

Subject: Access to closed Aberdeen High Court records from 2004 held under reference numbers JC26/2004/554, JC34/2003/438, AD37/2004/89/4 and AD38/14/2004/25/1).

FOI reference: FOI/19/01772

Date received: 22 July 2019

Date responded: 30 August 2019

Information requested:

Access to closed Aberdeen High Court records from 2004 held under reference numbers JC26/2004/554 (trial papers), JC34/2003/438 (appeal by the accused), AD37/2004/89/4 (precognition produced for the trial by the Procurator Fiscal and Crown Office) and AD38/14/2004/25/1 (additional papers produced by the Procurator Fiscal and Crown Office).

NRS Response:

A sensitivity review has been undertaken on the trial papers (JC26/2004/554) by the Scottish Courts and Tribunals Service (SCTS). As a result of this, some information in the files has been redacted due to sensitivity issues.

An exemption under section 38(1)(b) of FOISA applies to the redacted information as it is personal data of third parties and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

Due to the amount of sensitive information contained within this record, SCTS have provided copies of the Indictment (which sets out the charges against the accused) which is pages 1-5 of the bundle and also the Sheriff's report for each of the accused, made by the presiding Sheriff which are pages 18-23 and 71-76.

The redacted copy of JC26/2004/554 (i.e. JC26/2004/554, pages 1-5, 18-23, 71-76) is available in digital form at the National Records of Scotland.

This can be viewed in the Historical Search Room at General Register House, 2 Princes Street, Edinburgh, EH1 3YY. Further information is available on our website at: <https://www.nrscotland.gov.uk/research/visit-us/historical-search-room>.

Under section 25(1) of FOISA, we do not have to provide information if it is already reasonably accessible by inspection or copying, even if a payment has to be made for it.

SCTS have decided to keep closed the appeal papers under reference number JC34/2003/438. SCTS has concluded that any meaningful insight would be lost after heavily redacting the personal information contained within this record as this information is exempt from release under section 38(1)(b) of FOISA.

The two records produced by the Procurator Fiscal and Crown Office (NRS ref.: AD37/2004/89/4 and AD38/14/2004/25/1) are exempt under Section 34 of FOISA – Investigations by Scottish public authorities and proceedings arising out of such investigations. The data controllers of this record, Crown Office and Procurator Fiscal Service have sanctioned this exemption for all precognition files (and appeal records) less than 100 years old. For further explanation of this exemption please see the annex below.

ANNEX

REASONS FOR NOT PROVIDING INFORMATION

Section 34 exemptions applied to precognitions and appeal records

Exemptions under section 34(1)(a), (b) and (c) of FOISA (investigations by Scottish Public Authorities and proceedings arising out of such investigations) apply to some of the information you have requested because it is information which has been held by the Crown Office and Procurator Fiscal Service (COPFS) for the purposes of criminal investigations and the institution of criminal proceedings.

COPFS apply section 34(1) exemptions to all precognition and appeal records. There is no harm test in any of these exemptions – information will be exempt simply because it has, at some point, been held by an authority for any of the purposes described under section 34(1). These exemptions are subject to the ‘public interest test’. COPFS recognise that while there may be some public interest in the disclosure of information about individual cases, there is a greater public interest in withholding all information relating to criminal investigations in order not to compromise the informant and witness system, which is essential for an effective justice system. They believe that witnesses would be inhibited from co-operating in criminal investigations if there was a possibility that the information they gave could be disclosed under FOISA, and that the possibility of disclosure would undermine the informant system.

The section 34 exemptions can be applied in perpetuity, subject to public interest. COPFS do not, however, wish this information to be exempt forever and have decided to remove the exemption after 100 years.