



SCOTTISH POLICE  
**AUTHORITY**  
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## **LETTER SENT BY E-MAIL ONLY**

[request-945905-dd0b8854@whatdotheyknow.com](mailto:request-945905-dd0b8854@whatdotheyknow.com)

6 March 2023

2023-015

Dear Owen Sayers

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

#### **Request**

Please find below our response to your correspondence dated 6 February, in which you made the following request under the Freedom of Information (Scotland) Act 2002:

It is now well over a year since it was announced in the press that the Scottish Government would bring in a new digital Evidence platform (DESC) based on Axon Technology, which sits on the Microsoft Azure Public cloud.

I would be grateful if you would provide me with the following information relating to this project and its current status from your organisations perspective as a listed participant:

1 - A copy of the Data Protection Impact Assessment(s) conducted on the AXON 'Evidence.com' and digital evidence management cloud services under the terms of s64 of the Data Protection Act 2018, to include any and all of the following families of Axon services in use or planned for deployment for DESC.

Please note:

A DPIA should not in general contain any specific information of security measures requiring redaction before release, but I am aware that some Policing and Justice organisations do include this information in their DPIAs.

Reasonable redaction of such information strictly to the extent necessary to maintain the security of Police or Justice operations (if this is included in the DPIA) is acceptable.

General redaction of core information relating to relevant DPIA content required to evidence achievement against statutory obligations would however be unacceptable and should be unnecessary since its release is obviously and materially in the public interest and confirmation that public and citizen interests will be suitably protected under the law is the core function of a DPIA.

2 - A copy of the specific terms of service applied within the contract between Axon and the Authority relating to Data Protection Act Part 3; or confirmation that their standard Terms of Service have been applied without modification.

3 - Details of any sub-processor engaged by Axon as part of their DESC service delivery and the countries in which data shall or may be processed.

If element 4a below is not in place please apply element 4b - one of them should be applicable, but both cannot be:

4a - Copies of any specific diligence material, contractual terms or other undertakings from Axon and their sub-processors that they will not transfer any personal data processed for a Law Enforcement purpose by the Authority outside of the UK without the Authorities prior written and specific approval in each instance, as required under S59(7) go the Act;

OR -

4b - Copies of the guidance issued by the Authority to any officers and staff relating to the steps and procedures required by the Authority (under DPA 2018 s.77) before the upload of personal data processed for a Law Enforcement purpose to any Axon cloud services where an undertaking not to transfer the data outside of UK has not been given in contract.

5 - Copies of the communications between the authority and the ICO, and/or other professional or advisors, which informed the creation of the DPIA and/or supported decisions around the procurement or use of the Axon evidence.com related products for the processing of personal data for a Law Enforcement purpose by the Authority.

## Response

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

1. The Data Protection Impact Assessment is provided as **Appendix 1**.
2. There is no contract in place between Axon and the Scottish Police Authority. Therefore, this represents a notice in terms of Section 17 of the Freedom of Information (Scotland) Act 2002 - Information not held.

In terms of our duty to assist, I can advise that the Scottish Government contracted with Axon Public Safety UK Ltd to deliver the new Digital Evidence Sharing Capability service (DESC). This information may, therefore, be available by contacting the Scottish Government at [Request information - gov.scot \(www.gov.scot\)](http://www.gov.scot)

In addition, the contract details were provided on the Scottish public contracts register at the following link:  
[https://www.publiccontractsscotland.gov.uk/Contracts/Contracts\\_View.aspx?id=670801](https://www.publiccontractsscotland.gov.uk/Contracts/Contracts_View.aspx?id=670801)

3. A table of sub-processors and country of origin is provided as **Appendix 2**.
- 4A. As stated at 2 above, there is no contract between Axon and the Scottish Police Authority. DESC was procured by the Scottish Government. Therefore, this represents a notice in terms of Section 17 of the Freedom of Information (Scotland) Act 2002 - Information not held.
- 4B. No guidance has been issued to staff as no personal data is being uploaded by the Authority. Therefore, this represents a notice in terms of Section 17 of the Freedom of Information (Scotland) Act 2002 - Information not held.
5. The relevant communications between the Authority and the Information Commissioner are attached as **Appendix 3**. Some of this information is considered to be exempt under Section 38(1)(b) Personal data of a third party. Disclosure would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018. This exemption is absolute and therefore does not require the application of the public interest test.

Advice provided by Kings Counsel is held and is considered exempt under S36(1) 'Confidentiality of Communications'. This exemption applies because the information refers to legal advice and disclosure would breach legal professional privilege. Legal advice privilege covers communications in which legal advice is sought or given and where a legal adviser is acting in their professional capacity.

This exemption is non-absolute and requires the application of the public interest test. Therefore, consideration has been given as to whether the public interest favours disclosing the information or maintaining the exemption.

### **Public Interest Test**

The public interest factors in favour of disclosure is that:

- It could contribute to transparency and allow scrutiny of advice provided.

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

- The general public interest inherent in this exemption is strong due to the importance of the principle behind legal professional privilege. Disclosing legally privileged information threatens that principle;
- It is vital to maintain and safeguard legal professional privilege, ensuring the confidentiality of communications between legal advisers and their clients, in order to ensure access to full and frank legal advice;

On balance, our conclusion is that maintaining the exemption outweighs the public interest in disclosure.

### **Right to Review**

If you are dissatisfied with the way in which your request has been dealt with 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@spa.police.uk](mailto:foi@spa.police.uk) or by post to Corporate Management Team, Scottish Police Authority, 1 Pacific Quay, Glasgow, G51 1DZ.

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 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 Scottish Police Authority Freedom of Information [Disclosure Log](#) in seven days' time.

Yours sincerely

**Jackie McKelvie**  
**SPA Corporate Management**

