved under Delegated Authority of the SPA Chief Executive
Presented By	Jackie Kydd
Recommendation to Members	For Information
Appendix Attached	No

PURPOSE

This paper provides the Legal Committee with an update on the ill health retirement and injury on duty considerations since the proposal of the Committee, and subsequent approval by the Chair, that these remain the delegated responsibility of the SPA Chief Executive.

1 BACKGROUND

- 1.1 At a meeting of the Legal Action, Claims and Appeals Committee on 28 January 2020 Members agreed that, a report on the business approved under the delegated responsibility would become a standing agenda item for the Committee. This covers the requirements of the scheme of delegation that updates on the approvals made are submitted to the Committee for information.
- 1.2 This report details the applications received, the recommendations from Police Scotland, and the decisions taken in cases in the period 11 May 2022 to 28 August 2022.

2 FURTHER DETAIL ON THE REPORT TOPIC

2.1 Ill Health Retirement / Redeployment

2.1.1 Applications for retirement on the grounds of ill health (IHR) are determined under Regulation A20 of the Police Pensions Regulations 1987 which allow that the Police Authority may determine that an officer ought to retire on the grounds that he/she is permanently disabled for the performance of his/her duties as a police officer. In considering whether a person is permanently disabled, Regulation H1 of the 1987 Regulations provides that the Police Authority shall refer certain questions to the Authority's Selected Medical Practitioner (SMP) who shall provide a report with their determination.

2.1.2 Subsequent to the receipt of the documentation from the SMP a robust process is undertaken within Police Scotland to conclude, given the capabilities that have been determined by the SMP as permanently disabled, whether any redeployment opportunities exist. Whether any opportunities for redeployment have been identified is contained within the report that is submitted to the Authority with comments and a recommendation provided by the Director of People and Development (on behalf of the Chief Constable as permitted by the regulations).

2.1.3 The table below presents information on the number of cases presented by Police Scotland, which have been considered by the Authority in the period 11 May 2022 to 28 August 2022.

	No of IHR Submitted to SPA	Recommended by Police Scotland		Decision by SPA	
		IHR	Redeployment	IHR	Redeployment
June	5	5	0	5	0
July	4	2	2	2	2
August	10	10	0	10	0
TOTAL	19	17	2	17	2

2.2 Injury on Duty

2.2.1 Applications for Injury on Duty (IOD) awards are dealt with in terms of the Police (Injury Benefit) (Scotland) Regulations 2007.

Regulation 30 of the 2007 Regulations provides that, where a police authority is considering whether to grant an IOD award to an individual, it should refer questions to the SMP.

2.2.2 Subsequent to the receipt of the documentation from the SMP, Police Scotland complete their administration process which includes requesting comments from the ex-officer and completing the 'Police Authority Report – Injury on Duty Award' form. Once complete this form is submitted to the Director of People and Development for comment prior to its onward submission to SPA.

2.2.3 At a previous committee, members were presented with legal opinion on the level of discretion that SPA have with regards to cases when the SMP has determined as IOD award is appropriate.

2.2.4 Police Scotland have been working hard to ensure that all relevant information is submitted to the SMP in advance of any consideration of whether an IOD should be awarded. This has resulted in a number of IOD submissions being rejected by the SMP as they have had a greatly improved quality of information on which to base their report.

2.2.5 The table below presents the information on the number of cases presented by Police Scotland, which have been considered by the Authority in the period 11 May 2022 to 28 August 2022.

	No of IOD Submitted to SPA	Recommended by Police Scotland		Decision by SPA	
		Approved	Not Approved	Approved	Not Approved
June	2	2	0	2	0
July	1	1	0	1	0

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August	1	1	0	1	0
TOTAL	4	4	0	4	0

2.3 Outstanding Cases

2.3.1 Engagement with Optima Health (the SPA/ Police Scotland provider for Occupational Health), other Forces and stakeholders has resulted in the SMP provision being increased from one to six, and although they are not all providing a full time resource, the pool now available increases the ability to progress IHR/IoD cases. It has however taken a number of months to identify and on-board this additional resource but the impact of the increased provision is now resulting in a higher number of cases progressing to approval (19 IHR/Redeployment cases and 4 IoD this period compared to 2 IHR and 4 IoD in previous reporting period).

2.3.2 Cases continue to be seen by the SMP based on the date that they entered the IHR/IoD process with particular cases prioritised where their specific circumstances dictate. Work continues with the OH provider to reduce the time that is currently being taken from date of appointment to the organisation receiving the SMP report.

2.3.3 PS colleagues are in the process of refining the system that is used to manage IHR/IoD cases and from November data on this will be included in the Wellbeing update provided to People Committee. This can be shared with Members of this Committee following presentation at People Committee.

2.4 Members are invited to note the information contained in the report.

3 FINANCIAL IMPLICATIONS

3.1 There are financial implications associated with this paper. The payment of an injury award is a cost that is borne by SPA/Police Scotland.

3.2 A number of officers have been maintained on full pay due to the delays in the IHR process.

3.3 Commitment has previously been given that financial considerations are not part of the approval process.

4 PERSONNEL IMPLICATIONS

4.1 There are personnel implications associated with the paper. All officers have been notified of the outcome of their request for IHR/IOD and regular contain in being maintained with officers who at all stages of the process.

5 LEGAL IMPLICATIONS

5.1 There are legal implications associated with this paper. The SPA must comply with the regulations stated.

6 REPUTATIONAL IMPLICATIONS

6.1 There are reputational implications associated with this paper. The reputation of the SPA may be damaged if applications for IHR/IOD are not managed appropriately.

7 SOCIAL IMPLICATIONS

7.1 There are no social implications associated with this paper.

8 COMMUNITY IMPACT

8.1 There are no community implications associated with this paper.

9 EQUALITIES IMPLICATIONS

9.1 There are no equalities implications associated with this paper.

10 ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications associated with this paper.

RECOMMENDATIONS

Members are requested to:

- Note the information contained within this report.

Meeting	Legal Committee
Date	6 September 2022
Location	Microsoft Teams
Title of Paper	Legal Assistance Appeals
Presented By	John Maclean and Susan Montgomery
Recommendation to Members	For Decision
Appendix Attached	Yes - Appeal Submissions for 4 cases included as appendices

PURPOSE

To present Members of the Legal Committee with additional documentation in relation 4 appeals previously considered at Committee.

Members are invited to discuss the content of this report and make decisions based on the additional information now available.

1 BACKGROUND

- 1.1 The cases being progress to the Legal Committee cover the period from the commencement of Police Scotland (in some cases the incident took place prior to Police Scotland). Since the creation of Police Scotland, legacy practice has continued where Police Scotland consider Legal Assistance applications with the requirement for SPA to consider the appeals against those applications rejected by Police Scotland. As previously mentioned the Scottish Police Federation (SPF) elected to cover the costs of these officers' legal fees to ensure that officers were not adversely impacted by a delay in Police Scotland and SPA's considerations of the appeals. Therefore the appeals are coming from the SPF rather than the individual officers themselves.
- 1.2 16 cases were considered in August 2020 with the decision taken to uphold the appeal for three cases and to seek further information from Police Scotland in relation to the remaining 13.
- 1.2 Seven of the remaining historic cases were considered at the Legal Committee in February 2021 and four of the remaining six historic appeals are now in a position to be presented to the Legal Committee on the basis that additional information has been provided by Police Scotland, with this having been shared with the Scottish Police Federation for additional comment.
- 1.3 The final two historic appeals are due to be considered at the December 2022 Legal Committee.

2 FURTHER DETAIL ON THE REPORT TOPIC

- 2.1 Each set of appeal documentation includes the following to support decision making:
- Detail of papers originally provided to Legal Committee in August 2020
 - Detail of outcome of Committee Considerations in August 2020
 - Additional information provided by Police Scotland following request from Legal Committee
 - Views of Scottish Police Federation (Appellant) following consideration of additional information
 - Agreed principles/learning from Legal Committee consideration of previous appeals.

- Advice from SPA Officials based on all information available.

3 FINANCIAL IMPLICATIONS

- 3.1 There are financial implications associated with this report. The total amount of legal fees associated with the four cases is in the region of £160k. The two remaining cases still being progressed are in the region of £90k.

4 PERSONNEL IMPLICATIONS

- 4.1 There are personnel implications associated with the paper.

This relates to the approach of Police Scotland and SPA in outlining what actions will or will not be supported in terms of legal fees associated with criminal proceedings.

5 LEGAL IMPLICATIONS

- 5.1 There are no further legal implications in this paper to those listed above and within the appendices.

6 REPUTATIONAL IMPLICATIONS

- 6.1 There are reputational implications associated with this paper.

The decisions taken could impact on the reputation of the authority if it is perceived that an officer's actions were not supported when it was felt it should have been. Alternatively there may be reputational risk where the authority covers the legal fees where there may be a public perception that they should not have been.

7 SOCIAL IMPLICATIONS

- 7.1 There are no social implications associated with this paper.

8 COMMUNITY IMPACT

- 8.1 There are no community implications associated with this paper.

9 EQUALITIES IMPLICATIONS

- 9.1 There are no equalities implications associated with this paper.

10 ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications associated with this paper.

RECOMMENDATIONS

Members are invited to discuss the content of this report and make decisions based on the additional information now available.