

Response from SCID, dated 15 March 2013

Access to information¹

The Report was commissioned by SCID with support from the Campaign for Freedom of Information Scotland to examine if “best practice” could be identified in a bereaved family’s search to access to information following a fatal road crash. Previous research in the UK in November 2009 by SCID had revealed what SCID knew to be true that bereaved families in Scotland were being denied (or omitted to be told) what information they could access by right. By 2012, although many welcome steps had been taken to improve the investigation of road deaths, access to information by bereaved families had not.

The Report in July 2012 was timely given the publication in 2011 of the DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing minimum standards on the rights, support and protection of victims of crime and the introduction on February 2013 of the Victims and Witnesses (Scotland) Bill.

SCID has actively been supporting families since 1985. During that time SCID has supported hundreds of families. On average 80 bereaved families request some support each year. SCID knows of only one widow who was given the Collision Investigation Report by the Procurator Fiscal in Inverness in 2008. By comparison the accused, who is innocent until proved guilty, has access pre-trial to all investigation documents albeit through their solicitor. One family who recently requested the post mortem report was told by the PF “it’s too distressing and anyway it’s evidence.” A common complaint from victims’ families is “they (the PF) assume to do the thinking for you instead of being up front and telling you what information is gathered and how you can get it”.

COPFS makes reference to the establishment of the Scottish Fatalities Investigation Unit (SFIU). SCID welcomed the formation of the SFIU in 2010 and its intention that the investigation of all deaths are carried out to the highest standard. There are over 8,000 sudden, unexplained and unexpected deaths reported to the procurator fiscal each year in Scotland, of which just over 200 will be road deaths and 80 homicides. The SFIU oversees all deaths investigations with the exception of those where criminal proceedings are recommended (for example, cases of homicide and road traffic deaths). These will still be reported to the High Court Division at Crown Office. The role of the SFIU is more of a managerial/ administrative one and does not include direct contact with families bereaved by road crashes. As stated in the response to the Justice Committee from COPFS, dated 9th January 2013, “the normal course of action would be for requests for information to be considered by them (COPFS), rather than referred to the police”.

The response by ACPOS to the Committee revealed that a brief scoping exercise had been undertaken to determine the number of FOI requests from families bereaved by road crashes in the past three years. It has also been SCID’s

¹ <http://news.stv.tv/highlands-islands/218237-parents-of-christopher-durrand-charged-500-for-copy-of-crash-report/>

experience that bereaved families have sought a fatal accident inquiry in an effort to access the information gathered in the course of the investigation into their loved ones death. The total number of bereaved families who have requested an FAI from PFs is unrecorded. Many of our families have been told “there would be no point, nothing would be gained.” A mandatory FAI will only be held if a driver is killed in the course of his/her employment. All others will be at the discretion of the Lord Advocate. The response from ACPOS states that a bereaved family, in search of information “hopefully” would be satisfied with the information provided by the FLO, SIO and PF. We respectfully comment, while the good intention is not in doubt, information gleaned in this way from varying sources has, in SCID’s experience, led to misinformation and has caused further misery for these families.

The Dundee Law School Report, ACPOS and SCID have all agreed that FOI is not the appropriate route for these families to access information and yet there had been eight such requests to Scottish police forces in the past three years. It has to be said, it takes very strong, articulate and well informed bereaved families at this most traumatic and emotional time to pursue an FOI request. Why has it been necessary for these families to pursue an FOI request when COPFS have stated in their guidelines published May 2008;

In death cases “at the meeting with nearest relatives it is likely they will be shown any sketch, plan or photographs and reference may be made to reports obtained by the Procurator fiscal. Should the nearest relatives request copies of these items, the Procurator Fiscal must assess whether any proceedings, either in contemplation or pending, may be prejudiced by such disclosure, in which case copies should only be made available at the conclusion of such proceedings. (Copy post mortem reports can also be provided). Books of photographs will only have been copied if there are to be proceedings but good practice dictates that, in the event that there are no copies, the Procurator Fiscal should obtain them for the family, ensuring that their contents are not likely to be excessively distressing.”

Grief has been defined by bereavement counsellors as a process or a journey and information is necessary to aid that grieving process. To deny a family the right to access the investigation documents leads to secondary victimisation.

Bereaved families have statutory right to know from the procurator fiscal what information is gathered in the course of the investigation into their loved one’s death i.e. police reports (witness statements, expert reports etc.) collision investigation reports, sketches and photographs and when they can access this information if they so wish. There must be transparency in the investigative process so that bereaved families can rest assured that all that could be done, was done, and they can come to terms with their grief. Procurators fiscal omitting to be proactive in this respect leaves some families believing “there is something to hide” and alienates them from the system they looked to for support.

For these reasons SCID supports the recommendation in the Dundee Law School report that—

The family of a road death victim should have a legal right to obtain copies of the 'Investigation Documents' on completion of the investigation or on conclusion of criminal proceedings. Such a right should be set out in primary legislation.

The Committee have not asked for comments on the response received from the Scottish Government but, as the Government and its road safety partners are committed to preventative measures to reduce road casualties by 2020, consideration of a multi-disciplinary road collision investigation body should not be dismissed so lightly.

Multi-disciplinary road collision investigation body

In the course of the research, and secondary to the main purpose of the research, it was found in some countries there had been establishment of multi-disciplinary road collision investigation body.

Research by Dundee Law School Report stated; "Recommendations have been made for each member state (EU) to establish an independent multi-disciplinary collision investigation body to investigate fatal road collisions."

The Dundee Law School Report also explains this body works in tandem with the police. The purpose of the multi-disciplinary road collision investigation body is not unlike that of a Fatal Accident Inquiry (FAI). An FAI can be held where there are issues of public safety or systems that may have caused or contributed to the death.

An FAI does not apportion blame; its purpose is to ventilate the facts in public and to establish—

- The cause of death;
- Any precautions by which the death might have been avoided; and
- Any defects in systems that caused or contributed to the death.

The sheriff will determine the above facts and a report will be published. The sheriff's determination is not a public document and any recommendations made are not binding. This was highlighted in Lord Cullen recommendations in his report of findings of the Review of Fatal Accident Inquiry Legislation, Nov. 2009, "when a recommendation is made by a sheriff, the entity or body to whom it is directed should be under a duty to make a written response to an appropriate department of the Scottish Government within a period set by the sheriff, stating whether and to what extent it has implemented, or intends to implement, the recommendation, or, if not, for what reason or reasons. Where implementation is stated as intended, there should be a further duty thereafter to confirm its implementation."

On a similar vein, the multi-disciplinary road collision investigation body does not apportion blame. The multi-disciplinary road collision investigation body issues a report which covers all the factors that might have contributed to the collision and factors that might have contributed to its severity. It also contains proposed local and general measures to prevent similar collisions. The report is a public document with names etc redacted.

As an FAI is only mandatory if a driver/cyclist/motorcyclist is killed in the course of his/her employment; all others are at the discretion of the Lord Advocate. A discretionary FAI is unlikely to be granted especially if there are to be criminal proceedings. There were 13,338 reported road casualties in 2010 of which just over 200 were fatal and 27 resulted in court proceedings. Much could be learned by closer examination of the precautions and defects which may have contributed to these casualties and systems put in place to improve road safety.

The total value of prevention of reported road accidents in the UK in 2011 was estimated to be £15.6 billion. Prevention can be interpreted in two ways here; on the one hand it is the benefit which would be obtained by prevention of road accidents from a cost point of view. On the other hand, it can be considered as the loss to society due to the current level of road accidents.

The establishment of a single constabulary in Scotland is well suited to consider the benefits such a multi-disciplinary road collision investigation body would bring—

- A reduction in road casualties.
- A reduction in associated costs to police and the COPFS.
- Uniformity throughout Scotland into the investigation of road casualties.
- Greater awareness of road safety and public confidence in the investigative process.

For these reasons, SCID supports the recommendation in the Dundee Law school report—

The establishment of an independent and transparent multi-disciplinary road collision investigation body carrying out in-depth analysis of each fatal road collision should be considered by the Scottish Government as part of its road safety framework.

Post Impact Care

The response received from the Scottish Government to the Justice Committee makes reference to post-impact care being a health issue and that there is representation on the Strategic Partnership Board to ensure governance of the Road Safety Framework and its commitments. Much good work has been done by the Strategic Partnership Board to publicise and promote road safety, all of which is more than welcome, however, there has been no discussion or provision for post impact care for families suddenly bereaved by road crashes. The emphasis of the group which could loosely be termed as a “health” issue has been on publicity surrounding drink driving and recidivist drink drivers and not on post impact care for victims.

The Scottish Government is seeking to introduce a “victims surcharge” through the Victims and Witnesses Bill. Section (3)(c) of the Victims and Witnesses (Scotland) Bill states that a victim or witness should have access to appropriate support during and after the investigation and proceedings. As 60% of all court fines will come from driving offences it is reasonable to seek assurances from the Government that the much needed provision for the post impact care of victims of road crashes will be put in place.