| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 24-3148Responded to: xx December 2024 |
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Your recent request for information is replicated below, together with our response.

## We hereby request that you kindly disclose a copy of all CCTV and/or dashcam footage or indeed any footage that you hold pertaining to the incident PS-20240624-1535 x CRaSH URN 1459472.

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)(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.

**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 providing details regarding this incident would therefore be a public disclosure. On that basis, it is my view that disclosure of the information sought would be unlawful.

**Public Interest Test**

I appreciate there is a degree of interest in the release of such information: however this must be tempered against what is of interest to the public and what is in the public interest.

The Act does not define public interest; however, it has been described as “something which is of serious concern and benefit to the public”, not merely something of individual interest. In other words, it serves the interests of the public.

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 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.

On that basis I would also ask you to note that you have been given incorrect advice and our colleagues in the Abstract team have since been advised to stop directing applicants to FOI as they did this without consultation and not fully understanding the limitations of that legislation.

You are, of course, free to submit an FOI request for anything you choose - but I must advise you that a request for CCTV of a road traffic collision is likely to be refused in terms of a number of exemptions from disclosure set out in FOI legislation - police investigations, personal data etc.

For those reasons, I can only advise the alternative route set out in their response to you.

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 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 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.