



LETTER SENT BY E-MAIL ONLY

14 August 2024

2024-25-049R

Freedom of Information (Scotland) Act 2002

Request

On 27 May you made a Freedom of Information request to the Scottish Police Authority. In response to your request, the Authority advised that some of the information is already available. It was also explained that some of the information is exempt as it is third party data held by the Authority in confidence.

Response

On 22 July you requested that the Authority review this decision. The decision has been reviewed by an independent reviewer, the Authority's Solicitor, who was not involved in the original decision-making process.

I can confirm that the original decision is upheld for the reasons outlined below.

The Authority issued a refusal notice in terms of three separate and distinct exemptions contained in the Freedom of Information (Scotland) Act 2002 ("FOISA"):

- Section 25 (information otherwise accessible);
- Section 36(2) (confidentiality); and
- Section 38(1)(b) (personal information).

The Section 25 exemption was applied to information which was contained in an Employment Tribunal judgment dated 17 February 2022, with an electronic link to that judgment being provided in the refusal notice. This exemption was applied as some of the information held by the Authority, falling within the scope of the request, is contained in the Employment Tribunal judgment. This is publicly available and is therefore already in the public domain.

I am therefore satisfied that the Section 25 exemption has been appropriately applied.

Section 36(2) and Section 38(1)(b) exemptions were applied to the remainder of the information held by the Authority which falls within the scope of the request.

Regarding the application of the Section 36(2) exemption. The information requested relates to information provided to the Authority by an individual who lodged complaints against named senior officers of Police Scotland, and the officers in question.

To ensure the co-operation of those involved, and maintain the integrity of the complaints process, it is essential that all concerned have confidence that information of a confidential nature will not subsequently be disclosed by the Authority to third parties. Participants in the complaints process also have a reasonable and legitimate expectation of privacy.

In my view, disclosure of the information in question by the Authority would amount to an actionable breach of confidence as (i) the information provided to the Authority has the necessary quality of confidence, (ii) the Authority received the information in circumstances which imposed an (implied) obligation on the Authority to maintain confidentiality, and (iii) unauthorised disclosure of the information by the Authority would be to the detriment of the individuals who provided the information to the Authority.

As the Section 36(2) exemption is an absolute exemption, it is not subject to the 'public interest test'.

I am therefore satisfied that the Section 36(2) exemption has been properly applied.

Regarding the application of the Section 38(1)(b) exemption. It is the Authority's position that information held, which falls within the scope of the request is exempt from disclosure as this information constitutes personal data of third parties.

I am satisfied that the information held by the Authority does constitute personal information of third parties. In my view, the disclosure of the personal information in question would contravene the first data protection principle – which states that personal information must be processed lawfully, fairly and in a transparent manner – given that the disclosure of this information would be intrusive and would be likely to cause the third parties in question distress.

As the Section 38(1)(b) exemption is an absolute exemption, it is not subject to the 'public interest test'.

In conclusion, therefore, I hereby uphold the original decision of the Authority.

Right to 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.

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

Yours faithfully

SPA Corporate Management

