

Our Ref: IM-FOI-2022- 2438
Date: 19 December 2022



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

Please provide information held by Police Scotland in relation to public health risks - including the risk of "explosion" from Hydrogen Sulphide toxic gases - in Portree since 1 August 2022.

In relation to the incident referred above, I must first advise you that the barge venting project was undertaken by Bakkafrost Scotland who are also undertaking the ongoing salvage recovery of the barge.

Police Scotland were part of the Emergency Liaison Group (ELG) with our partner agencies where we discussed worst case scenario and agreed a response plan in this event. As a group we were content there was no risk to public health as mitigation measures were put in place by Bakkafrost and in the event of an uncontrolled release our response plan would be invoked.

All risk to public health was assessed by Public Health Scotland who are the lead agency in this area and as such they may be able to provide further information via the link below:

[Freedom of Information \(FOI\) and Environmental Information Regulation \(EIR\) requests - Contact us - Public Health Scotland](#)

Medical Officers within the Scottish Government may also be able to advise you in respect of any information which can be considered under the Act by contacting the following address:

ceu@gov.scot

Please include any emails, letters, warnings and any other information.

Police Scotland held a number of ELG meetings with Bakkafrost and local councillors to assess the company's progress and all partners agreed they were content with their roles and responsibilities prior to the venting taking place.

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I can confirm that minutes were not recorded of the meetings and as such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that this information is not held by Police Scotland.

After this agreement the venting was completed safely and without issue. Bakkafröst reported nowhere near the gas levels planned for in worst case scenario.

I have gone on to review the information which is held by Police Scotland and I would first remind you that the Freedom of Information (Scotland) Act 2002 gives a right to information, not to documents.

Where a public authority chooses not to provide copies of original documentation however, it must ensure that any information which falls within the scope of the request and which is contained in the document is disclosed completely and accurately.

In this case, I have chosen not to provide actual copies of the correspondence as they would have required hard-copy redaction in terms of the removal of direct email addresses and telephone numbers etc.

I can however provide you with the attached information which details the relevant information /correspondence held by Police Scotland which meets the terms of your request and which I can disclose to you under the Act.

Attachments(s) 22-2438 – Information refers + Map document

I must advise that it has been necessary to withhold some of the information requested, therefore, 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 you have requested and the exemption(s) that I consider to be applicable is set out at:

The exemptions that I consider to be applicable to the information requested are;

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'

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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 General Data Protection Regulation (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 and that disclosure may well be necessary for that purpose, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject.

In addition the following exemptions are applied:

Section 30(b) Prejudice to effective conduct of public affairs

Information is exempt if its disclosure under this Act would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.

The exemptions in section 30(b) focus on the effect that disclosure of information would have (or would be likely to have) on the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.

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

Some references are to opinion, decisions and documents in draft form. Releasing associated information into the public domain is likely to inhibit the manner in which those issues are debated, effectively undermining the ability to ensure that there is sufficient opportunity to ensure all potential concerns and viewpoints are accurately identified and addressed.

Section 30(c) - Prejudice to the Effective Conduct of Public Affairs

Where necessary some internal names / telephone numbers and email addresses have been redacted. To release these details publicly through FOI legislation could negatively impact on the operational effectiveness of various departments and external partner agencies, notwithstanding that some individuals may no longer be with the organisation.

While it is acknowledged that the disclosure of this information would support transparency and better inform the public as to how the Service conducts its business, there are already established routes for the public to make contact with the police and the disclosure of these additional details would not support the effective conduct of public affairs.

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

There are already various ways in which the public can contact Police Scotland with a specific section of their websites dedicated to this, and to that end the public interest has been met and the disclosure of these additional details would not support the effective conduct of public affairs. As a result, section 30(c) of the Act is engaged.

This exemption is also engaged in relation to information provided to Police Scotland by partner agencies and private companies for information purposes where it is assessed that public disclosure of such information under FOI would prejudice the ability of all organisations involved to freely discuss and plan such matters in the future.

Section 33(1)(b) - Commercial Interests

The barge recovery contract was awarded to Briggs Marine Contractors and some of the information held by Police Scotland is reports created by them outlining their processes and procedures in relation to same. This information and the documents themselves are commercially sensitive as a result as they would provide an insight into the operations of a private company.

More generally, Police Scotland will hold such information from a variety of companies for a number of reasons and public disclosure of same via FOI can only serve to lessen the confidence of such companies in sharing such information with Police Scotland.

If you require further assistance or are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions.

Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to foi@scotland.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision. You can apply [online](#), by email to enquiries@itspublicknowledge.info or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.