| Police Scotland logo | Freedom of Information Response Our reference: FOI 24-2442  Responded to: 05 November 2024 |
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Your recent request for information is replicated below, together with our response.

## Are you able to confirm whether a request has been submitted for the release and retesting of samples in the case of Jodi Jones (murdered in 2003, Dalkeith, Scotland), by convicted individual Luke Mitchell's legal team?

## The reason for this question is that individuals leading a campaign and claiming to have connections to his legal team, have been requesting money from the public for the purposes of this 'independent' testing, under the premise that a miscarriage of justice has occurred.

I interpret this question to refer to the time period after the conviction of Luke Mitchell. I can confirm that no request has been received in relation to this case for the release of productions for the purpose of re-testing by a forensic provider from legal representative acting on behalf of Luke Mitchell.

## Are you able to please confirm whether there are untested semen samples in Jodi's case? SPA have helpfully responded to confirm that they are not aware of any samples provided to forensic services in 2003/4 which were not tested, or of any semen samples which were not DNA matched.

Before any crime scene stain/liquid/sample is ever called ‘semen’, it would first have to be tested/examined to confirm it was in fact semen. As such it is not possible to have an untested semen sample therefore the information sought is not held by Police Scotland and section 17 of the Act applies.

## Were there any samples not provided to forensic services for testing which could have been?

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 39(1) – Health, safety and the environment

Section 34(1)(b) of the Act provides an absolute exemption from disclosure in that information is exempt information if it has at any time been held by Police Scotland for the purposes of an investigation which may lead to a decision to make a report to the Procurator Fiscal to enable it to be determined whether criminal proceedings should be instituted.

As per the above, release of this information would be likely to prejudice substantially the ability of the police to investigate and detect crime and would have a similar detrimental impact on the apprehension or prosecution of offenders.

It would provide an insight into murder investigations and would be extremely useful for criminals and those intent on wrongdoing and would assist them in circumventing the efficient and effective provision of law enforcement by the police service, which in turn would have an adverse impact on the safety of the officers involved and the general public.

This would increase the risk to the personal safety of individuals and also the safety of the police officers responding to incidents.

These are non-absolute exemptions and requires the application of the public interest test.

**Public Interest Test**

Public awareness would favour a disclosure as it would contribute to the public debate surrounding a high-profile murder investigation and the police handling of such an enquiry.

I would, however, contend that the public safety favours retention of the information as it cannot be in the public interest to release information that would prejudice law enforcement, or which is likely to have an adverse impact upon public safety.

Accordingly, at this time the public interest lies in protecting the integrity of investigative and criminal justice procedures by refusing to provide the information sought.

I appreciate that there is a public interest in relation to police investigations and in particular murder investigations. That said, it is essential that neither investigations nor the potential for proceedings to be brought against an individual are put at risk.

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.