

## Briefing for the Public Petitions Committee

**Petition Number:** [PE 1763](#)

**Main Petitioner:** Robert Brown

**Subject:** Make the Scottish Police Federation comply with FOI legislation

Calls on the Parliament to urge the Scottish Government to make the Scottish Police Federation comply with the Freedom of Information (Scotland) Act 2002.

### Background

#### Freedom of information

Freedom of information legislation allows individuals to request information held by public authorities. Freedom of information is devolved to the Scottish Parliament, so the legislative framework is slightly different between Scotland and England and Wales.

Broadly, freedom of information requirements apply to public authorities, such as governments, councils and health boards. They don't generally apply to private bodies, although some private bodies carrying out public functions are covered (in relation to their public functions, rather than their wider work).

Police Scotland is subject to the requirements of the Freedom of Information (Scotland) Act 2002. The Scottish Police Federation is not.

#### The Scottish Police Federation

Police officers are prohibited from joining trade unions. The [Scottish Police Federation](#) was created by the Police Act 1919 as a staff association with responsibility for the welfare and efficiency of police officers.

Trade unions are not covered by freedom of information legislation. They are seen as private bodies representing the interests of members.

It could be argued that the Scottish Police Federation is akin to a trade union and therefore should not be covered by freedom of information requirements. However, the Scottish Police Federation was established by legislation and could be argued to have some similarities with public bodies.

## The Police Federation in England and Wales

The [Police Federation](#) in England and Wales is required to comply with freedom of information legislation, as a result of changes to the law in 2017<sup>1</sup>.

The then Home Secretary Theresa May argued that this change was necessary to improve transparency and accountability<sup>2</sup>. It formed part of a wider reform initiative covering the Police Federation, which had been hit by several scandals. These included the so-called “plebgate” incident, involving allegations that the then UK Government Chief Whip, Andrew Mitchell MP, had called police officers “plebs”.

### Data protection legislation

Separately, data protection legislation controls how personal data (covering any information from which a living individual can be identified) can be used. Individuals have rights to access information that organisations (including private bodies) hold about them personally under data protection legislation.

Data protection is reserved to the UK Parliament (and is, at present, mainly controlled at a European Union level).

Freedom of information legislation **cannot** be used to require the release of information which would identify a living individual, unless this would also be possible under data protection legislation. This would include information which would identify a police officer (including a police officer who was subject to a complaint) or a member of the public.

Data protection legislation will usually mean that the consent of the person affected would be required before their data can be released. However, it is possible to release personal data to a third party without consent where it is “reasonable” to do so. Consideration must be given to the circumstances of the case, including the type of information which would be disclosed.

It is also possible for organisations to redact (block out) information which could lead to the identification of a living individual when responding to freedom of information requests.

### **Scottish Government Action**

The Scottish Government has stated, [in response to a parliamentary question](#) from July 2019<sup>3</sup>, that it has no plans to make the Scottish Police Federation subject to freedom of information legislation.

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<sup>1</sup> Amendments by the Policing and Crime Act 2017.

<sup>2</sup> Home Office. (2014) [Speech given by Home Secretary Theresa May at Police Federation on 21 May 2014](#).

<sup>3</sup> S5W-24011.

## Scottish Parliament Action

As above.

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4 November 2019

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