| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-1965  Responded to: 25th August 2023 |
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Your recent request for information is replicated below, together with our response.

## Under FOI legislation I would like to request any and all information that is held with regard the hiring of former Deputy Chief Constable William Kerr in 2018. Specifically, I would like to request any information about the Police Scotland vetting process which took place before and during his hiring.

In terms of section 16 of the Act, I am refusing to provide you with the information sought.

Section 16 requires that Police Scotland:

(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 the information sought is held by Police Scotland and the exemption I consider to be applicable is 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, 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 I do not agree that disclosure could be considered necessary in the circumstances.

Notwithstanding, I am further of the view that your interests are overridden by the interests or fundamental rights and freedoms of the data subjects.

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

## Did this vetting process produce any information of concern about his time in PSNI? If so, what were the issues raised and what action was taken? I would like to request any and all information, electronic or otherwise, held in relation to this.

I am refusing to confirm or deny whether the information sought exists or is held by Police Scotland in terms of section 18 of the Act. Section 18 applies where the following two conditions are met:

* It would be contrary to the public interest to reveal whether the information is held.

Whilst we accept that you may have a particular personal interest in being informed as to whether or not the information sought is held, the overwhelming public interest lies in protecting individuals’ right to privacy and the expectation of confidence that exists as regards the handling of personal information.

* *If* the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act.

In this instance, sections 38(1)(b) and 38(1)(2A) of the Act apply insofar as you have requested third party personal data which is exempt from disclosure as outlined above.

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.