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Our Ref: IM-FOI-2020-0110  
Date: 5<sup>th</sup> March 2020



## **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 - INTERNAL REVIEW**

In accordance with section 20(1) of the Freedom of Information (Scotland) Act 2002, I understand that you have requested a review of the decision communicated to you on 7 February 2020 in respect of your original request for information, received 13 January 2020.

### **Original Request**

**I would like to know the incidents of death of police officers whilst under investigation for misconduct. Both natural and suicide.  
If this is not recorded, I would like to know why?**

### **Request for Review**

**I am writing to request an internal review of Police Scotland's handling of my FOI request 'Death of Police Officers whilst under investigation for Misconduct'.**

**I have sent this request to all Constabularies in the UK and I have received the information requested - I am wondering why you are different?**

**I am requesting this information as I am looking into the deterioration of the Mental Health of officers under investigation. I have spoken to families of officers who have died who believe that it has been as a direct result of a misconduct investigation. Not providing these details is certainly not being "open and honest" and leads me to believe this is not something you want "published" as it may not show the police in a good light**

My role is to consider the response issued and determine whether or not your request was handled in accordance with the provisions of the Freedom of Information (Scotland) Act 2002.

As part of the review, I am also required to consider the quality of the administrative process applied to your request and I am pleased to record no deficiency in that regard.

In reviewing the response I have studied all documentation relevant to the request, including that which documents both the research carried out and the decision making process.

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The decision I have to make is whether or not section 16 of the Act, in conjunction with the exemption(s) set out at section(s) **34(2)(b)(ii) – Investigations by a Scottish Public Authority** and **s39(1) – Health and Safety** was correctly applied to your request.

**Consideration of section 34(2)(b)(ii)**

Under this section of FOI(S)A, information is exempt information if it has been held at any time by a Scottish Public Authority for the purposes of any investigation (other than an ongoing Fatal Accident Inquiry) being carried out for the purpose of making a report to the procurator fiscal as respects the cause of death of a person.

This exemption exists in perpetuity to information falling under its scope. This means that even if the information is no longer part of an ongoing investigation or a report to the procurator fiscal, it will remain exempt.

Further, section 34(2)(b)(ii) is a so-called “class exemption” which means that any information falling within the above definition will qualify for the exemption. This is distinct from prejudice-based exemptions where it is necessary that disclosure of the information in question would, or would be likely to, have a specified prejudicial effect.

I am informed (and accept) that information gathered regards the suicide or sudden unexplained death of **any** individual is held by Police Scotland for the purposes of an investigation being carried out for the purpose of making a report to the Procurator Fiscal as respects the cause of death of a person.

To explain, there is no system of coroners’ inquests in Scotland unlike England, Wales and Northern Ireland. In Scotland, accidental, unexpected, unexplained, sudden or suspicious deaths are investigated privately for the local crown agent, an official called the Procurator Fiscal. Only certain types of death are investigated further at Fatal Accident Inquiries.

**Public Interest Test**

It might be argued that the maintenance of the convention of confidentiality in respect of evidence submitted to the procurator fiscal as respects the cause of death of a person is in the public interest. My understanding of this convention is that it ensures that proper procedure is followed and that the justice system is not undermined or circumvented. I would also add that it would be an unnecessary and unpleasant experience for relatives of the deceased to have the circumstances of a loved one’s death circulated in the public domain which is likely to draw unnecessary speculation and conjecture.

The fact that Police Scotland holds information is not in dispute. Information regards the cause of death (**how**) and speculation as to any perceivable contributing factors (**why**) is a much more contentious point. I would suggest that the release of this data is likely to contribute to that element of the debate, which *could* be in the public interest.

However, I am not convinced that the general public would be better informed by disclosure of information. To explain, suicidal ideation and the act of suicide involve wide ranging, complex issues and ultimately the rationale for committing this act is often only known to the individual and is not something that can be ‘categorised’ by causal factor.

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I am not convinced that the general public would be better informed as to why a police officer committed suicide by the release of this information. I do not consider that there is sufficient public interest in overturning the convention of protecting this sort of information on the mere *potential* that the information could enable a number of speculative conclusions to be drawn.

Additionally, the next of kin and surviving relatives are individuals likely to be *significantly* affected by the stress and unpleasantness of any release of such information and having details printed in the media.

Police Scotland also has to be mindful of fair treatment to the reputation of the deceased.

Taking all of the above into account, I am satisfied that your request has been handled in accordance with the Freedom of Information (Scotland) Act 2002 and in terms of section 21(4)(a) of the Act, I uphold the original response and agree that section 34(2)(b)(ii) of the Act was correctly applied.

**Consideration of section 39(1)**

Under this section, information is exempt information if its disclosure would, or would be likely to, endanger the physical or mental health or safety of an individual. Section 39 is a qualified exemption and therefore subject to the public interest test.

The information if disclosed would be placed in the public domain through their release under FOI(S)A – a disclosure to the world in general terms.

The matter of misconduct is very sensitive information about an individual and is not something that might even be shared with closest family/friends and to release this, in my opinion, has great potential to cause distaste amongst not only the public, but more-so, is likely to cause undue distress for the deceased's next of kin.

Section 39(1) of FOI(S)A requires that the physical or mental health or safety of an individual be, or would likely to be, endangered. In this instance I do not consider that 'the public' is sufficiently refined to be considered 'an individual'. However, I do accept that specifically identified groups, consisting individuals who may be affected can be considered 'individuals' for the purpose of S39(1).

Therefore I am of the opinion that the next-of-kin would be individual's whose mental health would, or would be likely to be, endangered by the release of this information.

Having taken account of the content and context, I am satisfied that the release of the information would, or would be likely to, endanger the mental health of an individual and that the information is therefore exempt in terms of Section 39(1) of FOI(S)A.

Should you require any further assistance concerning this matter please contact Information Management - **Stirling** on **01786 456540** quoting the reference number given.

If you remain dissatisfied following the outcome of this review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision.

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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.

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