

**Subject:** Access to criminal case file (HH16/212).

**FOI reference:** FOI/18/03716

**Date received:** 12 December 2019

**Date responded:** 29 January 2019

**Information requested:**

Access to criminal case file (HH16/212).

**NRS Response:**

A sensitivity review has been undertaken on this material by the Scottish Prison Service. As a result of this, some information in the files has been redacted due to sensitivity issues.

An exemption under section 31(1) of FOISA applies to this information because it contains information which may threaten national security. This information has been redacted by the data controller and relates to contemporaneous letters received by the prison addressed to a prisoner.

This file also 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. A common law duty of confidence applies to an individual's health information and these ethical obligations extend even after the individual'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.

While our aim is to provide information whenever possible, in this instance, some the information within the file HH16/212 is not held by National Records of Scotland (NRS) for the purposes of FOISA. The information was created in confidence by the UK Government. Information is not held by NRS if it is contained in a record transferred by a public authority within the meaning of the Freedom of Information Act 2000. Under the terms of section 3(2)(a)(ii) of FOISA, we are unable to disclose it in response to the request.

A new request can be submitted under the Freedom of Information Act 2000 (FOIA) to the Office of the Secretary of State for Scotland. The contact details are as follows:

Office of the Secretary of State for Scotland  
Freedom of Information Officer UK Government  
1 Melville Crescent  
Edinburgh EH3 7HW  
United Kingdom

Email: [foi@scotlandoffice.gsi.gov.uk](mailto:foi@scotlandoffice.gsi.gov.uk)

The redacted copy of the information 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.