| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-2964  Responded to: 28 November 2023 |
| --- | --- |

Your recent request for information is replicated below, together with our response.

**Lukasz Keszka had an accident three years ago on Loch Ness and the body has never been found.**

**- when, where and what kind of accident did [he] have**

**- are the searches still ongoing and if not why were they interrupted**

**- and that he was not declared dead**

## I need to provide official document proving that [he] had an accident, when it was and that the body has not been found.

I can first advise you that the missing person investigation is live and under FOI legislation we are unable to assist you with your request due to the terms laid down below.

However, to be of assistance, I would recommend that your own solicitor contact our legal services team with regard to the documentation they are requesting.

Legal Services

Police Scotland

PO BOX 2460

Dalmarnock

GLASGOW

G40 9BA

In terms of section 16 of the Act, I am refusing to provide you with the information sought.

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. There are no time limitations in this respect and this is particularly pertinent where an ongoing missing person investigation will remain open until that person is traced.

**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.

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

Disclosure would or would be likely to endanger the health or safety of an individual(s).

**Public Interest Test**

Public awareness would favour disclosure as it would contribute to the public debate surrounding the police handling of such an enquiry.

I would, however, contend that the efficient/ 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.

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

I appreciate that there is a public interest in relation to police investigations. That said, it is essential that neither the investigation nor the potential for proceedings to be brought against an individual are put at risk.

**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.

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

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.