

Our Ref: IM-FOI-2019- 1808  
Date: 13 August 2019



## **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

**I would be obliged if I could be furnished with copies of the investigation files and any other information pertaining to the investigation of the murder of a Bridget Findlay of Kelvin Drive, Airdrie, murdered on 7th October 1973 and found by a passerby on a layby near Bargeddie, just off the A8 Glasgow-Edinburgh.**

In response to your request for information, I can advise that in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information requested.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

- (a) states that it holds the information,
- (b) states that it is claiming an exemption,
- (c) specifies the exemption in question and
- (d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested and the exemption that I consider to be applicable is set out at

**Section 34(1)(b) - Investigations**  
**Section 38(1)(b) - Personal Data**  
**Section 35(1)(a)&(b) - Law Enforcement**

Section 34(1)(b) of the Act provides an absolute exemption from disclosure in that information is exempt information if it has at any time been held by Police Scotland for the purposes of an investigation which may lead to a decision to make a report to the Procurator Fiscal to enable it to be determined whether criminal proceedings should be instituted, regardless of passage of time.

Furthermore, in the course of investigations the police interview and obtain evidence from persons who are in a position to assist them. The co-operation of witnesses is vital to policing and witnesses assist in this process, in the belief that not only their identities, but also the information that they provide will remain confidential.

There is an understanding that any statements given, or other evidence obtained will not be disclosed to third parties other than in the course of criminal proceedings. Anything that undermines this expectation of confidentiality is likely to impact on the willingness of victims or witnesses to report matters to, or assist the police.

This, in turn, would be likely to prejudice substantially the ability of the police to investigate and detect crime, and in turn would have a similar detrimental impact on the apprehension or prosecution of offenders - making the information exempt from disclosure in terms of Section 35(1)(a)&(b).

In addition, some of the information held in relation to this case could be classed as personal data which I consider exempt from disclosure in terms of Section 38(1) (b).

Personal data is defined in Article 4 of the General Data Protection Regulation (GDPR) as:

*‘Information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person’*

Section 38(2A) of the Act provides that personal data is exempt from disclosure where disclosure would contravene any of the data protection principles set out at Article 5(1) of the GDPR which states that:

*‘Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject’*

Article 6 of the GDPR goes on to state that processing shall be lawful only if certain conditions are met. The only potentially applicable condition is set out at Article 6(1)(f) which states:

*‘Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child’*

Whilst I accept that you may have a legitimate interest with regards the disclosure of this information and that disclosure may well be necessary for that purpose, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject.

On that basis, it is my view that disclosure of the information sought would be unlawful.

I appreciate that there is public interest in relation to police investigations and, in particular, the effective use of police resources by the service. Likewise, disclosure could also inform the public debate on the issue of policing and contribute to the accuracy of that debate.

That said, it is essential that neither the investigation nor the potential for proceedings to be brought against an individual are put at risk.

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Accordingly, at this time the public interest lies in protecting the integrity of the investigative and criminal justice procedures by refusing to provide the information sought.

Should you require any further assistance please contact Information Management - DUNDEE on 01382 596657 quoting the reference number given.

If you are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions.

Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to [foi@scotland.pnn.police.uk](mailto:foi@scotland.pnn.police.uk) or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision. You can apply [online](#), by email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info) or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.

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