| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0489  Responded to: 1st March 2023 |
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Your recent request for information is replicated below, together with our response.

## All information in relation to reference number [redacted] up to and including the date in which the matter was reported and details of any investigation into this matter.

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with information relating to this specific incident report.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, 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.

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:

**Section 34(1)(b) – Investigations**

Information is exempt if it is held for the purposes of an investigation which in the circumstances may lead to a decision to report a matter to the Procurator Fiscal.

Public awareness would favour a disclosure as it would contribute to the public debate surrounding the use of police resources and provide additional transparency in how Police Scotland deal with matters. I would, however, contend that the efficient/effective conduct of the service and protecting the integrity of investigations favours retention of the information as it cannot be in the public interest to release information that would prejudice law enforcement.

**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, in particular where the data subject is a child’*

I appreciate that this response may be disappointing; however, I feel that it is important to emphasise to you that the Act is in essence, applicant and purpose blind. By this I mean that any information disclosed under the Act would be available to any person requesting it and in addition, that all responses under the Act are published on our website.

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

You may wish to call 101 and ask to speak to someone regarding the incident.

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.