| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 24-2365Responded to: 25 September 2024 |
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Your recent request for information is replicated below, together with our response.

## I'd like to request witness statements and court transcripts on the Jodi Jones murder case from 2003? Luke Mitchell was convicted of her murder.

With regards to the witness statements in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information requested.

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 sections 38(1)(b) Personal Data, section 35(a) and (b) Law Enforcement and section 39(1) Health, Safety and the Environment.

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.

This exemption is absolute and does not require 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.

Disclosure of the requested information would impact on the process of investigating this case. One of the main purposes of the Police Service is to prevent crime but to release this information would be contrary to that purpose.

There is an understanding that any statements given, will not be disclosed to third parties other than during criminal proceedings.

Anything that undermines this expectation of confidentiality is likely to impact on the willingness of victims or witnesses to report matters to, or to assist the police.

This would be likely to prejudice substantially the ability of the police to investigate and detect crime, and in turn would have a similar detrimental impact on the apprehension or prosecution of offenders.

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

Section 39(1) Health, Safety and the Environment

One of the main purposes of the Police Service is to protect individuals and members of the public, as per the reasons set out within the exemption above, to disclose the requested information would be contrary to that purpose.

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

Public Interest Test

I appreciate there is a degree of interest in the release of such information, however this must be tempered against what is of interest to the public and what is in the public interest.

Public awareness would favour disclosure as it would contribute to the public debate surrounding the police handling of such an enquiry.

I would, however, contend that the efficient/effective conduct of the service and public safety favours non-disclosure of the information as it cannot be in the public interest to release information that would prejudice law enforcement or endanger individuals.

As such, 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.

Additionally, with respect to the court transcripts, in terms of Section 17 of the Act, I can confirm that the information you have requested is not held by Police Scotland.

You may wish to direct your request to the Scottish Courts and Tribunals Service at the email address provided to determine if they can assist with your request. foi@scotcourts.gov.uk

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.