| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-1550  Responded to: 26 July 2023 |
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Your recent request for information is replicated below, together with our response.

## 1. What the ‘arrangement’ referred to by xxxxxxxxxxxxxx in a comment from her official spokesperson regarding her arrest by Police Scotland on 11 June 2023 where she attended an interview, was arrested, and questioned in relation to Operation Branchform.

*Clarification*

## The arrangement I am referring to is the comment given by a spokesperson for xxxxxxxxxxxxxx saying: ‘xxxxxxxxxxxxxxx has today, Sunday June 11, by arrangement with Police Scotland, attended an interview where she was to be arrested and questioned in relation to Operation Branchform.

## 2. The dates of all of Police Scotland’s contact with xxxxxxxxxxxxxx regarding Operation Branchform. Please provide the dates (and specific time if available) of each contact going back to 1 January 2023, the method of communication (WhatsApp, email other instant message etc.) and a brief summary of the intention of the communication (for example whether it was about intention to arrest etc.).

## 3. Whether Police Scotland previously attempted to arrest xxxxxxxxxxxxxx before her eventual arrest on 11 June 2023. 4. When Police Scotland made the decision to arrest xxxxxxxxxxxxxx and whether (and when) it notified the Crown Office and Procurator Fiscal Service of this intention.

## 4. When Police Scotland made the decision to arrest xxxxxxxxxxxxxx and whether (and when) it notified the Crown Office and Procurator Fiscal Service of this intention.

In this instance all of the above requested information is considered to be exempt from disclosure in terms of the Freedom of Information (Scotland) Act 2002 (the Act).

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 are as follows:

## Section 26 (c) – Prohibitions on disclosure

Information is exempt information under this section, if its disclosure would constitute, or be punishable as, a contempt of court.

Disclosure would substantially risk prejudicing what is an ongoing and live investigation. This includes an increased risk of a breach Contempt of Court legislation which is active in this case

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**

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 35 (1) (b) – Law enforcement

Information is exempt information if its disclosure would, or would be likely to, prejudice substantially the prosecution of offenders.

Disclosure of the requested information would impact on the live investigation and any ongoing and/or subsequent legal proceedings.

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

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

Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

Whilst I appreciate the reasons why you might wish this information, I also have to consider the wider implications of the public release of such information as a release of information under this Act is, essentially, a release of sensitive information into the public domain.

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

**Public Interest Test**

I appreciate there is an 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 that is “in the interest of the public”, not merely “of interest to the public.” 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, therefore, accountability and transparency relating to the actions of Police Scotland and its officers would favour disclosure of the requested information.

That said, a decision for non-disclosure follows consideration of ongoing or likely criminal investigations and the efficient and effective conduct of Police Scotland in relation to such investigations.

It is essential that information pertaining to investigations is disclosed at the correct time and where appropriate, to ensure that neither the investigation nor the potential for proceedings to be brought against an individual(s) are put at risk.

Further, disclosure of investigative processes would, due to this being a live investigation, prejudice the ongoing investigation and as a result, affect the administration of justice and increase the risk of a breach of Contempt of Court legislation, which is active in this case.

Accordingly, in this instance, the balance of the public interest test favours retention of the requested information.

**Section 38(1) (b) of the Act - personal information.**

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 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 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).

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

## 5. Whether Police Scotland had an arrest warrant for xxxxxxxxxxxxxx.

I can advise you that Police Scotland does not hold the above requested information. In terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

By way of explanation, Police Scotland did not apply for a warrant and as such no information is held.

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.