| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-2401  Responded to: 5th October 2023 |
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Your recent request for information is replicated below, together with our response.

**Under FOI, may I please have a copy of the commissioned FBI BAU report that was delivered to Police Scotland in January 2004 in the Luke Mair Mitchell case.**

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

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.

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

* Section 34(1)(b) – Investigations
* Section 35(1) & (b) – Law Enforcement
* Section 39(1) – Health, safety and the environment

## Section 34(1)(b) – Investigations

Section 34(1)(b) of the Act provides that 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.

The matter you are enquiring about was previously subject to a live police enquiry.

**Public Interest Test**

I do appreciate that there is a degree of interest in the release of the information you have requested and that to do so would help inform public debate on policing in Scotland.

However it is essential that any release of information does not interfere or prejudice enquiries or risk such enquiries in the future. To do so would put the enquiries at risk and to do so would be vastly against the public interest.

The balance lies in withholding the information requested at this time.

## Section 35(1) & (b) – Law Enforcement

## Section 39(1) – Health, safety and the environment

In regards to Section 35(1)(a)(b) and 39(1), as per the above, 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.

It would provide an insight into murder investigations and would be extremely useful for criminals and those intent on wrongdoing and would assist them in circumventing the efficient and effective provision of law enforcement by the police service, which in turn would have an adverse impact on the safety of the officers involved and the general public.

This would increase the risk to the personal safety of individuals and also the safety of the police officers responding to incidents.

These are non-absolute exemptions and requires the application of the public interest test.

**Public Interest Test**

Public awareness would favour a disclosure as it would contribute to the public debate surrounding a high profile murder investigation and 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 or which is likely to have an adverse impact upon public safety.

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 and in particular murder investigations. That said, it is essential that neither investigations nor the potential for proceedings to be brought against an individual are put at risk.

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.