



Freedom of Information Response

Our reference: FOI 24-0357

Responded to: 1 March 2024

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

1. What date did Police Scotland receive the complaint in relation to the alleged fraud of Government Minister Mr Matheson in relation to an £11,000 bill

I can advise this information is considered to be exempt. Section 16 of the Act requires Police Scotland 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. Where information is considered to be exempt, this letter serves as a Refusal Notice that information is held and an explanation of the appropriate exemption is provided. The exemptions that I consider to be applicable to the information requested are as follows:

Section 38(1) (b) - 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'

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

This is an absolute exemption and does not require the application of the public interest test.

Section 34(1) (a) (i) & (b) – Investigations by a Scottish public authority and proceedings arising out of such investigations

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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.

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 the 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. This is particularly true in investigations, therefore, accountability 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, 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.

Accordingly, I can find no public interest in the disclosure of the requested information.

2. Police Scotland did not Perdue the complaint. Can you please confirm the date in which Police Scotland confirmed they were not pursuing the complaint.

On the 14 November 2023 a statement was prepared for any media enquiries. That statement is provided below:

A Police Scotland spokesperson said: “A complaint which had been received has been assessed and no further action will be taken by Police Scotland at this time.”

If you require any further assistance, please contact us quoting the reference above.

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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, and 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](#), 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](#) 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.