| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 24-3106Responded to: xx December 2024 |
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Your recent request for information is replicated below, together with our response.

**I would like to make a Freedom of Information request concerning the Northern Constabulary investigation into the murder of Shamsuddin Mahmood at the Mumutaz Indian Restaurant in Kirkwall on June 2, 1994.**

**I would like to request a copy of report which I understand has a HOLMES reference of D329. It would appear to be a report on the investigations into the murder that had been carried out. I would also like to request the following:**

**a. How many pages long is the report?**

**b. When was the report dated?**

**c. If it is based on a review of the evidence, when did this review start and when did it finish?**

**d. How many named murder suspects are identified in the report?**

**e. How many named "persons of interest" are identified in the report?**

**f. How many unsolved key sightings are highlighted in the report?**

**g. If the report identifies any lines of enquiry or motives for the murder which had not at that stage been pursued (or pursued fully) please describe each of these (preferably quoting the text of the report fully on each point).**

**h. Please also provide any comments from the report regarding an incident that occurred around midnight on Tuesday, May 31, 1994, when an argument occurred at the door of the restaurant with Mr Mahmood, and one of the participants allegedly threatened to shoot him (preferably quoting the text of the report fully on each point as it regards this matter).**

I must advise you that a search of our electronic systems (including paper documents) has confirmed that the requested document D329 is not held by Police Scotland. For this reason I must respond in terms of Section 17(1) of the Act: Information not held.

**Separate to the above, I would also like to request an Interpol document from the investigation, which appears to have a HOLMES reference of D320. Please also provide any response that was received regarding this Interpol request.**

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the specific information (D320 document) requested.

I can confirm that Police Scotland holds information but that this information is considered to be exempt from public disclosure.

There are a number of exemptions that I consider to be applicable to the information requested by you:

Thes exemptions are:

Section 34(1)(b) – Investigations

This provides an absolute exemption from disclosure in 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.

Section 35(1)(b) – Law Enforcement

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

In regard 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.

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

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

Nevertheless 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.

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

The following exemption is also applicable;

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’

I am of the view that the potential for an offender to be identified is significant, making any statistical information ‘personal data’.

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.

Taking all of the above into account, it is my view that disclosure of the information sought would be unlawful.

Accordingly, in this case it is assessed that the public interest lies firmly in refusing disclosure.

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.