

Crown Office and Procurator Fiscal Service

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Policy Division



Ms Catriona Dalrymple, Head of Policy

Mr Steven Semple

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9 April 2014

Dear Mr Semple,

FOI REQUEST

Thank you for your e-mail of 6 March 2014 under the Freedom of Information (Scotland) Act 2002 (FOISA) in which you seek the following information:

"Any and all paperwork, documentation, police reports, etc. relating to the death of Willie McRae at Aberdeen Royal Infirmary on 7 April 1985"

I would firstly like to offer you my apologies for the delay in providing this response, which was caused by the need to make further investigations into the issues you raised.

The information held by COPFS in relation to the death of William McRae consists of police reports, witness statements, Crown precognitions and correspondence and minutes between Crown Counsel and the Procurator Fiscal at Inverness, as well as correspondence between the Procurator Fiscal and witnesses. There is also a copy of the post mortem report, a firearms report and a road traffic collision report.

It has previously been decided that it is in the public interest to disclose certain information in relation to the death of William MacRae. The information that has previously been made available to the public is enclosed at **Annex A**. This information was first made publicly available on 1 February 2005 in response to a number of Freedom of Information requests that had been received.

In relation to your request for further information, the various reports held by COPFS in relation to this case, they are held by the Procurator Fiscal for the purposes of an investigation carried out by virtue of a duty to ascertain the cause of a person's death, and as such are exempt in terms of section 34(2)(b)(i) of FOISA. Section 34(2)(b)(i) is not an absolute exemption and the Crown must consider the public interest in the disclosure of information in this case.

There are very strong public interest considerations which require COPFS to maintain the confidentiality of police reports and reports provided by expert witnesses. In terms of FOI, the public interest must be assessed in the context of each individual case and I can confirm that the following factors have been considered. The courts in Scotland have traditionally placed great weight on any assertion of the Lord Advocate that it is not in the public interest for certain documents to be disclosed except when, in the particular circumstances, the interests of justice require it. In particular, a high degree of confidentiality has traditionally been attached to police or expert witness reports. This is both during the investigation into a death and after it has concluded to secure absolute candour and freedom in the making of such reports and the courts have indicated that the most important safeguard in that regard is an absolute guarantee against publication. To disclose the police and expert reports in any case would jeopardise that candour and freedom with which the police and expert witnesses report to the Procurator Fiscal.

As with police and expert reports, the witness statements and precognitions are held by COPFS for the purposes of an investigation which the department has a duty to conduct to ascertain the cause of a person's death. Such statements are, therefore, also exempt in terms of Section 34(2)(b)(i) of FOISA. Again, the public interest must be considered.

In assessing the public interest, I have had regard to the fact that the criminal justice system relies upon witnesses providing information to the criminal justice authorities, in order that offenders can be brought to justice and so that all sudden, suspicious or unexplained deaths can be fully investigated. I consider that, when doing so, witnesses have a legitimate expectation that information will be used for such purposes and will not be further processed unnecessarily. I have no doubt that the release of information relating to a serious and sensitive case such as this would seriously undermine the confidence that witnesses and, consequently, the public would have in the criminal justice system.

I have had regard to the comments of the Scottish Information Commissioner in decision 115/2007. In that decision, the Scottish Information Commissioner commented:

"Where witness' evidence is heard in open court, it is done (generally orally but occasionally by way of sworn witness statements) under strict rules and conditions. In my view, to release untested, verbatim statements into the public domain is likely to be unfair to those to whom the statements relate. Corroboration, cross examination and the legal testing of evidence are essential components of the justice system. Were these established principles of justice not to be adhered to (through the wholesale release of witness statements), there might be a form of summary justice established whereby the mere fact of a witness providing a statement in relation to some alleged offence or wrongdoing would be considered proof of that offence or wrongdoing".

The minutes and correspondence between Crown Counsel and the Procurator Fiscal, will also not be disclosed as they are covered by the exemption in section 30 of FOISA, namely it is not in the public interest to disclose because it would inhibit substantially the free and frank exchange of views. I have considered what effect disclosure would have on the provision of advice or the exchange of views including whether it would be more likely that persons

offering advice would be unwilling to do so in the future and whether it would it make it more likely that advice would be given in the future would be materially different because of the possibility of disclosure. Given the often confidential and sensitive nature of communication between Procurators Fiscal and Crown Counsel we have taken the view that it is not in the public interest to disclose this information. If the Law Officers or senior officials are to take decisions on the basis of the best available advice, they need to be confident that advice is given without reserve.

Finally, in relation to all of the information held by COPFS in relation to this case I consider that this information is exempt from release in terms of section 39 of FOISA as the release of such information would be likely to endanger the physical or mental health or the safety of an individual. I am of the view that the release of such personal, sensitive and distressing information about the circumstances of Mr McRae's death into the public domain would be likely to have a negative impact on the mental well-being of his relatives who may not wish such information to be made public.

I do not, therefore, intend to provide you with any of the documentation that you have requested..

If you are dissatisfied with the way in which your request under the Freedom of Information (Scotland) Act 2002 has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please write to the Disclosure Section, Policy Division, Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA or by e-mail to foi@copfs.gsi.gov.uk

The review will be undertaken by staff not involved in the original decision making process.

If our decision is unchanged following a review and you remain dissatisfied with this, please note that although generally under section 47(1) of FOISA there is a right of appeal to the Scottish Information Commissioner, where the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland, under section 48(c) no application can be made as respects a request for review made to the Lord Advocate. The information you have requested appears to fall into that category, although ultimately it would be for the Commissioner to decide whether that was the case should you refer the matter to her.

In circumstances where section 48(c) does not apply and the Commissioner accepts an appeal, should you subsequently wish to appeal against that decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely,



Iain Batho
Procurator Fiscal Depute
Response and Information Unit

Circumstances surrounding the death of William MacRae (61 years)

The deceased was 61 years of age, was single at the time of his death and resided in Glasgow. He was a partner in a firm of solicitors known as MacRae and Company, 16 Buchanan Street, Glasgow and a senior member of the Scottish National Party.

On Friday, 5th April 1985 MacRae contacted his legal partner and asked him to call at his home where there had been a fire. He informed his partner that he intended to travel to his holiday home at Dornie to spend Easter weekend.

His partner was aware that MacRae possessed a small calibre, possibly .22 revolver, which had a chrome and silver finish with a pearl handle. The deceased left Glasgow on the afternoon of Friday, 5th April to travel to Dornie and his partner had arranged to contact him at his home number. At about 7.30 pm that evening his partner telephoned the Dornie number and got no reply. He was concerned regarding his partner's state of mind and he contacted all police stations en route from Glasgow to Kyle. Mr MacRae had been driving his maroon coloured Volvo, registration number FGB 214X.

At approximately 11.15 am on Saturday, 6th April 1985 a telephone call was received at Fort Augustus Police Station from Police Headquarters to the effect that a single vehicle accident had occurred on the A87 Kyle of Lochalsh to Invergarry Road.

A police officer went to the locus and confirmed that a Volvo, registration FGB 214X had left the road on the nearside opposite the Bunloyne Dam and had rolled down an embankment. A local ambulance attended at the locus and with the help of witnesses, the injured party from within the vehicle was removed to Raigmore Hospital, Inverness. The injured party was identified as William MacRae, and it was found that he had serious head injuries. He was removed to the Neurosurgical Unit at Aberdeen Infirmary where he was examined by a neurosurgeon who found a bullet wound in his right temple. X-rays confirmed that there was a bullet in his brain. At this point senior police officers were informed, attended at the locus and the vehicle was secured and removed to Police Headquarters at Inverness. At the time of the accident, when the police got to the scene, they treated the matter as a road accident because they did not see any weapon in the car and all that could be ascertained was that the deceased had some injury to his head. At Raigmore Hospital the head wound was cleaned and any immediate evidence of forensic value was destroyed.

At approximately 3.30 am on Sunday, 7th April 1985, Mr MacRae died of his injuries without regaining consciousness. From the position of the wound in the deceased's temple it appeared to be self-inflicted."

Post mortem examination

Post mortem examination confirmed that the entrance wound was in the temple, suggestive of suicide. Microscopic examination of the skin immediately around the entrance wound showed no powder driven into the superficial layer

of the skin. There was abundant powder residue in the track of the gunshot wound extending quite deeply into the subcutaneous tissue. A mixture of fine and course particles was discovered. The presence of much powder debris in the wound was typical of contact or near contact between the muzzle of the gun and skin. This view was reinforced by finding no evidence of powder spread around the entrance wound suggesting that there was no room for such spread to occur and that the muzzle was held firmly against the skin. Taking these findings into account, the pathologist was of the view that the wound was self-inflicted. The cause of death was certified as a gunshot wound to the head.

Examination of the locus

Examination of the locus revealed a skid mark of some 57 feet in length on the loose grit at the lay by, which appeared to have been made by the rear nearside wheel of the vehicle. There were no further marks on the road until a point 171 feet from the lay by where 4 skid marks were seen on the west verge of the road. It was apparent that the vehicle had travelled down the embankment from the road, overturning until it landed on its roof, shattering the rear windscreen, had continued further down the embankment coming to rest 87 feet from the road on its wheels. The vehicle was facing back the way it had come, lying over the burn on a small waterfall, with the driver's door directly above the pool below the fall.

Search of the locus

Examination of the car, registered number FGB 214X failed to reveal a firearm so a search was carried out on 7th April 1985 at the locus of the accident. At approximately 1230 pm a firearm, later identified as a Smith and Wesson revolver, was found in the burn beneath the small waterfall directly below where the driver's door of the Volvo car had been. The weapon was found to have two spent cartridges in the chamber. It was concluded from the position of the deceased's head when found by witnesses that either the recoil from the gun when the fatal shot was fired caused it to drop out of the broken window into the burn or that the gun was lodged against the car door or in the deceased's hand and had fallen out of the car into the burn when the car door was opened by witnesses.

Firearms examination

The gun was examined by 2 police firearms experts and found to be a 7 chamber, top-hinged, external hammer, single action revolver of the American manufacture (Smith and Wesson) designed to chamber .22 short rim fire cartridges. Although fully capable of being fired the ratchet mechanism on the rear of the cylinder was so worn that the cylinder had to be rotated manually to align the chambers with the barrel. Nevertheless, test shots were successfully discharged and a fired bullet recovered for comparison purposes. At no time during the examination of the weapon could it be induced to discharge accidentally, despite being struck against hard and vertical and horizontal surfaces.

The firearms experts also examined 5 live and 2 fired cartridges. They were all .22 short rim fire cartridges of British manufacture (ICI) suitable for use in the above Smith and Wesson revolver. Five were apparently live and the two fired cases bore a clearly defined hammer impression in each of their rims. When

these were compared and a comparison microscope such detail was present within the hammer impressions of each as to enable the experts to form the opinion that both had been fired on the same weapon.

The test cartridge cases fired on the Smith and Wesson revolver submitted were compared one with another in a comparison microscope and it was found that the hammer imparted its own repeated, individual characteristics to each of the cartridge cases. When one of these cases was similarly compared against one of the fired cases submitted, such agreement was again present as to enable the experts to form the opinion that the two fired cartridge cases submitted had indeed been fired in that Smith and Wesson revolver.

A similar comparison exercise was carried out between the test bullets and the fired bullets recovered during the post mortem examination and again these showed such agreement in detail with the markings caused by the rifling system of the weapon that the experts formed the opinion that the bullets had also been fired from the Smith and Wesson revolver.