| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 23-2064Responded to: 8th September 2023 |
| --- | --- |

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

**I wish to submit a Freedom of Information Request in relation to an investigation into a former officer, Gavin Donaldson. I do not know the reference number associated with this investigation but it was assigned the Procurator Fiscal ref CA21000038 by COPFS in case that is useful.**

**I am seeking any information about or communications relating to the investigation of this officer and the submission of an anti-corruption police report to COPFS about him.**

**I am seeking any information relating to procedural administration around the placing of this officer on restricted duties and suspending him. I am seeking the minutes and notes of any meetings within Police Scotland, or in which Police Scotland attended, which discussed actions in relation to this officer’s alleged misconduct and inappropriate relationship(s) with victim(s) of crime.**

**I am seeking any communications from or received by Police Scotland officers in relation to the decision by COPFS not to pursue some of the criminal charges in the case above, and also in relation to a later case which COPFS did pursue through the courts. The later case has the PF ref ED22006366.**

In relation to the questions above, the information sought is held by Police Scotland, but I am refusing to provide it in terms of section 16(1) of the Act on the basis that the following exemptions apply:

Section 34(1)(b) - Investigations
Section 35(1)(a)&(b) - Law enforcement
Section 35(1)(g) & 2(a)&(b) - Law enforcement & conduct
Section 38(1)(b) - Personal data
Section 39(1) - Health and safety

First and foremost, all of the information sought is 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 believe that disclosure is necessary.

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

Furthermore, the personal data in question would reveal information about an individual’s:

- criminal convictions
- offences
- related security measures

Whilst that does not in itself render the information special category personal data, it is our view that section 10 of the Data Protection Act 2018 makes clear that such information should be treated in a very similar way.

Article 9 of the GDPR only allows special category data to be processed in very limited circumstances and it is assessed that none of those circumstances are relevant here.

Taking all of the above into account, it is my view that disclosure of the information sought would be unlawful.

Clearly, any public disclosure of personal data would also have a negative impact on the mental health of the individual concerned.

Additionally, all of the information requested is held for the purposes of an investigation.

Information about investigations will only ever be disclosed by Police Scotland where there are overwhelming public interest considerations favouring disclosure.

In this case it is assessed that the public interest lies firmly in refusing disclosure and protecting the individual’s right to privacy in the circumstances.

Furthermore, it our view that additional exemptions apply in relation to the impact that disclosure would have on Police Scotland’s ability to effectively investigate crime and conduct matters.

**I would like to request any communications or notes taken about communications between Police Scotland staff, particularly Mark Lumsden of J Division, and the lawyer Pamela Rodgers, in relation to the investigation into Gavin Donaldson.**

As regards communications with Pamela Rodgers specifically, I can confirm that the information sought is not held by Police Scotland and section 17 of the Act therefore applies.

More generally, any other communications are considered exempt from disclosure in terms of the exemptions articulated above.

**I would like to request any departmental reviews, retraining or advice that was issued to officers, particularly in Dalkeith Police Station and J division, that came after the misconduct carried out by former officer Gavin Donaldson, particularly around officer relationships with victims of crime.**

**I believe all of this information would be dated after Nov 2020.**

First of all, I would stress that there is no information held regarding reviews, retraining or advice in relation to this case *specifically* or targeted only at officers in J Division and section 17 of the Act therefore applies.

You may be interested in a recent FOI response that details a recent Values and Standards campaign:

[23-1363 - Professional Standards Department - Sex Equality Tacking Misogyny survey, Gross Misconduct publication & Values and Standards Campaign - Police Scotland](https://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log/disclosure-log-2023/june/23-1363-professional-standards-department-sex-equality-tacking-misogyny-survey-gross-misconduct-publication-values-and-standards-campaign/)

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.