

**Our Ref FOI 14257**

Dear [REDACTED],

25<sup>th</sup> February 2015

Thank you for your request dated the 29<sup>th</sup> January 2015 under the Freedom of Information (Scotland) Act 2002 (FOISA). For reference, you asked the following;

- They [The Crown Office] say that not necessarily “all” prison deaths lead to an FAI. I need clarification on this.
- I raised with them [The Crown Office] the three deceased still listed on your 2007-8 page as “not yet determined.” Their information is that an FAI into the death of Steven Mitchell was held at Greenock Sheriff Court in February 2009 unfortunately they haven’t shared with me what the determination was and they say it was decided not to hold FAIs into the other two deceased. My question therefore is how up to date your listings are? How does SPS find out the cause of death if there is no FAI? And how does SPS find out the result of an FAI?
- Am I correct in assuming that SPS will be represented at every FAI that is held? Is that legally represented?
- Do you have any dates/names for any FAIs coming up within the next couple of months at which you will be represented?

We received your request on the 29<sup>th</sup> January 2015 - this gave a statutory deadline of the 26<sup>th</sup> February 2015 for responding under the terms of the Freedom of Information (Scotland) Act 2002.

We have now completed our search for the information you request, please see the following.

- In response to your first question the decision on whether to hold an FAI is a matter for the Lord Advocate/Procurator Fiscal. Below is an extract from the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976:

**Investigation of death and application for public inquiry.**

(1)Subject to the provisions of any enactment specified in Schedule 1 to this Act and subsection (2) below, where—

(a)in the case of a death to which this paragraph applies—

(i)it appears that the death has resulted from an accident occurring in Scotland while the person who has died, being an employee, was in the course of his employment or, being an employer or self-employed person, was engaged in his occupation as such; or

(ii)the person who has died was, at the time of his death, in legal custody; or

(b)it appears to the Lord Advocate to be expedient in the public interest in the case of a death to which this paragraph applies that an inquiry under this Act should be held into the circumstances of the death on the ground that it was sudden, suspicious or unexplained, or

has occurred in circumstances such as to give rise to serious public concern, the procurator fiscal for the district with which the circumstances of the death appear to be most closely connected shall investigate those circumstances and apply to the sheriff for the holding of an inquiry under this Act into those circumstances.

- In response to your second question the problem with the Deaths in Custody database has now been resolved and information from all completed FAIs has been included. In respect of cause of death where there is no FAI SPS would be informed through receipt of the post-mortem report or death certificate.
- With regard to question three, SPS is legally represented at all FAIs, which are held to look into the circumstances of a prisoner's death.
- In relation to question 4, the information we hold on forthcoming FAIs is detailed below;
  - Richard Mulhearn, 11 February 2015;
  - Ian Mackie, 16 February 2015 and
  - Kevin Fyffe, 23 March 2015.

As you are aware, the information you require is published on the SPS website under Freedom of Information – Prisoner Deaths. For ease of reference I have provided you with a link to the relevant section of the SPS website here: [SPS Prisoner Deaths](#)

As you are also aware, all deaths in custody may be subject to a Fatal Accidents Inquiry (FAI) at the discretion of the Crown Office and Procurator Fiscal. In cases where the death has not yet been considered by FAI, SPS is unable to confirm cause of death at this stage.

If you are unhappy with this response to your request, you may ask us to carry out an internal review, by writing to The Chief Executive, Calton House, 5 Redheughs Rigg, Edinburgh, EH12 9HW. Your request should explain why you wish a review to be carried out, and should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If you are not satisfied with the result of the review, you then have the right to make a formal complaint to the Scottish Information Commissioner.

Yours sincerely,

**Head of Corporate Affairs**  
**Scottish Prison Service**