| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-2703  Responded to: xx November 2023 |
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Your recent request for information is replicated below, together with our response.

## By way of background, I should state that my Freedom of Information (FOI) request concerns the Northern Constabulary investigation into the murder of Shamsuddin Mahmood at the Mumutaz Restaurant in Kirkwall on June 2, 1994. Please provide the report that was submitted to the Procurator Fiscal in 1995, seeking a warrant for the arrest of Michael Alexander Ross for the murder of Shamuddin Mahmood.

It is considered that public disclosure of the arrest warrant document under the Act would be detrimental to both the service and to the individuals involved.

The document contains significant personal information of witnesses including home addresses, together with excerpts from witness statements and other information relating to an investigation undertaken by a public authority.

Redaction of the details above would render the document meaningless.

Accordingly, in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with a copy of the requested information.

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 exemptions that I consider to be applicable to the information requested by you are:

**Section 34(1)(b) - Investigations**

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.

**Section 35(1)(a)&(b) - Law enforcement**

Release of this information would be likely to prejudice substantially the ability of the police to investigate and detect crime, and would have a similar detrimental impact on the apprehension or prosecution of offenders.

The information relates to alleged criminality and was recorded for the purposes of report to the Procurator Fiscal and such information is afforded greater protection from disclosure under FOISA.

**Section 39(1) - Health & Safety**

Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

All of the exemptions above require the application of the public interest test.

**Public Interest Test**

Whilst I appreciate the reasons why you might wish this information, I also have to consider the wider implications of the public release of such a document as a release of information under this Act is, essentially, a release of such sensitive information into the public domain.

I wholly acknowledge that public awareness may favour disclosure as it would contribute to the public debate surrounding the police handling of the enquiry.

Nevertheless, the efficient and effective conduct of the service and public safety favours retention of the information as it cannot be in the public interest to release information that would prejudice law enforcement.

Disclosure could lead to a situation whereby the ability of Police Scotland to effectively investigate serious crime is compromised as a result of individuals being less willing to engage with the process for fear that the details will emerge publicly.

Disclosure generally will undoubtedly bring unwanted attention to those involved as witnesses who make statements with an expectation of confidentiality.

Bereaved families may also suffer harm if sensitive or upsetting detail is disclosed publicly.

Information about investigations will only ever be disclosed by Police Scotland where there are overwhelming public interest considerations favouring disclosure.

I can find no corresponding argument in terms of placing this document in the public domain and accordingly it is assessed that the public interest lies firmly in refusing disclosure.

**Section 38(1)(b) - Personal Data**

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.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.