

**Subject:** Access to records relating to John Welsh (JC26/1938/53, HH21/48/7, page 1 and 2 as well as AD15/38/27).

**FOI reference:** FOI/18/03240

**Date received:** 05 November 2018

**Date responded:** 12 December 2018

**Information requested:**

Access to records relating to John Welsh (JC26/1938/53, HH21/48/7, page 1 and 2 as well as AD15/38/27).

**NRS Response:**

A sensitivity review has been undertaken on JC26/1938/53 by the Scottish Courts and Tribunals Service (SCTS). As a result of this, some information in the file has been redacted due to sensitivity issues.

An exemption under section 38(1)(b) of FOISA applies to this information because 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.

In addition, this file contains information relating to a deceased person's health record. This information has also been redacted as an exemption under section 38(1)(d) of FOISA applies. There is a common law duty of confidence to patients and these ethical obligations extend even after the patient's death. The exemption under section 38(1)(d) is time limited to 100 years. 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.

The redacted copy of JC26/1938/53 is available in digital form at the National Records of Scotland and can be viewed in the Historical Search Room at General Register House, 2 Princes Street, Edinburgh, EH1 3YY.

The prison record relating to John Welsh (HH21/48/7, page 1 and 2) requested has been reviewed by the Scottish Prison Service and the information has been opened in full. This record has also been digitally imaged and can also 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.

The precognition file (AD15/38/27) is exempt from release under Section 34 of FOISA (Investigations by Scottish public authorities and proceedings arising out of such investigations). The data controller of this record, Crown Office and Procurator

Fiscal Service has 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**

### **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 AD15/38/27 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.