



## **LETTER SENT BY E-MAIL ONLY**

29 July 2024

2024/25-040R

### **Freedom of Information (Scotland) Act 2002**

#### **Request**

On 22 May 2024 you made a Freedom of Information (FOI) request to the Scottish Police Authority.

In response to your request the Authority advised that the information was held, however was exempt under Section 34(1)(a)(i) and 34(1)(a)(ii) - an investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence; or to ascertain whether a person prosecuted for an offence is guilty; and 34(1)(b) - an investigation conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the PF to enable it to determine whether criminal proceedings should be instituted.

#### **Response**

On 1 July 2024 you requested that the Authority review this decision. The decision has been reviewed by an independent reviewer, the Authority's Information Management Lead, who was not involved in the original decision-making process.

I can confirm that the original decision is partially upheld for the following reasons:

The initial request should have applied S17 exemption "Information not held". By means of explanation, Forensic Services does not hold images of the knife at the skip.

In relation to the remainder of your request, it is the Authority's position that the information would be exempt from disclosure under section

38(1)(a) of FOISA as this information would constitute personal data due to images containing staff within them.

The application of Section 34(1) is upheld by the Authority as the information was collected for investigation purposes. An investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence; or to ascertain whether a person prosecuted for an offence is guilty; and 34(1)(b) - an investigation conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the PF to enable it to determine whether criminal proceedings should be instituted.

### **Public Interest Test**

The initial response is upheld in relation to the public interest test.

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

- This would provide full transparency relating to the investigation of this case.

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

- There is 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 established routes to support an efficient and effective criminal justice system and ensure the security of SPA Forensic Services information and data.
- This case has been subject to court proceedings and subsequent appeal where court documentation is a matter of public record. It is considered that the public interest in this case has been served through the judicial process and therefore this favours maintaining the exemption.

The public interest lies in protecting police and forensic investigation operations to be carried out effectively and securely. Therefore, on balance, our conclusion is that maintaining the exemption outweighs that of disclosure.

### **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](mailto: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**

