



## LETTER SENT BY E-MAIL ONLY

9 April 2024

2023/24-117

### Freedom of Information (Scotland) Act 2002

#### Request

Please find below our response to your correspondence dated 24 March, in which you made the following request under the Freedom of Information (Scotland) Act 2002.

By way of background, I should state that my Freedom of Information request concerns the Northern Constabulary investigation into the murder of Shamsuddin Mahmood at the Mumutaz Indian Restaurant in Kirkwall, Orkney, on June 2, 1994, and a cold case review that was undertaken in 2006-7.

I'm aware of an FOI exemption regarding law enforcement activity, but since the case closed with the conviction of Michael Alexander Ross for the crime at the Glasgow High Court in 2008, I'm hoping the information I seek is available.

I am researching the case, as it is one about which concerns have been raised locally (in Orkney) and nationally for at least 20 years. Ross has always maintained his innocence and, for over ten years, the Justice 4 Michael Ross campaign group have been trying to prove their belief that the conviction is a miscarriage of justice.

In 2016, Orkney and Shetland's MP, Alistair Carmichael, said: "The verdict has been controversial within the local community in Orkney and I have been approached by a number of constituents over the years who have been concerned about it."

He added: "It is easy to be critical with hindsight, but I suspect that, given the opportunity to do things again, some aspects of the police investigation might be done differently."

In 2018, human right lawyer, Aamer Anwar, told The Scotsman: "I took on this case because after meeting Michael and examining the papers it became clear there were significant concerns with regards to the murder investigation as well as over his conviction."

By way of the Freedom of Information (Scotland) Act 2002, I would like ask for the following information regarding the 9mm bullet casing recovered after the murder from the floor of the Mumutaz Indian Restaurant:

1. please provide a complete list of the dates when the casing was forensically tested, fingerprinted, or subject to any other kind of analysis or procedure known to the Scottish Policing Authority.
  - 1.1. for each of the tests, please outline the results - including how many individual DNA or fingerprint samples were found.
  - 1.2 for each of the tests, please indicate how many DNA or fingerprint samples were of sufficient quality to identify the person to whom they belonged.
  - 1.3. for each of the tests, please indicate how many DNA profiles/sets of fingerprints were identified, if any.
  - 1.4. for each of the tests, please explain what happened with the results of the test (i.e. were the results sent to the COPFS or to Northern Constabulary) and specifically who they were sent to.
2. please describe the bullet casing in exact detail, including any unusual markings, or signs of damage/contamination.
3. what was the labelling information for the bullet casing?
4. please provide a complete list of the records, reports, and documents held by the Scottish Policing Authority concerning this bullet casing (i.e. the number of reports and their purpose).
5. if the cost exemption allows, please provide copies of any and all records, reports, and documents held by the Scottish Policing Authority concerning this bullet casing.

## **Response**

The Scottish Police Authority has considered your request for information and can confirm the following.

To provide you with the information requested would prove too costly within the context of the fee regulations. The current cost threshold is £600. We estimate that it would cost more than this amount to locate, retrieve and provide the information sought.<sup>1</sup>

To explain, SPA Forensic Services was established in 2013. This was after the case in question and cold case review. We would need to search

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<sup>1</sup> This represents a refusal notice in terms of Section 12 of the Freedom of Information (Scotland) Act 2002 – Excessive Cost of Compliance.

legacy systems and physical case records (which may be off site) to establish:

- If records are held for this case from the legacy forensic Aberdeen lab and legacy Scottish Criminal Records Office (SCRO).
- If records are held, what forensic analysis did Northern Constabulary and the Crown Office and Procurator Fiscal Service (COPFS) instruct to the Aberdeen forensic laboratory or SCRO.
- Depending on forensic analysis instruction, if the legacy Aberdeen laboratory system holds the information needed to answer your questions. This is due to the age and functionality of the system as recording standards at the time were limited compared to modern standards.

The time required to do this, and for a scientific specialist to review information to assess if we can answer your questions, is considered to exceed the cost limit.

The Authority has assessed that the £600 cost limit within the Act equates to 40 hours of work and so your request would exceed the cost threshold.

If forensic analysis was instructed, scientific reports would have been provided to Northern Constabulary, COPFS and the Court. Therefore, Police Scotland, COPFS and the Scottish Courts may hold information. Requests can be submitted to Police Scotland at [foi@scotland.police.uk](mailto:foi@scotland.police.uk) , COPFS at [FOI@copfs.gov.uk](mailto:FOI@copfs.gov.uk) , and the Scottish Courts at [foi@scotcourts.gov.uk](mailto:foi@scotcourts.gov.uk)

Other than that, Police Scotland and COPFS may hold information on which forensic provider was instructed to undertake forensic analysis. This may assist you in making a more specific request.

### **Right to Review**

If you are dissatisfied with the outcome, you can ask us to review our response. If you want us to carry out a review, please let us know within 40 working days. You must specify the reason for your dissatisfaction and submit your request to [foi@spa.police.uk](mailto:foi@spa.police.uk) or by letter to Scottish Police Authority, 1 Pacific Quay, Glasgow, G51 1DZ.

If you remain dissatisfied after review, you can appeal to the Scottish Information Commissioner within six months. You can apply [online](#), by email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info) or by letter to Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Commissioner's decision, you can appeal to the Court of Session, only if you think the law has not been applied correctly.

This response will be posted to our [Disclosure Log](#) after seven days.

Yours faithfully

**SPA Corporate Management**

