

Response from the Crown Office and Procurator Fiscal Service, dated 13 March 2013

Thank you for your letter dated 28 February seeking further information to assist with the consideration by the Justice Committee of the Report on Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision.

The Committee has asked for further detail about the involvement of the Scottish Fatalities Investigation Unit (SFIU) into the investigation of road traffic fatalities and in particular the criteria for the involvement of SFIU. It may be of assistance if I outline the procedures which take place following a road traffic death.

In the first place the police will send a Report of the Death to SFIU. This outlines the circumstances of the death. It is on the basis of this report that instruction for post mortem examination will be given to the pathologist. SFIU will also instruct the police to carry out further enquiries as appropriate into the circumstances of the case. SFIU will then fully review the available evidence in the case, which will generally include the post mortem examination report, statements from witnesses, the Collision Investigation Report and the results of any further enquiries instructed. SFIU will also at this stage make contact with the nearest relatives to offer an initial meeting. Once all available information, including the views of the relatives, has been obtained, SFIU will report the full circumstances to Crown Office as soon as practicable for a decision to be taken about potential criminal proceedings.

If Crown Counsel instruct that criminal proceedings are to be considered, the police are then instructed to caution and charge the suspect and to submit a Standard Prosecution Report to the Procurator Fiscal. At that stage the investigation passes to COPFS staff in the relevant High Court, Sheriff and Jury or Summary Unit, depending upon the nature of the anticipated criminal proceedings, to prepare the case for prosecution and to conduct the prosecution or, if it is to be in the High Court, to prepare the case for an Advocate Depute to prosecute in the High Court.

While the above process applies to the overwhelming majority of road traffic fatalities, there are some exceptional cases where a suspect is reported by the police to the Procurator Fiscal immediately following the death. This may occur, for example, where the accused is a foreign national and there is a potential risk that they may leave the country prior to prosecution.

You have asked for clarification of the circumstances in which investigation documents are disclosed or not disclosed to victim's families and how COPFS ensures there is a consistent approach across Scotland. You have asked for this information in the context of the second recommendation in the Report, that the family of a road death victim should have a legal right to obtain copies of investigation documents on completion or the investigation or on conclusion of the criminal proceedings and that right should be set out in primary legislation.

The guidance on the disclosure of such materials is contained in the Book of Regulations and the Deaths Manual of Practice. This is national guidance and is available to Procurators Fiscal on the COPFS intranet.

Procurators Fiscal are instructed that where a death is reported to them a meeting should always be offered to the nearest relative where the death has resulted from a road traffic accident, whether or not criminal proceedings are likely to be taken. As outlined above, SFIU make contact with relatives during their investigation and offer this initial meeting other than in the exceptional cases where the death is reported to the Procurator Fiscal in the first place. The guidance states that during that meeting the victim's family should be told about—

- the Procurator Fiscal's role;
- the possible outcomes of the enquiries;
- the role of Victim and Information Advice (VIA) service;
- the point/s of contact within the PF Office;
- to find out whether the family wishes to be kept informed about the progress of the case, in what way and what level of detail they want;
- to obtain the nearest relative's views, if relevant, re possible courses of action;
- to ascertain whether there is any wish for a Fatal Accident Inquiry to be held.

SFIU may also, with the consent of the nearest relative, invite either the Reporting Officer or accident reconstruction investigator along to explain the circumstances surrounding the road traffic collision.

The guidance about disclosure of reports, such as collision investigator's reports is contained in section 28 of the Manual of Practice. I also attach a link to the webpage—<http://www.crownoffice.gov.uk/Publications/2008/05/Book-Regulations-Chapter-12-Deaths-Part-4>

The guidance is clear that where the family of a victim request copies of documents such as the post mortem examination report and the collision investigation report the PF should provide copies of documents requested, apart from the very limited circumstances where these will not be disclosed where such disclosure could prejudice any criminal proceedings which are in contemplation or are pending.

The guidance also requires Procurators Fiscal to ensure that the provision of this information is carried out in as sensitive a manner as possible given that the information contained in the reports can be distressing.