| Police Scotland logo | Freedom of Information Response Our reference: FOI 24-3198  Responded to: xx January 25 |
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Your recent request for information is replicated below, together with our response.

**1. Please provide a list of all addresses in The Quadrant, Kirkwall, for which door-to-door questionnaires were filled in.**

In terms of Section 16 of the Freedom of Information (Scotland) Act 2002 I am refusing to provide you with the information sought.

I can confirm that Police Scotland holds the information that you have requested.

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

**Section 34(1) (a) (i) & (b) – Investigations by a Scottish public authority**

Information is considered exempt information if it has, at any time, been held by a Scottish public authority for the purposes of an investigation which may lead to a decision to report the circumstances to the Crown Office and Procurator Fiscal Service to enable a determination on whether criminal proceedings should be instigated and to determine whether a person should be prosecuted for an offence.

This is a non-absolute exemption and requires the application of the public interest test.

We acknowledge that it is in the public interest that an understanding exists as to the processes involved in police investigations and in their relative success. This is particularly true in homicide investigations, therefore, accountability and transparency relating to the actions of Police Scotland and its officers would favour disclosure of the information.

That said, when the Freedom of Information Bill was considered by the Scottish Parliament, the then Lord Advocate stated that the exemptions detailed in section 34(1) were essential for an effective justice system.

Section 34 of the Act has no harm test and information will be exempt from disclosure simply because it has, at some point, been held by an authority for any of these purposes listed.

The following exemption will also apply:

**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.*

Whilst I accept that you may have a legitimate interest with regards the disclosure, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject(s).

To explain, all Freedom of Information requests are published on our website and to provide such specific details (i.e. exact address of witness, coupled with year of enquiry) would therefore be a public disclosure of personal information.

Quite rightly, all witnesses who provide information or make statements to the police do so with the expectation that this will remain confidential. I would suggest this is particularly true where individuals and their wider families reside within a small community where they may be easily identified and subject to unwanted attention, even accounting for the passage of time in this case.

Accordingly, it is my view that publishing the identities of those families who did, or did not, provide information to the enquiry would be unlawful.

**2. Please provide a list of all addresses in The Quadrant, Kirkwall, at which door-to-door enquiries were carried out.**

According to HOLMES research, all dwellinghouses, commercial premises, Hotels, Public Houses, etc. in the Kirkwall area were to form part of house to house enquiries.

## 3. Please provide the reference numbers for all door-to-door enquiry questionnaire forms taken from The Quadrant.

Owing to the naming convention with house to house enquiries, the reference numbers in a particular street could easily be used to deduce the corresponding addresses to which they refer. On that basis, the Section 38(1) (b) - Personal Data exemption articulated above also applies here.

To be of some assistance I can confirm that a total of nine questionnaires were taken from The Quadrant

**4. Please also tell me how many door-to-door enquiry forms appear to be missing. For example, if forms Q112, Q113, Q114, and Q116 are present, and Q115 is not, please provide me with the number Q115.**

For clarification, the term ‘door-to-door enquiry form’ is not a form name used by Police Scotland. We have interpreted this question to refer to either ‘House to House Occupants Form’ or the ‘House to House Questionnaire’.

On that basis we can confirm that there are no missing occupant forms or questionnaires in respect of those enquiries conducted at The Quadrant. Accordingly Section 17 (No information held) applies.

**5. If any forms seem to be missing, please indicate which house address this missing form would appear to relate to. Of course one can't guess, but the address would be suggested by the details of the two forms either side of it numerically. So, please provide the addresses for each form numerically proceeding and succeeding each apparently missing one (to continue the above example, if Q115 appears to be missing, please provide the house addresses which are contained in Q114 and Q116. This would at least indicate the likely address of the missing form). Beyond determining this using any gaps in the numbering of the questionnaires which are held, please also provide the number of any other known instances of questionnaire forms going missing.**

Please see the response at Q4 above.

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.