



LETTER SENT BY E-MAIL ONLY

19 June 2024

2024/25-028

Freedom of Information (Scotland) Act 2002

Request

Please find below our response to your correspondence dated 22 May, in which you made the following request under the Freedom of Information (Scotland) Act 2002:

Following on from FOI 2023/24-070, please could you provide me with all the photographs that would have been taken at the search of the skip, in the yard of Newbattle House Farm in 2003, including the pictures taken of the knife and tip that were recovered by the police.

Response

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

SPA Forensics Services can confirm that information is held.

However, the information requested is subject to exemption. This is because the information falls within a particular class of information as it is held for the purposes of a criminal investigation¹.

This is a non-absolute exemption and requires the application of the public interest test.

¹ This represents a notice in terms 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:

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.

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 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.

After 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](#) in seven days' time.

Yours faithfully

SPA Corporate Management

