

Crown Office and Procurator Fiscal Service

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Mr John Ashton

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Your ref:

Our ref: R004775

17 June 2013

Dear Mr Ashton

FREEDOM OF INFORMATION REQUEST

Thank you for your email of 18 February 2013 to the Crown Office and Procurator Fiscal Service asking questions about the disclosure of evidence in the Lockerbie trial. Your email has been treated as a request in terms of the Freedom of Information (Scotland) Act 2002. Please accept my apologies for the fact that you did not receive a reply within the 20 working days timescale.

You have asked whether particular documents, identified by you as PT82 and PT88, D8624 and S3743A, were:

- passed by the police to the prosecution team pre trial;
- if they were, why were they not disclosed to the defence; and
- who made the decision not to disclose the material.

We do endeavour to provide information whenever possible. However, in this instance an exemption under section 34(1)(a) of the 2002 Act applies to all the information requested.

The exemption covers information which has been held by a Scottish public authority for the purpose of an investigation into criminal matters whether the public body is the prosecuting authority or has an obligation to make a report to the Procurator Fiscal. In particular, it exempts information which at any time has been used for the purposes of:

- an investigation an authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence;
- an investigation which may lead to a report to the procurator fiscal in connection with possible criminal proceedings; and
- criminal proceedings instituted in consequence of such a report.

Your questions relate to the steps taken by Dumfries and Galloway Constabulary and the Crown Office and Procurator Fiscal Service in relation to four documents during the preparation of the prosecution of Abdelbaset Ali Mohmed Al Megrahi for the Lockerbie bombing and murder of 270 people. Information held in relation to the submission of evidence to the Procurator Fiscal and its consideration for disclosure is information which falls within the terms of section 34(1)(a).

As the exemption is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. While we recognise that there is some public interest in release because it relates to the Lockerbie bombing which remains a significant event in Scotland and to Mr Megrahi's conviction, this is outweighed by the public interest in withholding information because of the ongoing criminal investigation into the involvement of others with Mr Megrahi in the bombing and the possibility of further legal proceedings in relation to Mr Megrahi's conviction.

If you are dissatisfied with the way in which your request has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please e-mail foi@copfs.gsi.gov.uk.

The review will be undertaken by staff not involved in the original decision making process.

If our decision is unchanged following a review and you remain dissatisfied with this, please note that although generally under section 47(1) of FOISA there is a right of appeal to the Scottish Information Commissioner, where the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland, under section 48(c) no application can be made as respects a request for review made to the Lord Advocate. The information you have requested appears to fall into that category, although ultimately it would be for the Commissioner to decide whether that was the case should you refer the matter to him.

In circumstances where section 48(c) does not apply and the Commissioner accepts an appeal, should you subsequently wish to appeal against that decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

J T LOGUE
Procurator Fiscal, East of Scotland