

XX XXXXX XXXXX

XXXXXX XXXXXX

XXXXXX XXXXX

xxxxxxx@xxxxxxxxxx.xx.xx

4 October 2016

Dear XXXXX XXXXXXXXX,

Request under Freedom of Information (Scotland) Act 2002

Thank you for your freedom of information request of 6 September 2016, received by us on 6 September 2016. This gave a statutory deadline for responding of 4 October 2016 under the terms of the Freedom of Information (Scotland) Act 2002.

We do endeavour to provide information whenever possible. However in this instance exemptions under sections 30(b), 33(1)(b) 35(1)(f) and 38(1)(b) of the Act apply to the information requested. We have given a great level of consideration to the information contained within the risk register and whether the release of that information would be likely to cause any harm.

We believe that releasing the risk register information may prejudice substantially the free and frank exchange of views and the provision of advice which are essential to the creation of a robust and effective risk register. The prison has previously had issues with incidents or events whereby people did not feel confident in speaking out in the event that their information was made available, and we feel that there is a real risk of this happening again if we did not apply this exemption. It is essential to the effective conduct of our role to ensure we have a full risk register. The relevant exemptions are within section 30(b) of the Act.

The risk register used at HMP Kilmarnock contains a number of business related risks, along with those of an operational nature. There is a real risk of harm to the commercial interests of Serco Limited if the business information were to be released to the public domain. Section 33(1)(b) of the act applies to the protection of the commercial interests of any person, including organisations which are public authorities under the Freedom of Information (Scotland) Act 2002.

Section 35(1)(f) exemptions apply where the information is likely to prejudice substantially the maintenance of security and good order in prisons. We have applied this exemption to risk register as it contains information which could be exploited by any person. If any of this information is released to the public, there is a real risk that it could be used to undermine the security measures which are in place at the prison.

Section 38(1)(b) exemptions apply to some areas of the risk register. This exemption applies to third party personal data, as defined in the Data Protection Act 1998. Before applying this exemption, we assessed whether there is likely to be a legitimate interest in you obtaining the information. This is an absolute exemption.

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As the other exemptions are 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 exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption.

The factors we took into account for disclosure of the information are:

- It is in the public interest to maintain a high level of openness and transparency;
- It is in the public interest to show that effective governance is being applied at the prison; and
- It is in the public interest to know that Serco Ltd is a risk aware company in relation to the operation of the prison.

The factors we took into account against the disclosure of the information are:

- It is in the public interest that the space for management within the prison to carry out free and frank exchange of views is protected;
- It is in the public interest that the commercial interests of companies are protected;
- It is in the public interest that the prisoners are kept in secure custody;
- It is in the public interest that there is a safe environment for prisoners, staff and visitors to the prison where safety is not put at risk.

We have given consideration to the titles of the risks, which are a high level risk description. We are happy to release these to you and have included them in the table below.

Event No.	High Level Risk Description	Risk Trend	Confidence			Action Status		
			Controllability	Adequacy	Effectiveness	Red	Amber	Green
1	Escape	⬇️	H	VG	H	0	0	0
2	Security Breach	⬇️	M	VG	H	0	0	0
3	Loss of Buildings	⬇️	M	VG	H	0	0	0
4	Death / Serious Injury due to Failure of Duty of Care	⬇️	M	VG	H	0	2	3
5	Member of staff becoming compromised	⬇️	M	G	H	0	1	0
6	Prisoner Disruption (incl. Concerted Indiscipline)	⬇️	M	G	H	2	0	0
7	Inappropriate use of Social Media	⬇️	M	G	M	0	0	0
9	Business Continuity	⬇️	M	G	H	0	0	0
10	Failure to meet Contractual Obligations	⬆️	H	G	H	1	0	0
11	Infrastructure Failure	⬆️	M	M	L	0	0	0
12	Legislative and Contractual Non Compliance	⬇️	M	G	M	1	0	0
16	Failure to discharge procedures by the National Health Service	⬆️	M	M	M	0	0	0
17	Inappropriate standards of Facilities Management	⬆️	M	M	M	1	0	0
18	Configuration of future Scottish Government	⬆️	L	VG	M	0	0	0

If you are dissatisfied with this response, you have the right to request an internal review. Your request should be made within 40 working days of the date of receipt of this letter, and we will reply within 20 working days of receiving your request.

Under section 20(3)(c)(ii) of the Act your request should outline your reason for seeking a review. If you remain unsatisfied following an internal review, you then have the right to make a formal complaint to the Scottish Information Commissioner.

If you require an internal review to be carried out, please write to

The Director
HM Prison Kilmarnock
Mauchline Road
Kilmarnock
KA1 5AA

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

Yours sincerely,

Andrew Hill
Head of Performance and Compliance