| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 23-1262Responded to: 23 June 2023 |
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Your recent request for information is replicated below, together with our response.

## Can drones be used for court-admissible evidence? Are there any conditions for them to be court-admissible?

In terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information you seek is not held by Police Scotland.

By way of explanation Police Scotland does not determine which information is or is not considered admissible in court.

To be of assistance you may wish to contact the Crown Office and Procurator Fiscals Service (COPFS) who may be better placed to provide a response to your request. A request can be submitted to COPFS via email using the following address foi@copfs.gsi.gov.uk

## What tools or technologies are utilised for drone forensics?

In terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought. 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.

With respect to your request I believe that the necessary exemptions are:

Section 31(1) National security and defence

Section 35(a) and (b) Law Enforcement

Section 39(1) Health, safety and the environment

Section 31(1) National security and defence

Information is exempt information if it is required for purpose of safeguarding national security.

Disclosure may have a negative effect on national security, as the release of the requested information has the potential to undermine any ongoing or future operations to protect the security or infrastructure of the United Kingdom.

Disclosing the technological capabilities of Police Scotland will assist groups, organisations and those with hostile intent to identify technology used and allow them to devise methods to overcome those technological capabilities. In turn this would provide a tactical advantage when planning or perpetrating any unlawful activities and maximise the impact of destruction, harm and disruption that may be caused.

Additionally, disclosed information could be manipulated by criminal fraternities to try and attack politicians, public figures and other protected establishments and individuals and ultimately increase the risk of harm to the public.

The public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with what is placed into the public domain.

This is a non-absolute exemption and requires the application of the Public Interest Test.

Section 35(a) and (b) Law Enforcement

Information is exempt information if its disclosure under this Act would, or would be likely to prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders.

Publically disclosing tools and technologies used for drone forensics will assist groups, organisations and those with hostile intent to identify technology used in the examination and evidence gathering investigative process. This would then provide a tactical advantage when planning or perpetrating any unlawful activities and maximise the impact of destruction, harm and disruption that may be caused, whilst avoiding being brought to justice.

One of the main purposes of the Police Service is to prevent crime but to release this information would be contrary to that purpose.

This is a non-absolute exemption and requires the application of the Public Interest Test.

Section 39(1) Health, safety and the environment

As earlier noted, the disclosure of the information requested has the potential to increase the number of attacks on public figures, other protected establishments and individuals and increase the risk of harm to the public.

Additionally, disclosure of the requested information has the potential to present a risk to an individual’s personal safety.

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

Public Interest Test

I would suggest that public accountability may favour disclosure, given that the information concerns the efficient and effective use of resources by the Service. Likewise, disclosure of the information would also inform the public debate on the issue of policing and contribute to the accuracy of that debate.

However, any disclosure under FOI legislation is a disclosure to the world at large and any information identifying the focus of policing activity could be used to the advantage of criminals.

Consequently, in terms of the applicability of the exemptions listed above, the need to ensure the effective conduct of the service in relation to prevention and detection of crime and the public safety considerations involved in the delivery of operational policing clearly favour non-disclosure of the information requested.

It is important to note that the UK faces a serious and sustained threat from violent extremists and this threat is greater in scale and ambition than any terrorist threats in the past. The police service has a duty to promote the safety of all individuals, whether protected or not, and will not reveal any information that might jeopardise this goal.

Accordingly, I would argue that the need to ensure the efficient and effective conduct of the service favours non-disclosure of the information requested and on balance is significantly in the public interest. I cannot identify any corresponding viewpoint in disclosing the requested information and therefore the exemptions are upheld.

I must advise you that it is doubtful it could ever be in the public interest to disclose information which would jeopardise the delivery of policing and the safety of individuals and prejudice the prevention or detection of crime.

## Are there any specific challenges your DFOs experience in regard to gaps in drone forensics capabilities?

I must advise that the question above is seeking an opinion rather than recorded information. Therefore in terms of section 8 of the Freedom of Information (Scotland) Act 2002 your requested is considered invalid.

## Could you disclose your digital forensics handling procedures in regard to drone forensics, if this exists? This should ideally cover planning to presenting as outlined within ACPO good practice for digital evidence. Where necessary please direct to further, publicly available, resources.

Please be advised that information regarding digital forensics handling procedure is publicly available.

As such, in terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought. 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 and the exemption that I consider to be applicable is set out at Section 25(1) of the Act - information otherwise accessible:

“Information which the applicant can reasonably obtain other than by requesting it under Section 1(1) is exempt information”

All devices submitted to Police Scotland for a digital forensic examination are handled in the same way. The Digital Forensic Examination Principles are available on the Police Scotland website, alternately they can be accessed by using the link provided below.

[Cybercrime Investigations and Digital Forensics - Police Scotland](https://www.scotland.police.uk/about-us/what-we-do/specialist-crime-division/cybercrime-investigations-and-digital-forensics/)

## Could you provide contact details of staff/officers working within digital forensics that will be able to answer further questions?

To provide a response to this question I must advise that any additional questions can be directed to the Contact Us team using the link below:

[Contact Police Scotland - Police Scotland](https://www.scotland.police.uk/contact-us/)

Should you wish your further questions to be considered under FOI you can submit your request to FOI@scotland.police.uk

However, as you have requested for contact details of staff members I must advise, in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought regarding individual names and contact details of staff members.

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 exemption that I consider to be applicable to the information requested by you is 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’*

Whilst I accept that you may have a legitimate interest with regards the disclosure of this information I do not accept that disclosure is necessary for that purpose.

Further, I am of the view that any interests are overridden by the interests or fundamental rights and freedoms of the data subject.

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

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.