



LETTER SENT BY E-MAIL ONLY

1 November 2024

2024/25-069

Freedom of Information (Scotland) Act 2002

Request

Please find below our response to your correspondence dated 5 October 2024, in which you made the following request under the Freedom of Information (Scotland) Act 2002.

Your request has not been repeated here as it names specific individuals.

Response

Your request for information has been considered and the Scottish Police Authority is able to confirm that information relevant to your request is held. However, the Authority considers that the information held is exempt for the following reasons.

The information is held by SPA Forensic Services for the purpose of an investigation¹, which was subsequently subject to criminal proceedings.² These exemptions are “class-based”. This means that the exemption applies if the information falls within a particular class of information. Unlike other exemptions we are not required to demonstrate that disclosure would cause harm. However, we are required to apply the public interest test.

Information is also exempt from disclosure if it is the personal data of a third party.³ This exemption is absolute and does not require application

This represents a notice in terms of Section 34(1) of the Freedom of Information (Scotland) Act 2002. Information will be exempt from disclosure if at any time, it has been held by a Scottish public authority for the purposes of:

¹34(1)(a) - an investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence; and

² 34(1)(c) - criminal proceedings instituted in consequence of a report made by the authority to the PF.

³ This is a notice in terms of Section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 – Third party data. Disclosure would contravene the data protection principle in Article 5(1)(a) of the General Data

of the public interest test. While you may have a legitimate interest in disclosure of this information, it is our view that those interests are overridden by the interests or fundamental rights and freedoms of the data subjects.

The Authority also considers that the release of this information would be likely to endanger the mental health of individuals.⁴ This exemption requires application of the public interest test.

Public Interest Test

The public interest in favour of disclosure of the requested information:

- This would adhere to the basic principle of being open and transparent.

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

- This case has been subject to court proceedings and subsequent [appeal](#). The courts decisions are a matter of public record. It is considered that the public interest in this investigation and case has been served through the judicial process.
- There are established processes in statute and at common law for the disclosure of evidence in criminal proceedings (see e.g. the Criminal Justice and Licensing (Scotland) Act 2010, Part 6). SPA Forensic Services also has an established process through the Defence Access Policy to ensure that defence agents and independent forensic science experts have consistent, fair and transparent access to productions and specific information held by Forensic Services. The public interest lies in maintaining and protecting these established routes to support an efficient and effective criminal justice system and ensure the security of SPA Forensic Services information and data.
- The public interest lies in protecting police and forensic investigation operations to be carried out effectively and confidentially.
- There is a dedicated statutory body, the [Scottish Criminal Cases Review Commission](#), which investigates alleged miscarriages of justice. The Commission has significant powers to recover evidence of the kind requested. There is a strong public interest in

Protection Regulation: personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

⁴ This represents a notice in terms of Section 39(1) of the Freedom of Information (Scotland) Act 2002.

Information may be withheld if disclosure would, or would be likely to, endanger the physical or mental health or safety of an individual.

maintaining established statutory routes for recovering evidence of this nature.

- There is a significant public interest in protecting individuals' health and safety. Disclosure of information under the Freedom of Information (Scotland) Act is a disclosure to the world at large, not only the person making the request. While there is information already in the public domain, it is likely that disclosure would endanger the health and wellbeing of family members and others involved in this investigation.

Therefore, on balance, our conclusion is that maintaining the exemptions outweigh that of disclosure.

Right to Review

If you are dissatisfied with the outcome of your request you can ask for a review within 40 working days. 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.

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@foi.scot 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.

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

Yours faithfully

SPA Corporate Management