

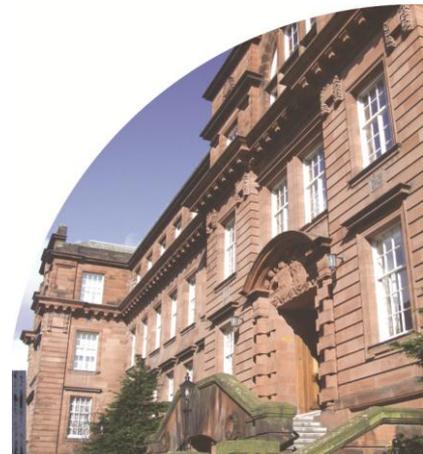


# **Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision**

Research project for Scotland's Campaign against  
Irresponsible Drivers with support from Campaign for  
Freedom of Information in Scotland

July 2012

**UNIVERSITY OF DUNDEE, SCHOOL OF LAW**



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## **Scotland's Campaign against Irresponsible Drivers**

SCID was formed in 1985 by Wendy Moss as a result of a fatal road collision in which her only son was killed. Since that time SCID has helped and advised hundreds of Scottish families who have lost a loved one as a result of a road collision. More information on SCID and its objectives can be found at <http://scid.org.uk>.

## **The Campaign for Freedom of Information in Scotland**

The Campaign for Freedom of Information in Scotland is part of the UK Campaign for Freedom of Information. It promotes freedom of information for all in Scotland. More information about the Campaign for Freedom of Information in Scotland can be found at <http://www.cfoi.org.uk/scotland>.

## **School of Law, University of Dundee**

The School of Law at The University of Dundee co-founded The Centre for Freedom of Information which is a joint venture between the Law School and the Scottish Information Commissioner.

The Centre Provides:

- Conceptual space to reflect on and discuss current FOI issues and practice.
- A central point for the development of research into FOI issues, in particular modelling decision making and examining bureaucratic culture.
- Access to expertise from specialists in constitutional and civil law, FOI practitioners and the Commissioner's office.
- Opportunities to transfer knowledge and gain further learning.

## EXECUTIVE SUMMARY

This project was commissioned by SCID, an organisation campaigning to ensure the rights of victims of road collisions and their families. The families of road death victims have a need to access as much information about the circumstances of the fatal collision in which their loved one was killed in order to aid the grieving process.

In Scotland, fatal road collisions are investigated by the police on behalf of the procurator fiscal (“PF”). There is no independent road collision investigation body. At present, there is no legal right for the family of a road death victim to obtain the police report, collision investigator’s report and associated documentation, including sketches and photographs, compiled by the police, the PF and other experts and agencies during the police investigation into a fatal road collision (“the Investigation Documents”). Where access to the Investigation Documents is refused, the only avenue available to a bereaved family is to initiate a freedom of information (“FOI”) request under the Freedom of Information (Scotland) Act 2002 (“FOIS Act”). The research carried out for this report, together with previous experiences of SCID and the families it assists, has revealed that such a process is not appropriate for bereaved families.

This report examined, through the use of FOI requests, the systems in place in selected European countries with a view to establishing whether best practice procedures exist in relation to access to information on a fatal road collision which could be used to inform the development of Scots law. It was found that in several European countries, there is a legal right to access the Investigation Documents. In countries where an independent road collision investigation body exists, that body carries out a safety investigation into the collision and publishes a report on its findings which is made available to the family of a road death victim on request.

Based on the responses to the FOI requests that were submitted to the selected European countries, combined with research into the current position in Scotland and policies and recommendations originating from Europe, the following observations and recommendations are made: -

### Observations

1. Scots law is not fulfilling the victim’s rights strategy. There is no legal right for the family of a road death victim to obtain the Investigation Documents. Access to the Investigation Documents is at the discretion of the PF. This leads to inconsistencies in service and secondary victimisation.

2. Where access to the Investigation Documents is refused, the only option for the family of a road death victim is to submit a FOI request to the police. FOI requests in these circumstances are seldom successful. FOI requests are not an appropriate process for a bereaved family to obtain access to the Investigation Documents and FOI laws were not designed for this purpose.
3. Several European countries provide the family of a road death victim with a legal right to access, to a varying degree, the Investigation Documents at varying stages of the proceedings.
4. An independent multi-disciplinary road collision investigation body carrying out in-depth safety investigations of each fatal road collision working alongside the police investigation and publishing the results is recognised as best practice.
5. Scotland is one of the few countries where guidelines and a recognised standard procedure exist for police investigations into fatal road collisions. This is to be commended but it does rely on each police force following the guidelines in a standard fashion.
6. Scotland's road safety framework ignores the vital area of post impact care which is an essential ingredient of an effective road safety strategy.

## Recommendations

1. The establishment of an independent multi-disciplinary road collision investigation body carrying out in-depth safety investigations of each fatal road collision should be considered by the Scottish government as part of its road safety strategy.
2. 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.
3. In the interim, the Road Death Investigation Manual ("RDIM"), Crown Office and Procurator Fiscal Service ("COPFS") Book of Regulations and the Lord Advocate's Guidelines to Chief Constables should be amended to include a duty to provide a copy of the Investigation Documents to the family of a road death victim on completion of the investigation or on conclusion of criminal proceedings.
4. Scotland's road safety framework should make provision for the post impact care phase of an effective road safety strategy.

## 1 INTRODUCTION

“Everyone killed, injured or disabled by a road traffic crash has a network of others, including family and friends, who are deeply affected.”<sup>1</sup>

A road death is indiscriminate, sudden, violent and premature. Where there is culpability, the effect on the bereaved family can only be compared with a homicide.<sup>2</sup> Whatever the circumstances of a road death, it is SCID’s experience that bereaved families will wish to access as much information as possible about the fatal collision and that having access to that information will aid the grieving process. SCID has been campaigning in Scotland on behalf of bereaved families to have a system in place whereby the family of a road death victim can, if desired, obtain the police report, collision investigator’s report and associated documentation, including sketches and photographs, compiled by the police, the procurator fiscal (“PF”) and other experts and agencies during the police investigation into a fatal road collision (“the Investigation Documents”).

At present, in Scotland, there is no formal procedure for access by the family of a victim of a fatal road collision to the Investigation Documents. In 2009, SCID carried out its own research, through Freedom of Information (“FOI”) requests<sup>3</sup> to determine the position regarding access by a bereaved family to police reports in the 59 English and 8 Scottish police forces.<sup>4</sup> It was found that in Scotland, where records were kept by the police, the police forces did not release the police report to the family of a victim.

SCID also carried out a small research project into access to police reports by the family of a victim of a fatal road crash in a small number of countries in Europe.<sup>5</sup> That small study found that in some countries,<sup>6</sup> the police report was automatically provided to the family of a road death victim on the conclusion of the investigation.

### 1.1 Scope

The aim of this research project was to establish, through FOI requests, whether there are systems in place in Europe by which police organisations or other investigating bodies provide, as a matter of procedure or on request, information to the family of a victim

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<sup>1</sup> World Health Organisation, Geneva 2004 – *World Report on Road Traffic Injury Prevention: Summary*, page 2.

<sup>2</sup> See <http://www.scid.org.uk>.

<sup>3</sup> Under both the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002.

<sup>4</sup> The results of that study can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

<sup>5</sup> The results of that study can be found in the report by Access Info Europe and David Goldberg, November 2009 – *The Right to Know: Europe and the Police* which can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

<sup>6</sup> France, Greece, Romania and Switzerland.

following a fatal road collision that could be deemed to be best practice and from which Scottish police forces and the Crown Office and Procurator Fiscal Service (“COPFS”) could base their procedures.

## 1.2 Methodology

This is a short lifespan study with its aim being to find best practice procedures, rather than provide a statistical analysis of the procedures in place in each country. On that basis, a qualitative approach has been adopted.

There is no formal procedure in place in Scotland for the provision of the Investigation Documents to the family of a victim of a fatal road collision. Access to the Investigation Documents by a bereaved family is at the discretion of the PF.<sup>7</sup> In the absence of a legal right to obtain copies of the Investigation Documents, the only avenue available to a bereaved family where disclosure of the documents is refused by the PF is to submit a FOI request to the police under the Freedom of Information (Scotland) Act 2002 (“the FOIS Act”).

When embarking on this project, it was not known which European countries would have formal procedures in place for the provision of information to the family of a victim of a fatal road collision. Initial research revealed that FOI laws exist in the majority of European countries, the use of which would provide some form of consistency when dealing with several jurisdictions. Due to the short timescale of this project and the fact that FOI laws usually contain a time limit for responses, it was thought appropriate to utilise FOI laws in countries in Europe in order to obtain the information required within the time frame stipulated.

It was not appropriate to include every European country within the project. The UK is excluded given that research has been carried out by SCID in relation to the current position in the UK.<sup>8</sup> Given that the project was to use FOI requests in order to obtain information, European countries that had adopted FOI legislation were considered.<sup>9</sup> Countries in Europe that have procedures in place for investigating fatal road crashes and/or best practice procedures in the area of road safety were then selected.<sup>10</sup>

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<sup>7</sup> COPFS Book of Regulations, Section 28.

<sup>8</sup> The results of that study can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

<sup>9</sup> See <http://www.freedominfo.org/> and <http://right2info.org/>. It should be noted that in Germany, the majority of federal states have adopted FOI legislation covering the police.

<sup>10</sup> The reports Road Strategy for Accidents in Transport (RO-SAT) Working Group, Report from the Road Sector Working Group to the Plenary, 11 May 2006 – *Road Accident Investigation in the European Union: Review and Recommendations* and Supreme, 17 June 2007 – Summary and Publication of Best Practices in Road Safety in the Member States – *Best Practices in Road Safety, Handbook for Measures at the Country Level* were utilised for this purpose.

Using the above triangulation, the following countries were selected for research: -

Austria	Latvia
Belgium	Netherlands
Denmark	Norway
Finland	Sweden
France	Switzerland
Germany	

Following consultation with SCID, it was agreed that Greece and Romania would be included in the project. In previous research carried out by SCID,<sup>11</sup> the police forces in both Greece and Romania were found to provide copies of the police report to the family of a victim of a fatal road collision.

In order to obtain a quality response on procedures following a fatal road crash, FOI requests were not limited to police organisations. FOI requests were made to organisations such as road traffic investigation bodies and government transport, interior and justice departments. The structure of the police organisations, road collision investigating bodies and/or government departments in each of the European countries selected (“the Selected Countries”) were researched so as to establish to which organisation the FOI request should be sent.

The form of FOI request sent to each organisation can be found at Appendix 1. The FOI request was sent to each of the organisations set out in the table in Appendix 2.

It is not possible to look at access to information by the family of a road death victim without examining how that information is gathered. The quality of the investigation into the fatal road collision will have an effect on the quality of the information potentially made available to the family. On that basis, the FOI request contained requests for information on the road crash investigation procedures in each of the Selected Countries as well as requests for details of the type of information provided to the family of a road death victim. This report examines the road crash investigation techniques and information provision procedures in Scotland and those in each of the Selected Countries in which an organisation provided a comprehensive response to the FOI request.

Road safety policy in Scotland and Europe has also been studied with a view to establishing what recommendations have been made and what improvements, if any, are proposed in post impact care of families of road death victims, in particular, in relation to the investigation of the collision and access to the Investigation Documents.

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<sup>11</sup> The results of which are included in Access Info Europe and David Goldberg, November 2009 – *The Right to Know: Europe and the Police* which can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

It was clear from the experience of SCID in previous projects involving FOI requests<sup>12</sup> and from other organisations active in the campaign for freedom of information<sup>13</sup> that responses to FOI requests are not always forthcoming. FOI requests can be met with administrative silence, a statement that the information is not held, refusal based on exemptions in the legislation or where private bodies carry out public functions, a statement that the body is not covered by the legislation.

It was decided that due to the short life-span of the project, it would not be appropriate to appeal a refusal to supply the requested information under the relevant FOI laws of each of the Selected Countries. Reminders were sent where appropriate and clarification was provided where sought.

Given that the FOI requests may not always yield substantive or qualitatively valuable responses, a less formal request for information and assistance was constructed and sent to relevant non-governmental organisations (“NGOs”). Relevant NGOs were not present in all of the Selected Countries. The form of request sent to NGOs can be found at Appendix 3. The NGOs to which that request was sent can be found in the table at Appendix 4.

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<sup>12</sup> SCID, September 2009 – *FOI Responses from Scottish and English Police Forces* which can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

<sup>13</sup> See Access Info Europe and Reprieve, December 2011 – *Rendition on Record*, Access Info Europe and David Goldberg, November 2009 – *The Right to Know: Europe and the Police*, Campaign for Freedom of Information, 14 February 2012 – *Post Legislative Scrutiny of the Freedom of Information Act 2000*, Submission to the Justice Select Committee. In addition, see the report by the Scottish Information Commissioner, January 2012 – A Special Report to the Scottish Parliament by the Scottish Information Commissioner, *Informing the Future: The State of Freedom of Information in Scotland* for details on delays in responses and inadequate searches for information.

## 2 CRASH INVESTIGATION

During the investigation of a fatal road collision, the information surrounding the circumstances of the crash is compiled. The procedures used and the organisations involved in the crash investigation will have an effect on the amount and the type of information gathered and the analysis of that information. The road crash investigation process has a direct impact on the quality of information obtained and which could potentially be made available to the family of a victim of a road death. In addition, a thorough investigation is vital for those bereaved to know that “...the unnatural death of their loved one is treated with the scrutiny and priority it deserves.”<sup>14</sup>

### 2.1 The Road Death Investigation

This section examines the road collision investigation procedures in Scotland and in each of the Selected Countries from which a response was received to the FOI or NGO requests. The information on road death investigation in the Selected Countries is based entirely on the responses received to FOI or NGO requests and relies on the accuracy of those responses as to current laws and practices in those countries.

#### 2.1.1 Scotland

In Scotland, a road death is investigated by the police on behalf of the PF with a view to establishing whether or not culpable negligence or criminal liability can be attributed to any person. The PF is contacted by the police at the earliest opportunity. The PF has authority to instruct a post mortem.<sup>15</sup> A post mortem will always be carried out following a fatal road collision. The post mortem report will be sent to the PF.

The police procedure for investigating fatal road collisions in Scotland is set out in the Road Death Investigation Manual (“RDIM”) produced by the Association of Chief Police Officers in Scotland (“ACPOS”).<sup>16</sup> The RDIM provides guidance to Chief Police Officers but the procedures are not mandatory and Chief Police Officers have discretion on whether to comply with the RDIM.

The RDIM adheres to the principle that all fatal collisions should be investigated as “suspicious death” until the contrary is proved.<sup>17</sup>

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<sup>14</sup> RoadPeace, February 2011, *Road Death Investigation Guide for Bereaved Families*, page 1.

<sup>15</sup> COPFS Book of Regulations Section 12.5.1.

<sup>16</sup> ACPOS, November 2008, Road Policing Business Area, *Road Death Investigation Manual: Adoption of Common National Standards*.

<sup>17</sup> *Ibid* at page 11.

The team investigating a fatal road collision will normally include: <sup>-18</sup>

- Road Policing Senior Investigating Officer (“RP SIO”)
- Collision Investigator
- Vehicle Examiner
- Family Liaison Officer (“FLO”)
- Investigating Officer

The RP SIO heads up the investigation and is the policy and decision maker. A policy file of all decisions made by the RP SIO is maintained throughout the investigation and is stored with the case papers at the conclusion of the investigation.

The police use a standard form to record details of the road collision and the parties involved.<sup>19</sup> Photo and video evidence may also be collected. Once all evidence and materials have been gathered, the Collision Investigator compiles the information and produces a report on the investigation into the fatal road collision. A report on the fatal road death is made by the police to the PF.

The PF should receive from the police team investigating the fatal collision: <sup>-20</sup>

1. The death report – on or before the next working day;
2. The criminal report – within 28 days unless otherwise agreed with the PF;
3. The collision investigation report, which should be completed and included as part of the criminal report – within 28 days.

Once the PF has received all reports and evidence from the police, the PF assumes responsibility for the investigation into the road death. The PF can decide whether to instruct expert witnesses or additional reports. After obtaining and examining all the evidence, the PF will decide whether to take further proceedings. If the PF concludes that further proceedings are required, the PF will report to the Crown Office on that basis. If the PF decides that no proceedings are appropriate, the investigation will be closed.

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<sup>18</sup> Ibid.

<sup>19</sup> The information is collected in a STATS 19 form, a copy of which can be found at <http://www.transport.scotland.gov.uk/files/documents/reports/j199237/j199237.pdf> at page 208. The STATS 19 form is completed by the police for all injury collisions reported to them and it includes details of the attendant circumstances (i.e. date, location, road conditions, and weather), vehicles and parties involved and casualties recorded.

<sup>20</sup> Lord Advocate’s Guidelines – Road Traffic Deaths, July 2002, *Guidelines to Assist Chief Constables in the Investigation and Reporting of Road Traffic Deaths*, COPFS website publication.

### 2.1.2 Austria

The response to the FOI request in Austria was received from the Law Enforcement Department of the Federal Ministry of the Interior. The majority of the response was provided in English.

In Austria, a fatal road collision is a crime amounting to either negligent homicide<sup>21</sup> or negligent homicide in particularly dangerous conditions.<sup>22</sup> Fatal road collisions are investigated by local police forces. As a fatal road collision is treated as a crime, the investigation is based on the Austrian penal prosecution code. Special rules to investigate fatal road collisions do not exist. A standard police form is used to collect information from the road collision. A copy of that form was provided with the response.

### 2.1.3 Latvia

The response to the FOI request in Latvia was received from the Ministry of Interior with information supplied by the State Police. The response was provided in Latvian with an unofficial translation to English.

In Latvia, fatal road collisions are investigated by the State Police. In the Riga region (capital city of Riga, the district of Riga and the city of Jurmala), the investigation is carried out by the traffic collision investigation office of the State Police of the Riga Region Department Order Police Department. In other regions of Latvia, an investigation into a fatal road collision is carried out by the relevant criminal police department official.

The investigation procedure for fatal road collisions is set out in criminal procedure law. There is no special procedure for fatal road collisions; they are investigated in the same way as any other crime.

Following a fatal road collision, a record and registration of collision form is prepared along with a post mortem report. A copy of the standard collision form was included with the FOI response. Photos and videos are also taken of the scene. During these investigations, all the information that is deemed to be significant and which could be important during the investigation is compiled by the person directing the proceedings. All significant information and decisions made during the investigation procedure are registered in relevant information systems.

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<sup>21</sup> Austrian Penal Code paragraph 80.

<sup>22</sup> Austrian Penal Code paragraph 81.

#### 2.1.4 Norway

The response to the FOI request in Norway was received from The Norwegian Public Roads Administration (“NPRA”). The response was provided in English.

In Norway, both the police and the NPRA are responsible for carrying out investigations into fatal road collisions. When fatal road collisions occur, both the police and a person representing a NPRA accident group collect information from the collision site. In this process, there is close co-operation between the police and the NPRA.

The police and the NPRA have different investigation aims. The aim of the police investigation is to discover who is responsible for the collision and whether any person has violated the traffic regulations. The aim of the NPRA is to analyse what factors caused the fatal collision and its severity and to prevent similar collisions from happening again.

NPRA has established regional accident analysis groups in each of its five regions. These groups started their work with in-depth analyses of all fatal road collisions in Norway on 1 January 2005. The aim of this work is to develop more knowledge about causal factors behind fatal road collisions within road user behaviour, vehicle safety and road conditions, and to propose measures in order to prevent similar collisions in the future.

A person in each district is designated to collect information from the collision site and send it to the regional accident analysis group, which then analyse the collision in detail and write a report. A preliminary report about the collision is also sent to the heads of the public roads administration, the regional heads and the heads at district level.

For each fatal collision, the regional accident analysis groups write a comprehensive report, describing all the factors that might have contributed to the collision happening and factors that might have contributed to the severity of the collision. The report is prepared according to common specifications. A blank version of the report was included in the FOI response. The report covers all the factors that might have contributed to the collision occurring and factors that might have contributed to its severity. It also contains proposed local and general measures to prevent similar collisions.

The regional accident analysis groups also prepare an annual report that summarises the results from their in-depth analyses, pointing out causal factors behind the collisions. Annual regional reports are publicly available exclusive of sensitive data. On the basis of regional reports, a national annual report is written.

### 2.1.5 Romania

The response to the FOI request in Romania was received from the Road Directorate of the General Inspectorate of Romanian Police, part of the Ministry of Interior and Administration. The response was provided in Romanian and an unofficial translation was obtained. The level of information provided in the response was very limited. Further clarification was obtained from The Center of Consultancy for Road Victims in Romania.

Fatal road collisions are investigated by the police under the guidance of the Romanian prosecutor and the competent court in the area in which the collision occurred. The police collect information surrounding the collision in a standard form, a copy of which was included with the response.

Once the police have completed their investigation, they forward their report to the prosecutor who can request additional investigations or technical expertise. On completion of the investigation, the prosecutor will make a decision on whether to initiate criminal proceedings.

### 2.1.6 Sweden

A response to the FOI request in Sweden was received from both the Ministry of Justice and the Swedish Transport Administration (“STA”). The responses were provided in English.

In Sweden, the police investigate fatal road collisions in order to determine liability. The STA investigates fatal road collisions to find ways to improve safety in the transport system. The STA does not take part in the investigation of liability. The police have a duty to report to the STA, within set time limits, any road collision in which a person has been injured or killed.<sup>23</sup> The police complete a standard road collision form at the scene of the collision, a copy of which was provided.

Under regulations containing instructions to the STA,<sup>24</sup> one of the objectives of the STA is to carry out in-depth studies of all road collisions in relation to which a person has died.

### 2.1.7 Switzerland

The response to the FOI request in Switzerland was received from the Federal Roads Office (“FEDRO”). The response was provided in English. The obligations and procedures of the police in relation to the investigation of road collisions as set out below are all contained in legislation for which a web link was provided in the response.

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<sup>23</sup> Proclamation 1965:561 on statistical data concerning road traffic accidents.

<sup>24</sup> Regulation 2010:185 with instructions for the Swedish Transport Administration.

In Switzerland, the investigation of fatal road collisions is the responsibility of the police forces of each of the 26 cantons. The police must be informed immediately of every road collision in which a person is injured.<sup>25</sup> The police investigate the circumstances of every road collision where a person has been injured.<sup>26</sup>

The police in the canton in which the collision occurred must complete a three part standard form setting out the circumstances of the collision.<sup>27</sup> A copy of the standard form was provided with the response. The police must collect data in relation to the persons involved in the collision,<sup>28</sup> the vehicles involved in the collision,<sup>29</sup> the collision site,<sup>30</sup> the type of collision and the causes of the collision. The details collected are entered in the road accident register. The police decide, on a case by case basis, whether further investigations are required.

### 2.1.8 The Netherlands

A response to the FOI request in the Netherlands was received from the Dutch Safety Board (“DSB”). A response to the NGO request was received from the University of Groningen. Both responses were provided in English.

The DSB is an independent safety investigation board that carries out in-depth investigations into various incidents. It has not, as yet, performed on-the-spot investigations into fatal road collisions. At present, such investigations are carried out by the police.

Each regional police force in the Netherlands contains a unit that carries out the investigation of fatal road collisions.<sup>31</sup> The unit examines such things as the infrastructure of the road, vehicle damage, the technical status of the vehicles and witness statements in order to determine the cause of the collision.<sup>32</sup> Fatal road collisions are investigated and prosecuted in accordance with criminal enforcement law.<sup>33</sup> The procedure for investigating fatal road collisions is set out in an instruction issued by the Board of Procurators General in the Netherlands.<sup>34</sup> The police and the public prosecutor must investigate fatal road

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<sup>25</sup> Article 51 SVG (SR741.01 Traffic Law) and Article 55 VRV (741.11 Rules of the Regulation).

<sup>26</sup> Unless the injuries are small abrasions or bruises, Article 56 VRV.

<sup>27</sup> Article 9 SURV (SR741.57 Regulation on the Road Accident Register).

<sup>28</sup> In particular, the personal data of the persons involved, the driver’s licence, influence of alcohol, drugs or medicines and any personal injuries.

<sup>29</sup> In particular, the type of vehicle, the indicator, the number and the holder.

<sup>30</sup> In particular, the location of the crash site, the road system, road conditions, traffic management and weather conditions.

<sup>31</sup> The units are called Verkeersongevallen analyse (VOA).

<sup>32</sup> The examinations take place at the scene of the collision as well as in a controlled environment.

<sup>33</sup> Judiciary Organisation Act, last modified 26 April 2012 (Stb. 2012, 200).

<sup>34</sup> The procedure is set out in Instruction for Road Accidents 2010 which came into force on 1 January 2010.

collisions in accordance with the instruction. All information gathered by the police unit at the scene of a fatal collision is recorded.<sup>35</sup>

### 2.1.9 Belgium

The response to the FOI request in Belgium was received from both the Ministry of Justice and the General Directorate of Administrative Police. The response from the Ministry of Justice was provided in English. The response from the General Directorate of Administrative Police was provided in French and a translation was obtained.

The investigation of fatal road collisions in Belgium is carried out, in the first instance, by the police. Depending on the circumstances, the investigation may be carried out under the supervision of a magistrate. There is no special procedure for investigating fatal road collisions. The investigation is carried out in accordance with the procedures set out in the Code of Criminal Instruction.

In Belgium, penal procedure is divided into two main sections: inquiry and preparation of a case. Inquiry is essentially the investigation and gathering of evidence and it is handled under the direction of the appropriate prosecutor.<sup>36</sup> The prosecutor is responsible for the investigation of the fatal road collision and the charges to be brought. The preparation is the series of investigative actions aimed at allowing the courts to give a ruling in full possession of the facts.<sup>37</sup> The preparation is led under the direction and authority of the magistrate. The magistrate conducts the investigative hearing and decides whether there is sufficient evidence to proceed to trial.

The police are responsible for investigating the crime, gathering evidence and passing evidence to the relevant authorities.<sup>38</sup> There is no set form or standardised list of evidence to be collected at the scene of a fatal road collision. In general, the police must collect sufficient evidence and material proof in relation to the offence in order to justify the matter being dealt with by the appropriate court. During the inquiry, information and evidence can be gathered either via inquiry by the prosecutor or via preparation under the direction of the magistrate. The prosecutor and the magistrate give instruction and direct

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<sup>35</sup> The information must be recorded in such a way that it can be adequately reproduced and checked. Photographic evidence must be obtained. Statements are taken from all those involved and all witnesses and, when reckless driving is implied, evidence regarding the standard of driving is obtained (e.g. driving under the influence of drugs, medicine or alcohol, significant exceeding of the speed limit, not keeping enough distance between vehicles, not giving way and dangerous overtaking – see Article 175 of the Road Traffic Act 1994). Detailed examinations of the vehicles involved in the collision are carried out and, where thought appropriate, a reconstruction of the collision may be performed.

<sup>36</sup> Article 28 of the Code of Criminal Instruction of 17 November 1808.

<sup>37</sup> Ibid at Article 55.

<sup>38</sup> Article 15 of the Law from 5 August 1992 on the functions of the police.

the police to gather the evidence necessary for a case. The police act under the command of the prosecutor and the magistrate.<sup>39</sup>

### 2.1.10 Germany

The response to the FOI request from the German Federal Ministry of Interior advised that due to the federal nature of Germany, the request would need to be sent to one or more of the state interior ministries. The German Federal Ministry of Interior advised that the majority of states followed the same procedures and provided links to two interior ministries. A response was received from the Ministry of Home Affairs and Local of North Rhine Westphalia (“NRW”) and from the Lower Saxony Ministry of Home Affairs and Sports. The responses were provided in German and translations were obtained.

#### 2.1.10.1 North Rhine Westphalia

The police of the federal state of NRW investigate fatal road collisions on behalf of the public prosecutor. There is a set procedure to be followed by police attending road collisions contained in a guideline of the Ministry of Interior.<sup>40</sup> A copy of the guideline was provided with the response.

The police attend and investigate every road traffic collision of which they are made aware. The actions required by the police to document the road traffic collision are set out in a standard form. A copy of the form was provided with the response. The nature and extent of the actions to be taken at the scene depend on the severity and complexity of the collision and the need to secure evidence. In collisions with complex evidence or severe consequences, the police must consider consulting special agencies or crime scene investigation teams. The collision is dealt with as a crime scene. All objective and subjective data must be recorded and compared. Experts can be consulted for vehicle inspection or reconstruction of the scene if it is necessary to complete the police evidence. The documentation of the road traffic collision comprises all actions of the police from acknowledging the collision to the presentation of the final report.<sup>41</sup>

In a criminal investigation, expert witnesses can only be requested by the public prosecutor, unless it is urgent and the public prosecutor is unavailable, in which case the police can request the expert.<sup>42</sup> In the police report into the road traffic collision, statements on the nature of the collision and its effect on the vehicles involved must be recorded. In collisions with complex evidence or severe consequences, the text of the report must follow a specific form. A copy of this form was provided with the response.

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<sup>39</sup> Ibid at Article 6 and the Code of Criminal Instruction of 17 November 1808.

<sup>40</sup> Procedures for Police Attending Road Traffic Accidents – Guideline of the Ministry of Interior from 25 August 2008 as amended on 11 November 2011.

<sup>41</sup> PDV Command and Control of use of Police Forces.

<sup>42</sup> The public prosecutor must be informed immediately of the request for an expert.

In a fatal road collision, the issue of a death certificate must be initiated by the police and the public prosecutor or the sheriff court must be informed immediately. The post mortem is initiated by the police and the results are provided to the public prosecutor. If the sequence of events leading to the collision is unclear then an investigation group can be created. All relevant facts and documents are passed to the public prosecutor who decides whether to prosecute.

### 2.1.10.2 Lower Saxony

The police are responsible for investigating road traffic collisions in the federal state of Lower Saxony.<sup>43</sup> There is a procedure in place for investigating fatal road collisions. The scene of the collision is treated as a crime scene. All evidence from the scene of the collision is secured.<sup>44</sup> The information from the scene of the collision is collected using the Lower Saxony Crime Investigation System (NIVADIS). A standard form is used, a digital copy of which was provided with the response.

### 2.1.11 Greece

The response to the FOI request in Greece was received from the Department of Road Traffic Police in the Hellenic Police Headquarters, part of the Ministry of Citizen Protection. The response was provided in Greek and a translation was obtained.

Investigations into fatal road collisions are carried out by the police or the coast guard in Greece. The procedure for carrying out the investigation of a fatal road collision is set out in the Code of Criminal Procedure and the Road Traffic Act.<sup>45</sup> There is a standard form setting out the details of the parties and all the circumstances of the collision that must be completed by the police.<sup>46</sup> A copy of that form was included in the response. The completed standard form is included in the file of proceedings in relation to the fatal collision, together with a layout of the scene of the collision.

### 2.1.12 Denmark

The response to the FOI request in Denmark was received from the Danish National Police. The response was provided in English. The level of information provided in the response was very limited.

All fatal road collisions are investigated by the Danish police. The procedure for investigating fatal road collisions is set out in the Danish Road Traffic Act.<sup>47</sup> A police report with standard

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<sup>43</sup> In accordance with RdErl. D. MI v. 14.03.2008 – P22.3 – 12322/2.1 with reference to RdErl. D. MI v. 2.12.1996 – 21.1 – 05140/12.3.

<sup>44</sup> In accordance with the principles of the Code of the Police Service 100 No. 2.2.3 and the instruction of the Federal Criminal Office regarding evidence at a crime scene.

<sup>45</sup> See the Law no.: 1493/1950 of the Code of Penal Procedure; the Law no.: 2696/1999 of the Road Traffic Act and the Presidential Decree no.: 141/1991.

<sup>46</sup> Details to be inserted in the form include the time of the collision, location, nature, parties and vehicles involved, road conditions, vehicle condition and various observations including whether alcohol or drugs were an influence.

<sup>47</sup> Danish Road Traffic Act, Paragraph 9 – a copy of the Act was not provided with the response.

details and photos and sketches of the scene is compiled.<sup>48</sup> A copy of the standard report was not provided. A motor vehicle inspector inspects the technical condition of the vehicles involved in the collision.

### 2.1.13 Finland

The response to the FOI request in Finland was received from the Police Department of the Ministry of Interior. The response was provided in English.

Fatal road collisions in Finland are investigated by the local police in the same way as with any other crime.<sup>49</sup> The police enter data on the collision into the PATJA information system. A copy of the form used to collate the data was not provided with the response. Once the investigation is complete, the results are sent to the public prosecutor for a decision on what charges, if any, are to be brought.

In addition to the police investigation, the Finnish Motor Insurers' Centre ("FMIC") has 20 multi-disciplinary collision investigation teams that carry out in-depth investigations of every fatal road collision.<sup>50</sup> The investigation teams receive notice of the collision from the emergency response centre or the police. The investigation is launched at the scene. The investigation at the scene is performed in co-operation with the police. After the initial on-scene investigation, the investigations of the police and the FMIC team are separated, although the police and other authorities must supply all investigation material collected to the FMIC investigation team.

The road collision investigations performed by FMIC investigation teams are performed in accordance with a consistent investigation method using standard forms ensuring the provision of information which is as uniform in quality as is possible. Data gathered by FMIC collision investigation teams is entered directly from standard electronic data logging forms into an accident register. The investigation team produces an investigation report which details all factors surrounding the collision together with recommendations for safety improvements. The report does not identify the parties or the vehicles involved. The main objective of the investigation by FMIC is to promote road safety by obtaining information to assist in national and local road traffic measures. After completion, the investigation report

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<sup>48</sup> The information contained in the police report includes date, time, addresses, weather conditions, road type and conditions and statements from witnesses and involved parties. The police report also includes photos and a sketch of the collision scene.

<sup>49</sup> The relevant legislation is the Criminal Code (39/1889), Police Act (493/1995), Pre-Trial Investigations Act (449/1987) and Coercive Measures Act (450/1987).

<sup>50</sup> They operate in accordance with the Act on Investigation of Road and Terrain Accidents (24/2001). Road accident investigation teams were launched in 1968 and were extended in 1997 to cover all fatal collisions. The investigation of road collisions by FMIC is steered and supervised by the Road Accident Investigation Delegation of the Ministry of Transport and Communications which decides annually what type of collisions are to be investigated. FMIC is responsible for maintenance of the road accident investigation and the use of the investigation results and the information service.

is a public document. Other documents gathered in connection with the investigation are confidential.

## 2.2 Examination of the Varying Methods of Investigation

It can be seen from the responses received to the submitted FOI requests that there are many different ways to approach the investigation of a fatal road collision.

### 2.2.1 Police Investigations

In Scotland, as in all of the Selected Countries from which a response was received, fatal road collisions are investigated by the police in order to establish whether there is culpability. The investigation processes used by the police vary considerably, although in the majority of the Selected Countries, as in Scotland, the police are required to complete a standard form detailing the circumstances of the collision. The level of detail required in the standard police forms varied considerably; some were more comprehensive than others.

In many of the Selected Countries, there is no special procedure to be followed by the police in relation to the investigation of a fatal road collision. Instead, investigations into fatal road collisions are dealt with by local police forces in the same way as any other crime. Of the countries examined in this project, only Scotland, the Netherlands and the federal state of NRW in Germany appear to have adopted guidelines for the investigation of fatal road collisions.<sup>51</sup> The procedures adopted in Scotland and set out in the RDIM and the COPFS Book of Regulations are designed to ensure that, in Scotland, the investigation of a fatal road collision is dealt with in accordance with national procedures and standards. In the Netherlands, police units follow an instruction issued by the Board of Procurators General and in Germany, the police in the federal state of NRW follow a standard procedure set out in a guideline issued by the Ministry of Interior. Where guidelines exist and are followed by police in relation to the investigation of a fatal road collision, it ensures a minimum standard and a certain level of consistency in the information and evidence gathered during the investigation. That approach can only be commended but it does rely on the procedures being followed in a standard fashion by all police forces.

While the RDIM in Scotland encourages the RP SIO at a fatal road collision to consider how such collisions could be prevented, the main focus of the investigation is to establish liability. Even where the RP SIO does consider the prevention of future collisions as part of the investigation, it is widely recognised<sup>52</sup> that where the investigating body is also the enforcing agency a conflict of interest may result which could lead to ineffective

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<sup>51</sup> The response to the FOI request from the federal state of Lower Saxony did refer to a procedure to be followed when investigating a fatal road collision but full details of that procedure and its origins were not provided.

<sup>52</sup> Association for European Transport and contributors, 2007 – *Proposing a Framework for Pan-European Transparent and Independent Road Accident Investigation*, SafetyNet, 8 November 2006 – Deliverable D4.3,

investigations.<sup>53</sup> Any organisation with an actual or perceived interest in the result of the investigation is rarely able to act with total impartiality,<sup>54</sup> unlike an independent road collision investigation body focussed on safety.

### 2.2.2 Independent Multi-Disciplinary Investigations

In some of the Selected Countries, such as Finland, Norway and Sweden, every road death is investigated by an independent multi-disciplinary road collision investigation body which has been established to investigate fatal road collisions in tandem with the police.

In Sweden, independent road collision investigation is undertaken by the Swedish Transport Administration (“STA”), in Norway it is undertaken by the Norwegian Public Roads Administration (“NPRA”) and in Finland it is undertaken by the Finnish Motor Insurers’ Centre (“FMIC”). The investigations by the STA, the NPRA and the FMIC are safety investigations with the main purpose being to establish the full circumstances of the collision and to ensure, where possible, that it does not re-occur. The purpose of the investigations is not to apportion blame. Each of the STA, the NPRA and the FMIC publish a report into the investigation of every fatal road collision. The reports cover all the factors that might have contributed to the collision occurring and factors that might have contributed to its severity. They also contain proposed local and general measures to prevent similar collisions.<sup>55</sup>

### 2.2.3 Analysis

Given that responses to the submitted FOI requests were not received from all of the Selected Countries and, where responses were received, the level of information provided was often limited or incomplete, a direct comparison cannot be made between Scotland and the Selected Countries in relation to the standard of the road death investigations conducted by police and/or other organisations. However, this project was not intended to undertake a comparative analysis of the methods used by the police and/or other organisations to investigate fatal road collisions in Scotland and the Selected Countries. The aim of this project was to seek to identify “best practice” approaches used in one or more of the Selected Countries which could be used to inform the development of Scots law in order to improve the right of access to information for families of road death victims.

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<sup>53</sup> SafetyNet, 8 November 2006 – Deliverable D4.3, *Draft Recommendations for Transparent and Independent Accident Investigation – A Working Paper*, page 39.

<sup>54</sup> European Transport Safety Council (ETSC), 2001 – *Transport Accident and Incident Investigation in the European Union*, page 3.

<sup>55</sup> *Draft Recommendations for Transparent and Independent Accident Investigation – A Working Paper*, European Transport Safety Council (ETSC), 2001 – *Transport Accident and Incident Investigation in the European Union*.

It has been suggested that “...in-depth independent multi-disciplinary investigations should be a core ingredient of road traffic safety policies.”<sup>56</sup> Such bodies exist in Norway, Sweden and Finland and have been proven to lead to immediate improvements to the road environment and to road safety.<sup>57</sup> Nevertheless, none of the different types of road collision investigation can completely supplant the other. Both judicial investigations and independent safety investigations must co-exist. Independent investigations are complementary to other types of collision investigation activities and they benefit from a unique position to issue recommendations for collision prevention. It is clear that the existence of an independent multi-disciplinary road collision investigation body, carrying out investigations in tandem with and with the co-operation of a police unit trained in collision investigation, is “best practice”.<sup>58</sup>

An organisation carrying out independent road collision investigations does not exist in Scotland. The lack of such an organisation in Scotland means that the police investigation must, insofar as is possible, fulfil the role of both a judicial and a safety investigation and be as transparent as is practicable. The RDIM goes some way towards attempting to achieve these outcomes. However, as indicated previously, there is some doubt as to whether it is possible for one body to fulfil both roles without a conflict of interest arising.

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<sup>56</sup> Road Strategy for Accidents in Transport (RO-SAT) Working Group, Report from the Road Sector Working Group to the Plenary, 11 May 2006 – *Road Accident Investigation in the European Union: Review and Recommendations*, page 9.

<sup>57</sup> See Vagverket – *In-depth studies of fatal accidents help to save lives* and [www.trafikverket.se](http://www.trafikverket.se).

<sup>58</sup> See chapter 4, paragraph 4.1.2.1 for a brief overview of recommendations originating from Europe in relation to the investigation of fatal road collisions.

### 3 ACCESS TO INFORMATION

Several organisations<sup>59</sup> established to assist the families of victims of fatal road collisions agree that the provision of full and accurate information on the circumstances surrounding a fatal road collision and the subsequent investigation into the death are vital in order to assist the grieving process. Victim Support found that one of the most commonly expressed needs of those bereaved by road death was for accurate information.<sup>60</sup>

In a study published by the European Federation of Road Traffic Victims<sup>61</sup> (“FEVR”) it was found that families bereaved through road death suffered a dramatic decline in their quality of life and standard of living. A further study<sup>62</sup> was undertaken in order to determine the cause of the decline. It found that one of the causes was due to the inadequate information provided to victims and victims’ families following a fatal collision. There is an immediate need for access to information regarding the circumstances of the collision and the legal rights and procedures following the collision.<sup>63</sup>

This chapter first examines the type of information that can be accessed by a family bereaved by road death through existing laws, procedures or guidelines. It then considers the adequacy of FOI laws as means for a bereaved family to access information where no such laws, procedures or guidelines exist.

#### 3.1 Procedural Access to Investigation Documents

This section examines what information on the investigation of a fatal road collision is made available on request to bereaved families through existing laws, procedures or guidelines in Scotland and in each of the Selected Countries from which a response was received to the FOI or NGO requests. The details on access to information following a road death in the Selected Countries are based entirely on the responses received to FOI or NGO requests.

##### 3.1.1 Scotland

As detailed above, in Scotland, the investigation of fatal road collisions is undertaken by the police and COPFS.

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<sup>59</sup> See the websites of SCID, RoadPeace, Brake and The European Federation of Road Traffic Victims (FEVR).

<sup>60</sup> Victim Support, 1994 – *Support for the Families of Road Death Victims: Report of an Independent Working Party* convened by Victim Support, page 3.

<sup>61</sup> European Federation of Road Traffic Victims, Geneva 1993, *Study of the physical, psychological and material secondary damage inflicted on the victims and their families by road crashes*.

<sup>62</sup> European Federation of Road Traffic Victims, Geneva 1997, *Impact of Road Death and Injury. Research into the principal causes of the decline in quality of life and living standards suffered by road crash victims and victim families. Proposals for improvements*.

<sup>63</sup> Ibid at page 16.

There have been many improvements in the provision of information to families bereaved by road death since Victim Support published its findings in 1994.<sup>64</sup> For example, the provision of a FLO to a bereaved family,<sup>65</sup> the services of Victim Information and Advice (“VIA”) provided by COPFS and the revised guidance to PFs on dealing with death cases.<sup>66</sup> It should be recognised that much of the progress made in this area is as a result of the relentless campaigning by groups such as SCID, RoadPeace and Brake. There is still room for improvement.<sup>67</sup>

One of the objectives of COPFS<sup>68</sup> in relation to the investigation of deaths is to provide services that meet the information needs of victims, witnesses and nearest relatives, in cooperation with other agencies. It is the duty of the PF to provide services which meet the information needs of nearest relatives.<sup>69</sup> Road deaths are automatically referred to VIA. The VIA service should provide nearest relatives with information about the progress of the case.

Throughout the investigation of a road death, the PF retains the principal duty to provide information to the nearest relative about the progress of the investigation.<sup>70</sup> The onus is on the PF to establish the level of information that the nearest relative wishes to receive.<sup>71</sup> There are set time limits for contact by the PF with the nearest relative and for progress reports to be provided.<sup>72</sup> At the initial meeting with the PF, the PF may, with the consent of the family, invite the reporting officer or collision investigator to the meeting to explain the circumstances of the road collision.<sup>73</sup>

The documentation that a nearest relative is likely to want to examine is the post mortem report and the Investigation Documents.

The post mortem report is confidential to the PF. The PF will consider requests for a copy of the post mortem report from those with a legitimate interest, including the victim’s family.

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<sup>64</sup> Victim Support, 1994 – *Support for the Families of Road Death Victims: Report of an Independent Working Party* convened by Victim Support.

<sup>65</sup> The FLO is responsible for providing as full and up-to-date information as possible on the fatal collision, information on support organisations and booklets from support organisations as well as advising the family on the need for a post mortem.

<sup>66</sup> COPFS Book of Regulations, Chapter 12.

<sup>67</sup> The need for improvement is identified in the Inspectorate of Prosecution in Scotland and HM Inspectorate of Constabulary for Scotland’s joint report on *Victims in the Criminal Justice System Phase II*, November 2011.

<sup>68</sup> COPFS Book of Regulations, Section 12.1.1.

<sup>69</sup> *Ibid* at Section 12.15.1.

<sup>70</sup> But not about the progress of the criminal proceedings which is the responsibility of the VIA officer, see COPFS Book of Regulations, Section 26.

<sup>71</sup> COPFS Book of Regulations, Section 26.

<sup>72</sup> *Ibid* at Section 26 – first contact by letter within 2-3 weeks of death and initial meeting within 6 weeks of death.

<sup>73</sup> *Ibid* at Section 26. It should be noted that SCID is not aware of this approach having been taken with any of the cases for which it has been involved in the last 14 years.

There is a presumption in favour of providing a copy of the report to the family of the victim but it is not a legal requirement.<sup>74</sup> The PF must consider whether any criminal proceedings would be prejudiced by the release of the report and, if so, the report should only be released at the conclusion of proceedings.

The COPFS Book of Regulations<sup>75</sup> states that it is normal practice for the PF to inform a nearest relative that there is no objection to copies of sketches, plans, reports or photos being made available by the author of the requested information.<sup>76</sup> The Book of Regulations goes on to state that the importance of providing information to nearest relatives in a death case justifies a different approach. Where nearest relatives in a death case request copies of plans, sketches, photos and reports, the PF is required to assess whether any proceedings, either in contemplation or pending, may be prejudiced by such disclosure, in which case the PF should consider whether copies should be made available at the conclusion of such proceedings.

In Scotland, there is no legal right for the nearest relative of a victim of a fatal road collision to receive a copy of the Investigation Documents on completion of the investigation or on the conclusion of criminal proceedings. The release of the Investigation Documents is always subject to the discretion and judgement of the PF and/or the police.

### 3.1.2 Austria

In Austria, the investigation of fatal road collisions is undertaken by the local police.

Under the Austrian penal prosecution code,<sup>77</sup> the family of a victim of a fatal road collision has the opportunity, by law, to obtain the full investigation results. Where the investigation has not concluded, family members are entitled, by law, to request copies of the investigation results at the relevant police station or at the office of the state attorney. Once the investigation has been completed, the family members may request copies of the investigation results from the office of the state attorney only.

All information can be shared with the family members,<sup>78</sup> provided that the state attorney has not excluded certain information and the members of the family request the information. The family members will be provided with the full investigation results in the same format as the information is held by the police and the state attorney at the time the request is made. The information can be provided at any stage of the investigation process.

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<sup>74</sup> Ibid at Section 28 and ACPOS, Road Death Investigation Manual, page 115.

<sup>75</sup> COPFS Book of Regulations Section 28.

<sup>76</sup> It should be noted that SCID is not aware of this approach having been taken with any of the cases for which it has been involved in the last 14 years.

<sup>77</sup> Austrian Penal Prosecution Code paragraph 68.

<sup>78</sup> Austrian Penal Prosecution Code paragraph 68.

### 3.1.3 Latvia

In Latvia, the investigation of fatal road collisions is undertaken by the State Police.

There is no procedure in place for the supply of information and/or evidence collected during the investigation of a fatal road collision to the family of a road death victim. The family of the victim of a road death is informed of the death verbally or by telephone.

In accordance with Latvian Criminal Procedure Law, during criminal proceedings, all material and information obtained in relation to the case is a State secret. On completion of an investigation and following a final judgement in a criminal case, the person whose rights have been violated<sup>79</sup> is entitled to inspect any file relating to their specific case.<sup>80</sup> Those with a right to inspect the files are notified in writing of their duty to keep a State secret and they are not permitted to make copies of the documents.

### 3.1.4 Norway

In Norway, the investigation of fatal road collisions is undertaken by both the police and the NPRA.

In the NPRA there are no procedures or guidelines regarding the provision of information to the family of a victim of a fatal road collision. The responsibility for access to that information rests primarily with the police.<sup>81</sup>

For each fatal collision, the NPRA regional accident analysis groups write a comprehensive report. The regional accident analysis groups also produce an annual report that summarises the results from their in-depth analyses, pointing out causal factors behind the collisions. Annual regional reports are publicly available exclusive of sensitive data. On the basis of regional reports, a national annual report is written which is also publicly available.

### 3.1.5 Romania

In Romania, the investigation of fatal road collisions is undertaken by the police and the prosecutor of the competent court.

Criminal records in relation to manslaughter or injury are prosecution documents. The juridical procedure in fatal road collisions is conducted by the prosecutor who has authority to provide information about the progress of the investigation. On completion of the investigation or on conclusion of criminal proceedings, the file relating to the fatal collision

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<sup>79</sup> Which, under Section 95(3) of the Latvian Criminal Procedure Law will include the next of kin as this section states that where the victim of the crime has died, the victim for criminal proceedings is the next of kin.

<sup>80</sup> Latvian Criminal Procedure Law Section 375(2).

<sup>81</sup> A response was not received from the police in Norway.

can be requested from the prosecutor but there is no procedure in place for access to that information, access is granted at the discretion of the prosecutor.<sup>82</sup>

### 3.1.6 Sweden

In Sweden, the investigation of fatal road collisions is undertaken by the police and the STA.

Where a collision results in a criminal investigation, the data collected by the police in relation to the collision may be classified as confidential. When the investigation is complete, the information may be requested by the family of a victim of a fatal collision. There are no specific guidelines for the provision of information to the family of a road death victim. If a crime has been committed in relation to a road collision, it is dealt with in the same way as any other crime. When the investigation of the crime is complete, information on the investigation may be requested by the bereaved family. The request should be in writing and should be submitted to the police.

The report produced by the STA into each fatal road collision is public, omitting any details that could identify the parties involved. The family of a victim of a road death may obtain a copy of the report into the collision in which their loved one was killed by requesting a copy from the STA. A copy of the report will be provided to the family, omitting any information sensitive to a party involved in the crash.<sup>83</sup> Although a family can discover what happened and how a person sustained fatal injuries, the family will not know all the circumstances surrounding the fatal collision. As the STA is not involved in the investigation of culpability, it cannot provide any information that could lead to blame for the collision. That type of information must be obtained from the police.

### 3.1.7 Switzerland

In Switzerland, the investigation of fatal road collisions is undertaken by the cantonal police.

Every person has a legal right to request access to their own data that has been collected by the police.<sup>84</sup> The police must provide the requested information, free of charge and in writing, within 30 days of the request. No information was provided in the response to the FOI request regarding whether a family of a road death victim is entitled to access the Investigation Documents.

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<sup>82</sup> The Center of Consultancy for Road Victims in Romania confirmed that, in its experience, the file relating to the fatal collision is usually provided to the bereaved family on request after completion of the investigation or conclusion of the case.

<sup>83</sup> For example, use of alcohol, speeding, not wearing a seatbelt etc.

<sup>84</sup> Article 13 SURV.

### 3.1.8 The Netherlands

In the Netherlands, the investigation of fatal road collisions is undertaken by the police and, potentially, the DSB, although the DSB has not yet, to this date, carried out any investigations into fatal road collisions.

The police report in relation to a fatal road collision is sent to the public prosecutor for a decision on whether to prosecute. Where a crime has been committed, the information held by the public prosecutor is only released to the family of a road death victim at the discretion of the public prosecutor. There is no legal right for the family of a road death victim to obtain information from the public prosecutor. The public prosecutor can provide information contained in the police report to the insurance company and other interested parties.<sup>85</sup>

The police do not provide copies of the Investigation Documents to the family of a road death victim. However, the police and/or the public prosecutor can refer the family of a road death victim to the Foundation for Police Reports (“the Foundation”).<sup>86</sup> The police can provide a copy of the police report in relation to the fatal collision to the Foundation.<sup>87</sup> The Foundation can provide information from the police report to a victim or the family of a victim. In order to obtain information from the Foundation, the family of a road death victim must make a written request to the Foundation stating why the information is sought.

Although the DSB has not yet carried out an in-depth investigation into a fatal road collision, it has the capacity to do so. The DSB is required to produce an investigation protocol of the investigation methods it uses and that protocol is a public document. The final report of the DSB into an incident is made public.

The DSB does not provide any data or other information collected during an investigation to any person or organisation (including relatives). The legislation establishing the DSB expressly forbids it from providing such information. The information collected by the DSB, including the final public report, cannot be used in any legal procedures.

The explanatory memorandum establishing the DSB prevents it from playing a role in victim support. It states that “During its investigation the Board will get into contact with victims and surviving relatives and be addressed by them. The Board is expected to be open to such contacts and to be aware that such contacts play a part in the process of the victims coping with the consequences. The Board shall explicitly not have the task of actively taking care of

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<sup>85</sup> This is to ensure that civil claims can be progressed.

<sup>86</sup> This referral is made where there is a possibility that the Foundation can provide the requested information.

<sup>87</sup> The Police Records Resolution states that the police can provide information to the Foundation for Police Reports. The conditions and procedures for the provision of such information are set out in the instruction Information Providing Traffic Accidents 2010 which came into force on 1 January 2010 (Stcrt 2009, 19484).

the victims and surviving relatives. Giving the Board such an operational task would impede the objectivity of its attitude in the investigation.”<sup>88</sup>

### 3.1.9 Belgium

In Belgium, the investigation of fatal road collisions is undertaken by the police under the supervision of a prosecutor and, in some circumstances, under the supervision of a magistrate.

No information was provided by the Ministry of Justice on the provision of information to the family of a victim of road death. The General Directorate of Administrative Police advised that victims of crime and their relatives must be treated correctly and carefully, particularly in relation to providing the necessary information and putting them in touch with specialist services such as justice assistants. The definition of a victim under Belgian law includes the relatives of a victim. There is a circular which is aimed at making officials aware of the obligations of the police to assist victims and their families.<sup>89</sup> Basically, the police must explain certain actions, provide basic information on procedures, provide information on civil actions and refer the victim to specialist services.

The community justice department makes available justice assistants to courts to deal with the care of victims. Justice assistants can provide victims and relatives with specific information in an individual folder both during the investigation and on sentencing. The type of information provided in the folder was not explained. When a case is sent to preparation, any victim initiating a civil action can have access to their file.<sup>90</sup>

### 3.1.10 Germany

#### 3.1.10.1 North Rhine Westphalia

In NRW, the investigation of fatal road collisions is undertaken by the police under the supervision of a public prosecutor.

The guideline for police attending road traffic collisions<sup>91</sup> states that the police have several roles in relation to the scene of a collision, one of which is victim support. During the assessment of a road traffic collision with severe consequences, particularly with fatalities or life threatening injuries, measures to protect and support the persons involved and, if necessary other persons, such as relatives or witnesses are to be implemented. In severe

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<sup>88</sup> Kingdom Act Instituting a Safety Investigation Board – Explanatory Statement ([http://www.onderzoeksraad.nl/docs/rapporten/Memorie\\_van\\_Toelichting\\_Engels.pdf](http://www.onderzoeksraad.nl/docs/rapporten/Memorie_van_Toelichting_Engels.pdf)).

<sup>89</sup> Circular from the Interior Minister: GPI 58 of 4 May 2007.

<sup>90</sup> No information was provided on whether access to the file would be granted where no civil action was initiated.

<sup>91</sup> Procedures for Police Attending Road Traffic Accidents – Guideline of the Ministry of Interior from 25 August 2008 as amended on 11 November 2011.

road traffic collisions, a special investigation group containing a victim support representative is recommended. Organisations providing victim support roles should be exchanged during the de-briefing of the collision.

The parties involved in the road traffic collision and any other persons harmed are given, at the scene, a copy of the standard collision report with page one completed<sup>92</sup> and a manual sketch of the scene. The remainder of the report contains further relevant data such as the road conditions and the influence of alcohol or drugs and it is for internal police use only.

Where there is a criminal investigation, examination by the family of a road death victim of the documentation gathered during the investigation can only be granted by the public prosecutor. A request for such documentation must be made to the public prosecutor. There was no indication in the response as to whether the family of a road death victim has a legal right to obtain copies of the Investigation Documents. Where the investigation has been cancelled or, in the case of minor offences, where the investigation will not be compromised, the police can provide access to the Investigation Documents.

#### **3.1.10.2 Lower Saxony**

In Lower Saxony, the investigation of fatal road collisions is undertaken by the police.

The police have authority, until such time as the case is referred to the Department of Public Prosecution, to provide to authorised lawyers, the name, address and number plate of those involved in the collision. A copy of part of the police report in relation to the collision can also be made available to authorised lawyers but the police are not permitted to provide an opinion on the cause of the collision or on culpability.<sup>93</sup>

Where road traffic offenses are dealt with by the issue of a police caution or suspension, the police also have authority in their jurisdiction to use discretion on whether to grant access to records or information in relation to that offense. Where the matter is referred for prosecution, the police have authority to release to those involved in the collision, those aggrieved and their lawyers, basic information about the party to be prosecuted together with the reference number of the prosecuting authority.<sup>94</sup>

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<sup>92</sup> If a copy cannot be provided at the scene of the collision then it must be provided as soon as possible afterwards. Page one of the report contains details to be released to the insurer etc. setting out the place of the accident, personal details of the parties involved and details of the vehicles.

<sup>93</sup> Pages 1-4 of the police report can be released to authorised lawyers, these pages include details of the parties and vehicles involved, the type of collision, damage to property and the degree of injury.

<sup>94</sup> The police can release information such as the name of the party and details of the vehicle.

### 3.1.11 Greece

In Greece, the investigation of fatal road collisions is undertaken by the police or the coastguard, depending on jurisdiction.

The relatives of a victim of a fatal road collision are provided with a copy of the police report into the circumstances of the collision prior to it being submitted to the public prosecutor's office.<sup>95</sup>

### 3.1.12 Denmark

In Denmark, the investigation of fatal road collisions is undertaken by the police.

There is no procedure in Denmark for the release of the Investigation Documents to the family of a victim of a fatal road collision. The Danish police do not provide any reports to the bereaved family.

### 3.1.13 Finland

In Finland, the investigation of fatal road collisions is undertaken by the police and the FMIC.

There is no specific procedure in Finland for the family of a road death victim to obtain the Investigation Documents from the police. The family of a victim of a road death can apply to the public prosecutor to obtain the pre-trial investigation report of the police under the Act on the Openness of Government Activities.<sup>96</sup> A bereaved family has a right to access the pre-trial investigation report as an interested party but not before completion of the criminal investigation or police inquiry where access would impede the resolution of the case.<sup>97</sup>

The investigation report produced by the FMIC investigation team into a fatal collision is a public document once completed and so the family can obtain a copy. The FMIC report does not identify any parties or vehicles involved in the collision. All other documents gathered by an FMIC investigation team in the course of its investigation are deemed confidential.

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<sup>95</sup> It was not made clear in the response to the FOI request as to whether disclosure of the police report is set out in any legislation or official procedural document.

<sup>96</sup> Section 11.

<sup>97</sup> See section 11(1) and section 11(2) (2). Under section 24(3) of the Act on the Openness of Government Activities, except in limited circumstances, documents obtained or prepared for the purposes of criminal investigation are deemed to be secret until a decision is made by the prosecutor on a hearing of the case, the prosecutor has decided to waive prosecution or the case is abandoned.

### 3.1.14 Analysis of Procedural Access to Investigation Documents

In Scotland, at present, the family of a victim of a road death has no legal right to access the Investigation Documents.<sup>98</sup> Access to those documents is at the discretion of the PF and the police;<sup>99</sup> it is not a statutory right. In practice, access by a bereaved family to the Investigation Documents is usually refused.<sup>100</sup> According to the COPFS Book of Regulations, there is no reason why the Investigation Documents should not be released on conclusion of proceedings; on the contrary, it is encouraged. In relation to the availability of the Investigation Documents, the spirit of the COPFS Book of Regulations and the practical reality are not compatible.

The responses to the FOI requests did not always include information on access to the Investigation Documents by the family of a victim of a road death. Some level of response on access to the Investigation Documents was received from Austria, Latvia, Romania, Sweden, the Netherlands, Belgium, Germany, Greece, Denmark and Finland.

In only four of the Selected Countries, from which a response was received to the FOI request in relation to access to the Investigation Documents, was it made clear that there is a legal right to access those documents.<sup>101</sup> Those countries are Latvia, Belgium, Austria and Finland. In Latvia, Belgium and Austria, as in Scotland, the investigation of a fatal road collision is carried out by the police; there is no separate independent road collision investigation body. In Finland, the investigation of a fatal road collision is undertaken by both the police and a FMIC investigation team.

In Latvia, the bereaved family is entitled by law to inspect, but not receive copies of, the file relating to the fatal collision on conclusion of criminal proceedings. There was no information on access to documentation where no proceedings are taken.

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<sup>98</sup> This is despite the family being recognised as the victim or co-victim where criminal proceedings are contemplated. The definition of a victim is “a natural person against whom a prescribed offence has been (or appears to have been) perpetrated” for the purpose of the statutory provisions at s14-18 of the Criminal Justice (Scotland) Act 2003. Where the victim has died, the next of kin is treated as the victim for the purposes of the statutory provisions. In terms of Section 22 of the COPFS Book of Regulations, families bereaved by a criminal death are regarded as co-victims.

<sup>99</sup> Following completion of the investigation or conclusion of any criminal proceedings, the PF may allow the Investigation Documents to be released with the consent of the author of the documentation which is generally the police as authors of the investigation report but it may include other agencies or experts.

<sup>100</sup> This is the experience of SCID in its dealings with families bereaved by road death and as evidenced in SCID, September 2009 – *FOI Responses from Scottish and English Police Forces* which can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

<sup>101</sup> It would appear that such a legal right exists in other Selected Countries but it was not made sufficiently clear in the response to the FOI request whether the right to access information was contained in legislation or guidelines. In other cases, the response did not make reference to the provision of the Investigation Documents.

In Belgium, justice assistants can provide victims and relatives with specific information both during the investigation of the road collision and on conclusion of proceedings. The type of information that can be provided was not explained. When a case relating to a road collision is sent to preparation in Belgium, any victim initiating a civil action can have access to their file. It was not made clear as to whether victims who do not initiate a civil action are entitled to access the file or whether access to the file is provided where no proceedings are taken.

In Austria, the family of a victim of a fatal road collision has a legal right under the penal prosecution code to obtain the full investigation results, at any stage of the investigation, in the same format as it is held by the police or state attorney at the time of the request. As the right of access is contained in the penal prosecution code, there is no need to rely on the discretion of the police or the office of state attorney which can provide inconsistencies in the release of documentation.

In Finland, the family of a road death victim can make an application to the prosecutor to receive a copy of the police pre-trial investigation report. That report will not be released to the family before completion of the criminal investigation or police inquiry where access would impede the resolution of the case so there is an element of discretion involved in its release prior to the conclusion of proceedings. A bereaved family in Finland will also be entitled to obtain a copy of the investigation report produced by the FMIC investigation team which, once completed, is a public document.

Although Sweden is similar to Scotland in that there is no formal procedure for the provision of the police Investigation Documents to the family of a road death victim,<sup>102</sup> Sweden has the STA, an independent multi-disciplinary road collision investigation body which investigates all fatal road collisions. The reports produced by the STA into each fatal road collision are provided to the family of a road death victim on request.

Where independent road collision investigation bodies exist,<sup>103</sup> the family of a road death victim can obtain, on request to the relevant body, a copy of the report into the road collision that killed their loved one. The report will omit sensitive data and any details that could identify the parties involved in the fatal collision. Access to such reports would go some way towards addressing the need for access by bereaved families to information on the circumstances of the road death. Bereaved families may be comforted by the knowledge that a thorough, transparent and independent safety investigation has been conducted which may prevent such a collision happening in the future. However, such reports do not include all of the circumstances of the road collision and so access to the Investigation

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<sup>102</sup> Although it was stated in the response from the Swedish Ministry of Justice that a family was entitled to request the police report by submitting a written request to the police for the report, it was not made clear if that access had a legal basis.

<sup>103</sup> Such as in Norway, Sweden and Finland.

Documents is vital for the family in order to aid the grieving process. Such access should be set out in primary legislation in order to avoid uncertainty and inconsistency in the provision of the documents.

## 3.2 Access to Investigation Documents through FOI Laws

This section examines whether, in the absence of a specific law, procedure or guideline conferring a right of access to the Investigation Documents, the provisions contained in FOI laws can provide that access. It also considers whether FOI requests are an appropriate method for bereaved families to obtain information on the circumstances of the death of their loved one.

### 3.2.1 Scotland

In Scotland, at present, there is no obligation on the police or the PF to provide the family of a victim of road death with a copy of the Investigation Documents following completion of the investigation or at the conclusion of criminal proceedings. In practice, in Scotland, the family of a road death victim is invariably denied access to the Investigation Documents.<sup>104</sup>

The Freedom of Information (Scotland) Act 2002 (“the FOIS Act”) came into force on 1 January 2005. It provides a statutory right of access to recorded information held by all public authorities in Scotland. Subject to certain conditions and exemptions, any person who makes a request to a public authority for information is entitled to be informed whether that authority holds the information and receive it in the specified format. In Scotland, both COPFS and the police are covered by the FOIS Act.

In the absence of specific legislation setting out a right for bereaved families to obtain copies of the Investigation Documents, a family could utilise the right of access to recorded information as set out in the FOIS Act. However, the process for submitting a FOI request is not as straight-forward as it may seem. The request must set out the information required in enough detail that it can be identified or the applicant is at risk of having to provide clarification on several occasions. The time limit for a response is 20 days but where the authority to which the request is submitted seeks clarification, the 20 day limit is re-set.<sup>105</sup> This means that it can take some time to obtain the information sought. The Scottish Information Commissioner has recently highlighted the problem with statutory time limits not being met and inadequate searches for information by an authority.<sup>106</sup>

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<sup>104</sup> This is the experience of the families assisted by SCID and as evidenced in SCID, September 2009 – *FOI Responses from Scottish and English Police Forces* which can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

<sup>105</sup> Section 10 of the FOIS Act.

<sup>106</sup> A Special Report to the Scottish Parliament by the Scottish Information Commissioner, January 2012 – *Informing the Future: The State of Freedom of Information in Scotland*.

SCID carried out research in Scotland and England in relation to access to police reports on the investigation of a fatal road collision.<sup>107</sup> It was found that in Scotland, a request by a bereaved family to the police for a copy of the police report into the fatal collision was invariably denied as the information requested was deemed to fall within one or more of the many exemptions set out in the FOIS Act.<sup>108</sup> The exemptions<sup>109</sup> make it relatively easy for the PF and the police to refuse to provide information. It was made clear in the study carried out by SCID that the only information that the family of a road death victim is entitled to receive from the police in relation to a fatal collision is, in relation to other parties involved, the car registration, the insurance policy number and company and the name of the driver.

Access Info Europe carried out a further study into freedom of information and the police in Europe.<sup>110</sup> The study was motivated by a concern that, in Scotland, some routine information held by police is not being made available on request. It found that, in Scotland, information sought through FOI requests to the police was often not provided due to the battle between information and privacy, in other words, the police are utilising the exemptions set out in the FOIS Act.

### 3.2.2 Europe

During this project, 55 formal FOI requests were sent to organisations in each of the 13 Selected Countries. Informal requests for assistance were also sent to 17 NGOs in some of the Selected Countries.

At the time of writing this report, in relation to the FOI requests, 15 responses had been received which provided some or all of the information sought in the requests.<sup>111</sup> Two requests were refused on the basis that the information sought was not covered by the relevant FOI law, 18 responses stated that the authority which received the request was not the appropriate authority to provide the information, three organisations acknowledged receipt of the request but did not provide a detailed response and 14 organisations failed to provide any response. It should be noted that, where an organisation advised that it was not the correct authority to provide the information, it often provided details of the correct authority to contact or advised that it had forwarded the request to the appropriate body.<sup>112</sup> Out of all the responses received, only 22 organisations complied with the statutory time limits set out in the national laws of their respective countries.

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<sup>107</sup> SCID, September 2009 – *FOI Responses from Scottish and English Police Forces* which can be found at [http://www.centrefoi.org.uk/seminars\\_archive.php](http://www.centrefoi.org.uk/seminars_archive.php).

<sup>108</sup> See Part 2 of the FOIS Act.

<sup>109</sup> In particular, those set out in s35 – Law Enforcement, s36 – Confidentiality and s37 – Court Documents.

<sup>110</sup> Access Info Europe and David Goldberg, November 2009 – *The Right to Know: Europe and the Police* which included Scotland, England and Wales and Ireland.

<sup>111</sup> See the table set out in Appendix 5 for more details.

<sup>112</sup> See the table set out in Appendix 6 for more details.

Where a response was received, the information contained in it was often limited, only covering part of the information sought. In other instances, links were provided to websites or documents that did not exist or that did not provide the information requested. In many cases the information was provided in a pdf or photo format that was difficult to use or obtain translations. Where detailed information was provided, much of it was not relevant to the specific request made and so time was spent extracting the necessary information. In one or two cases, the information provided was comprehensive and relevant. Less than half of the respondents complied with legislative time limits. The difficulties encountered in this project in relation to delays, incomplete responses and lack of responses to FOI requests have also been experienced by other research projects.

Access Info Europe has experienced these difficulties in two research projects<sup>113</sup> but most acutely in its project with Reprieve. Access Info Europe and Reprieve used FOI laws to investigate flights associated with extraordinary rendition. They encountered “systematic problems, including administrative silence, lost requests, incomplete responses, a failure by governments to safeguard potentially important data and various excuses designed to prevent the release of information”.<sup>114</sup> They also found that when public bodies processed their requests in accordance with national legislation, the majority of public bodies found that the material requested was not confidential. The report found that silence remains the norm in respect of FOI requests. Requests were often lost in the system and Access Info Europe and Reprieve found that they often had to emphasise the nature of their request in order to illicit a response.

### **3.2.3 FOI Requests: An appropriate process?**

The FOIS Act is intended to create a greater degree of openness amongst public bodies and those whom they serve. It is not intended to be used by grieving families to obtain information that should be made available to them through alternative means and neither should it be. The FOIS Act is not designed for release of the Investigation Documents to grieving families. That right should be set out in alternative legislation, procedures or guidelines.

Forcing a bereaved family to seek information through FOI requests is unacceptable. As indicated previously, the procedure for making a request can be confusing and families will often not be aware of their rights under the FOIS Act. If the request does not provide enough detail or does not ask for the information in the correct manner then it can be delayed or rejected. Requests often need to be followed up with further clarification and can take some time to be answered. Many requests are not answered in the time frame

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<sup>113</sup> Access Info Europe and David Goldberg, November 2009 – The Right to Know: Europe and the Police and Access Info Europe and Reprieve, December 2011 – Rendition on Record

<sup>114</sup> Access Info Europe and Reprieve, December 2011 – Rendition on Record, page 5.

stipulated in the legislation.<sup>115</sup> In relation to requests to the police, many are refused under the various exemptions set out in the FOIS Act. All this will add to the confusion, frustration and grief being felt by the family. It may even lead to a feeling that the truth is being withheld, causing further grief, anxiety, suffering and secondary victimisation.

The COPFS Book of Regulations recognises that “A sudden death is a traumatic event for most nearest relatives and families. At a time when they may be feeling very distressed because of the death, they also have to deal with a variety of new and sometimes bewildering procedures, liaise with official agencies and make important decisions.”<sup>116</sup> The lack of a clear legal framework for the provision of the Investigation Documents to a bereaved family is leading to failings and inconsistencies in the release of the Investigation Documents by COPFS and the police. This is forcing some bereaved families into the use of FOI procedures which are time consuming, confusing and often do not produce a satisfactory result.

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<sup>115</sup> See A Special Report to the Scottish Parliament by the Scottish Information Commissioner, January 2012 – *Informing the Future: The State of Freedom of Information in Scotland*, Access Info Europe and Reprieve, December 2011 – *Rendition on Record* and Campaign for Freedom of Information, 14 February 2012 – *Post Legislative Scrutiny of the Freedom of Information Act 2000*, Submission to the Justice Select Committee.

<sup>116</sup> COPFS Book of Regulations, Section 26.

## 4 ROAD SAFETY POLICY

### 4.1 Europe

This chapter examines the current road safety policy of both Europe and Scotland for the Decade of Action<sup>117</sup> with a view to identifying whether any improvements are proposed in the areas of road collision investigation or access to information by the family of a road death victim.

#### 4.1.1 Consolidated approach

There is presently a move, both in the United Nations<sup>118</sup> and in Europe,<sup>119</sup> towards a more consolidated approach to road safety policy and road collision investigation.

European road safety policy is moving towards creating greater uniformity in the regulations and objectives relating to road traffic.<sup>120</sup> In its paper on policy orientations on road safety in Europe, the European Commission<sup>121</sup> has highlighted the need to create a structured and coherent cooperation framework which draws on best practices across the member states of the European Union in order to implement the road safety policy orientations 2011-2020. The policy orientations aim to provide a general framework and objectives to guide national and local strategies. The European Commission states that a “coherent, holistic and integrated”<sup>122</sup> approach is needed.

With this in mind, Scotland’s road traffic policy, framework and objectives should be consistent with the policy orientations and objectives originating from Europe.

#### 4.1.2 Post-Impact Care

An emphasis on the prevention of collisions in road safety policies is paramount but it has been recognised that there is also a need for a greater focus on post impact care. The World Health Organisation report on Road Traffic Injury Prevention states that it is “...unrealistic to

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<sup>117</sup> The World Health Organisation launched the Decade of Action for Road Safety 2011 – 2020 on 11 May 2011.

<sup>118</sup> United Nations Economic and Social Council, Economic Commission for Europe, Inland Transport Committee, Working Party on Road Traffic Safety, 14 August 2009 - *Consolidated Resolution on Road Traffic (ECE/TRANS/WP.1/123)*.

<sup>119</sup> European Commission, July 2010 (COM (2010) 389 final) – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions – *Towards a European Road Safety Area: Policy Orientations on Road Safety 2011-2020*.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid at page 2.

expect that all crashes can be prevented.”<sup>123</sup> Crashes are inevitable and cannot be avoided completely. There needs to be a strategy in place to deal with post impact care both at the scene and at later stages.

Post impact care covers many factors such as the medical care provided to those involved in the collision at the scene and at hospital, including rehabilitation, the investigation of the road collision and the support, both psychological and practical, provided to the victim and/or family.

There have already been examinations into effective methods to reduce injury and death by better on-scene post impact care through, for example, first aid courses for all new or commercial drivers.<sup>124</sup> The emphasis on the improvement of medical care provided to road crash victims is a vital component in a comprehensive post-crash response strategy. The focus of this report, in relation to the post-crash response phase of an effective road safety strategy, is the information provided to victim families following a fatal crash. This report examines the policies and recommendations in relation to two areas of post impact care that affect the quality and availability of that information: the investigation of the collision and the degree of access to the Investigation Documents.

#### **4.1.2.1 Independent Multi-Disciplinary Road Collision Investigation**

Unlike the rail, civil aviation and maritime transport sectors, there is currently no standard process for investigating road collisions within Europe. Over the last decade there has been a steady stream of research which suggests that the establishment of an independent road collision investigation body in each member state is desirable.<sup>125</sup> The need for independent road collision investigations has been stressed by the European Transport Safety Council<sup>126</sup> (“ETSC”) and the European Commission.<sup>127</sup> The European Commission has made a

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<sup>123</sup> World Health Organisation, Geneva 2004 – *World Report on Road Traffic Injury Prevention: Summary* at page 4.

<sup>124</sup> World Health Organisation, Geneva 2004 – *World Report on Road Traffic Injury Prevention: Summary*.

<sup>125</sup> See Association for European Transport and contributors, 2007 – *Proposing a Framework for Pan-European Transparent and Independent Road Accident Investigation*, European Transport Safety Council (ETSC), 2001 – *Transport Accident and Incident Investigation in the European Union*, Road Strategy for Accidents in Transport (RO-SAT) Working Group, Report from the Road Sector Working Group to the Plenary, 11 May 2006 – *Road Accident Investigation in the European Union: Review and Recommendations*, SafetyNet, 8 November 2006 – Deliverable D4.3, *Draft Recommendations for Transparent and Independent Accident Investigation – A Working Paper*, Supreme, 17 June 2007 – *Summary and Publication of Best Practices in Road Safety in the Member States – Best Practices in Road Safety, Handbook for Measures at the Country Level*.

<sup>126</sup> European Transport Safety Council (ETSC), 2001 – *Transport Accident and Incident Investigation in the European Union*.

<sup>127</sup> European Commission Communication COM (2003) 311 Final - *Saving 20,000 Lives on our Roads: A Shared Responsibility*.

commitment to examine the need for common principles for technical road collision investigation during the Decade of Action.<sup>128</sup>

At present, throughout Europe, there are many different types of road crash investigations carried out by a range of organisations for a variety of purposes.<sup>129</sup> In general, there are investigations by the police for insurance or judicial purposes and there are safety orientated investigations aimed at identifying the causes of the collision without apportioning blame.

Recommendations have been made<sup>130</sup> for each member state to establish an independent multi-disciplinary collision investigation body to investigate fatal road collisions. The recommended structure of such a body and its status are set out in reports by SafetyNet,<sup>131</sup> ETSC<sup>132</sup> and the Road Strategy for Accidents in Transport (RO-SAT) Working Group.<sup>133</sup>

In relation to access to information, those recommendations suggest that the investigation procedures of an independent road collision investigation body should be published in a manual which is publicly available. They also recommend that reports produced by such a body into the circumstances of each fatal collision should be made public and used to develop measures that prevent future occurrences.

The publication of the investigation procedure manual ensures openness and transparency in the investigation process and provides a means by which investigation standards can be measured. The multi-disciplinary nature of the investigation ensures that organisations such as police, emergency services, health services and breakdown companies cooperate to ensure that the best possible information is obtained on the causes of the collision.

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<sup>128</sup> European Commission, July 2010 (COM (2010) 389 final – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions – *Towards a European Road Safety Area: Policy Orientations on Road Safety 2011-2020*, pages 14-15.

<sup>129</sup> As is shown, to some extent, in the responses to the FOI requests.

<sup>130</sup> Association for European Transport and contributors, 2007 – *Proposing a Framework for Pan-European Transparent and Independent Road Accident Investigation*. Road Strategy for Accidents in Transport (RO-SAT) Working Group, Report from the Road Sector Working Group to the Plenary, 11 May 2006 – *Road Accident Investigation in the European Union: Review and Recommendations*, and SafetyNet, 8 November 2006 – Deliverable D4.3, *Draft Recommendations for Transparent and Independent Accident Investigation – A Working Paper*.

<sup>131</sup> SafetyNet, 8 November 2006 – Deliverable D4.3, *Draft Recommendations for Transparent and Independent Accident Investigation – A Working Paper*.

<sup>132</sup> European Transport Safety Council (ETSC), 1999 – *Reducing the Severity of Road Injuries through Post Impact Care* and European Transport Safety Council (ETSC), 2001 – *Transport Accident and Incident Investigation in the European Union*.

<sup>133</sup> Road Strategy for Accidents in Transport (RO-SAT) Working Group, Report from the Road Sector Working Group to the Plenary, 11 May 2006 – *Road Accident Investigation in the European Union: Review and Recommendations*.

The existence of an independent multi-disciplinary road collision investigation body to carry out investigations in tandem with the police is widely acknowledged as best practice among road safety experts. The publication of the final report by such a body provides all those involved in and affected by the collision with a detailed explanation of the circumstances of the crash and the knowledge that the report outcome will be used to prevent future collisions where possible.

Some European countries, such as Sweden,<sup>134</sup> Norway<sup>135</sup> and Finland<sup>136</sup>, already have an independent multi-disciplinary road collision investigation body. In the absence of such a body, the family of a road death victim is reliant upon the Investigation Documents which, as indicated previously, are not always made available and are not always focussed on all aspects of a road collision.<sup>137</sup>

#### 4.1.2.2 *Information for the Family of a Road Death Victim*

The World Health Organisation,<sup>138</sup> the United Nations<sup>139</sup> and the European Commission<sup>140</sup> all recognise the importance of post impact care in road collisions, not only on the reduction of road injuries and deaths, but also the avoidance of trauma related illnesses.

The Supreme report<sup>141</sup> on best practices in road safety states that “A road crash can have far reaching consequences, not only physically, but also psychologically and socially, and not only for the victim, but also for his/her relatives and friends”. Despite this recognition, it has found that there is very little support provided by governments in this area. Psychological, social and practical support is provided through semi-professional volunteer organisations in each member state. The Supreme report extends to 78 pages but only one page is dedicated to psychological and social post impact care of victims and their families. This is not due to the lack of importance of this aspect but due to the lack of policies and procedures in place for this type of support in European countries.

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<sup>134</sup> The Swedish Transport Administration (Trafikverket).

<sup>135</sup> The Norwegian Public Roads Administration.

<sup>136</sup> The Finnish Motor Insurers' Centre.

<sup>137</sup> Such as prevention of future collisions.

<sup>138</sup> World Health Organisation, Geneva 2004 – *World Report on Road Traffic Injury Prevention: Summary*.

<sup>139</sup> United Nations Economic and Social Council, Economic Commission for Europe, Inland Transport Committee, Working Party on Road Traffic Safety, 14 August 2009 - *Consolidated Resolution on Road Traffic (ECE/TRANS/WP.1/123)*.

<sup>140</sup> European Commission Communication COM (2003) 311 Final - *Saving 20,000 Lives on our Roads: A Shared Responsibility*, European Commission, July 2010 (COM (2010) 389 final – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions – *Towards a European Road Safety Area: Policy Orientations on Road Safety 2011-2020*.

<sup>141</sup> Supreme, 17 June 2007 – Summary and Publication of Best Practices in Road Safety in the Member States – *Best Practices in Road Safety, Handbook for Measures at the Country Level*.

It has fallen on the victim support sector<sup>142</sup> rather than the road safety sector to promote improvements in the support of victims through the provision of accurate information. The Framework Decision on the Standing of Victims in Criminal Proceedings has led to improvements in information provision and support of victims and witnesses in many member states, including Scotland.<sup>143</sup>

However, there is some way to go. Road deaths are a unique type of sudden death. The death may or may not be as the result of a crime having been committed and yet the needs of the victim families are often identical.<sup>144</sup> The support for families of victims of road death should be recognised and promoted Europe wide, not only by the victim support sector, but also by the road safety sector as part of an effective road safety and road injury reduction strategy.

## 4.2 Scotland

Scotland's road safety policy for the next decade is set out in Scotland's Road Safety Framework to 2020.<sup>145</sup> The vision set out in the framework is "A steady reduction in the number of those killed and those seriously injured, with the ultimate vision of a future where no-one is killed on Scotland's roads and the injury rate is much reduced."<sup>146</sup>

One of the road safety priorities set out in the framework is "sharing intelligence and good practice".<sup>147</sup> It is made clear in the framework that Scotland is prepared to learn lessons from best practice in other European countries<sup>148</sup> and to lead the way through piloting new road safety ideas in Scotland.

The framework recognises that road collisions, in which people are killed or injured, result in a high social and economic cost including a devastating impact on families.<sup>149</sup> It acknowledges the United Nations Decade of Action and the European Commission's policy orientations on road safety.

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<sup>142</sup> Such as Victim Support Europe with its involvement in the Council Framework Decision of 15 March 2001 on the *Standing of Victims in Criminal Proceedings* (2001/220/JHA).

<sup>143</sup> With the publication of the Scottish Strategy for Victims and the changes made to the COPFS Book of Regulations, the introduction of VIA and the witness service following that strategy.

<sup>144</sup> With, perhaps, the exception of the need for information on the criminal justice procedure where the death did not involve the commission of a crime.

<sup>145</sup> Scottish Government, October 2009 – Scotland's Road Safety Framework to 2020, *Go Safe on Scotland's Roads it's Everyone's Responsibility*.

<sup>146</sup> Ibid at page 5.

<sup>147</sup> Ibid at page 6.

<sup>148</sup> Ibid at the Summary.

<sup>149</sup> Scottish Government, October 2009 – Scotland's Road Safety Framework to 2020, *Go Safe on Scotland's Roads it's Everyone's Responsibility*, page 8.

### 4.2.1 Post Impact Care

Despite its recognition of Europe's policy orientations on road safety and its commitment to learn lessons from best practice, Scotland's road safety framework makes no mention of improvements to post impact care. The emphasis in Scotland's framework for the next decade is on prevention. There is no indication that any improvements in the investigation of fatal collisions will be considered through the introduction of an independent road collision investigation body. Increased government support for victims of road collisions and families of road death victims is also ignored. The post-crash phase of an effective road safety strategy is conspicuous in its absence. The framework's "vision" of a steady reduction in those killed on the roads is acceptance in itself that casualties are unfortunately inevitable and yet the framework makes absolutely no provision for post impact care of the families of those casualties.

In Scotland, as in Europe, improvements in the provision of accurate and timely information and support to victim families originate from the victim support sector<sup>150</sup> rather than those involved in road safety policy.

As indicated previously, road deaths are a unique type of death.<sup>151</sup> They are sudden and violent and, unfortunately, all too frequent. This should be recognised by the Scottish government and other agencies involved in the formulation of road safety policy so that improvements in post impact care, tailored to deal with the unique nature of road deaths, can be implemented. Scotland needs to prove that the commitment in its road safety framework to learn and lead the way is not just a hollow promise. Rather than leaving the support of victims to the victim support sector, Scots law and policy needs to recognise that the support of victims and victims' families is an integral part of a comprehensive and successful road safety strategy.

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<sup>150</sup> Through Victim Support Scotland and road death victim support organisations such as SCID, RoadPeace and Brake.

<sup>151</sup> The unique nature of road deaths was highlighted by the Inspectorate of Prosecution in Scotland in The report by the Inspectorate of Prosecution in Scotland, 16 July 2007 - *Death Cases: A Thematic Report on Liaison in Death Cases with Particular Reference to Organ Retention*.

## 5 CONCLUSION AND RECOMMENDATIONS

The UK is one of the safest EU countries for road use.<sup>152</sup> Yet, despite a steady reduction in road deaths in Scotland, deaths on Scotland's roads have not yet been eradicated.

At the time of the Inspectorate of Prosecution's report<sup>153</sup> on death cases the number of people killed in road incidents was more than three times the number who died as a result of homicide. The report recognised that "the effect of a road death for nearest relatives, next of kin, etc. can be every bit as traumatic as a homicide. These are sudden, violent deaths with huge emotional and financial consequences."<sup>154</sup>

Families bereaved by road death have an understandable need to access information on the circumstances of the fatal road collision, which includes access to the Investigation Documents. Satisfying the need for accurate information, in many cases, is fundamental to the grieving process. Yet, at present, the family of a victim of a road death in Scotland does not have a legal right to access the Investigation Documents.

The aim of this report was to establish whether "best practice" approaches to provision of the Investigation Documents to the family of a road death victim exist in one or more of the Selected Countries. In establishing "best practice" procedures, there is a need to differentiate between those of the Selected Countries where the sole investigating body for a fatal road collision is the police and those where road deaths are investigated by the police alongside an independent multi-disciplinary investigating body.

As indicated previously, from the evidence presented in several studies, it would appear that an independent multi-disciplinary organisation carrying out in-depth investigations into every fatal road collision in tandem with the police and publishing a report with a view to preventing similar collisions in the future is "best practice".<sup>155</sup> It has been suggested that in-depth independent multi-disciplinary investigations into every road death are a core ingredient of road traffic safety policies<sup>156</sup> and have been proven to lead to immediate improvements to the road environment and to road safety.<sup>157</sup> Access to the report of an independent investigating body would go some way towards addressing the need for access

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<sup>152</sup> European Transport Safety Council (ETSC), June 2011 – *2010 Road Safety Target Outcome: 100,000 fewer deaths since 2001, 5<sup>th</sup> Road Safety PIN Report*, page 18.

<sup>153</sup> Inspectorate of Prosecution in Scotland, 16 July 2007 - *Death Cases: A Thematic Report on Liaison in Death Cases with Particular Reference to Organ Retention*.

<sup>154</sup> *Ibid* at page 5.

<sup>155</sup> Such bodies exist in Norway, Sweden and Finland.

<sup>156</sup> Road Strategy for Accidents in Transport (RO-SAT) Working Group, Report from the Road Sector Working Group to the Plenary, 11 May 2006 – *Road Accident Investigation in the European Union: Review and Recommendations*, page 9.

<sup>157</sup> See Vagverket – *In-depth studies of fatal accidents help to save lives* and [www.trafikverket.se](http://www.trafikverket.se).

by bereaved families to information on the circumstances of the road death. Bereaved families may be comforted by the knowledge that a thorough, transparent and independent safety investigation has been conducted which may prevent such a collision happening in the future.

In the absence of an independent investigation body in Scotland, the information available to the family of a victim of a fatal road collision on the circumstances of the crash is contained in the Investigation Documents held by the police and/or the PF in contemplation of criminal proceedings.

An examination of the procedures in the Selected Countries has revealed that, in some of those countries, there are statutory procedures in place for access to the Investigation Documents. Of those countries where there is a legal right to obtain access to the Investigation Documents, Austria appears to provide the family of a road death victim with the most comprehensive rights of access.

As set out in chapter 3, in Austria, the family of a victim of a fatal road collision has a legal right under the penal prosecution code to obtain the full investigation results, at any stage of the investigation, in the same format as it is held by the police or state attorney at the time of the request. As the right of access is contained in the penal prosecution code, there is no need to rely on the discretion of the police or the office of state attorney. This report acknowledges that access to the Investigation Documents at any stage of the investigation may not be appropriate in Scotland due to the need to ensure that criminal proceedings are not prejudiced by disclosure of the Investigation Documents. That does not preclude a law which states that the Investigation Documents are to be released on completion of the investigation, where there are no criminal proceedings, or on conclusion of criminal proceedings.

In Scotland, as there is no independent road collision investigation body that publishes a report and there is no legal right to access the Investigation Documents, the only option for the family of a road death victim, where access to the Investigation Documents has been denied, is to submit a FOI request under the FOIS Act.

As indicated previously, obtaining information under FOI laws can be time-consuming, frustrating, confusing and often does not yield the desired results even after several attempts at clarification and further requests. During the course of this project, 55 FOI requests were submitted to various organisations. Clarification was provided where sought and where responses were not received within the time limit, they were chased. Yet, only 15 responses were received which contained some of the information that was requested and even then, despite providing clarification and reasons for the request, the information contained in those responses was limited and/or incomplete and, on occasions, irrelevant.

The FOIS Act does not provide an appropriate procedure for bereaved families to access information on the death of their loved one; and it was never intended for that purpose. Forcing bereaved families to submit FOI requests will only add to the confusion, frustration and grief being felt by the family. It may even lead to a feeling that the truth is being withheld, causing further grief, anxiety and suffering.

The Council Framework Decision on the Standing of Victims states that “Victim’s needs should be considered and addressed in a comprehensive, co-ordinated manner, avoiding partial or inconsistent solutions which may give rise to secondary victimisation”.<sup>158</sup> In Scotland, access by a family of a road death victim to the Investigation Documents is at the discretion of the PF. Leaving matters to the discretion of individuals will inevitably lead to inconsistency and uncertainty, as is the experience of SCID and the families it supports. A recent report recognises that the current policy of COPFS on how it provides information to victims falls some way short of the requirements of the Scottish Strategy for Victims to which it has committed.<sup>159</sup> It has been shown that FOI laws are not an appropriate method for obtaining access to the Investigation Documents. The lack of any legislative process for obtaining the Investigation Documents following a fatal road collision is leading to secondary victimisation of the family of a road death victim.

Families bereaved by road death are recognised by the Inspectorate of Prosecution in Scotland (“IPS”) as a special group with often unique circumstances.<sup>160</sup> The unique situation of families of road death victims should be recognised by the Scottish government in both its road safety framework and in its victim support strategy.

Scotland is not fulfilling its commitment to Europe to adopt laws that are consistent with the European road safety framework and the victim’s rights strategy. The Haddon Matrix which is a widely recognised model for injury prevention includes a post event phase for analysis and action but Scotland’s road safety strategy omits this phase. The Scottish government should amend the focus in its road safety framework to invest as much effort in the post-crash response phase of road safety policy as it does into prevention. In addition, in order to truly fulfil the minimum standards set out for victims,<sup>161</sup> Scots law should eradicate the

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<sup>158</sup> Council of the Ministers of the European Union, 15 March 2001 – *Framework Decision on the Standing of Victims in Criminal Proceedings* (2001/220/JHA), paragraph 5.

<sup>159</sup> The Inspectorate of Prosecution in Scotland and HM Inspectorate of Constabulary for Scotland, November 2011, *Victims in the Criminal Justice System Phase II* at page 9. The report by the Inspectorate of Prosecution in Scotland and HM Inspectorate of Constabulary for Scotland, October 2010, *Victims in the Criminal Justice System* also found that information provision to victims from the police and COPFS did not match the trend of receipt of or access to relevant and timely information experienced in other public and private sector services.

<sup>160</sup> Inspectorate of Prosecution in Scotland, 16 July 2007 - *Death Cases: A Thematic Report on Liaison in Death Cases with Particular Reference to Organ Retention*.

<sup>161</sup> Council of the Ministers of the European Union, 15 March 2001 – *Framework Decision on the Standing of Victims in Criminal Proceedings* (2001/220/JHA) in Article 2 which puts more emphasis on the support and protection of family members by including the family members in the definition of a victim where the victim has been killed as a result of a criminal offence.

uncertainty and inconsistency surrounding access to Investigation Documents in order to prevent secondary victimisation of the family of a road death victim.

## Recommendations

Until the ultimate goal of Scotland's road safety "vision" of no one being killed or seriously injured on Scotland's roads is achieved, there is a need to recognise the inevitability of fatal road collisions and improve post impact care of the families of road death victims.

The optimum situation would be the establishment of an independent multi-disciplinary investigation body carrying out in-depth safety investigations of all fatal road collisions in tandem with the police and publishing its report, together with primary legislation providing a legal right of access to the Investigation Documents on completion of the investigation or on conclusion of criminal proceedings.

The establishment of an independent and transparent multi-disciplinary road collision investigation body carrying out in-depth analyses of every fatal road collision should be part of Scotland's road safety framework. It is anticipated that the existence of such a body would reduce road collision injuries and deaths<sup>162</sup> and therefore the high economic and social cost to society of such injuries and deaths.<sup>163</sup> The publication of the reports of such a body would not only improve safety for future road users but would also provide a bereaved family with comfort in the knowledge that a thorough investigation has been completed and furnish them with some level of information on the circumstances of the collision.

The right to access the Investigation Documents on completion of the investigation or the conclusion of criminal proceedings should be included in primary legislation<sup>164</sup> as it is done in other European countries.<sup>165</sup> The Directive<sup>166</sup> establishing minimum standards for victims, together with the proposals for victims and witnesses legislation in Scotland, provides the Scottish government with a unique opportunity to improve the rights of families of victims of road death by providing them with a legal right to access the Investigation Documents on

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<sup>162</sup> As is the experience in Sweden, see Vagverket – *In-depth studies of fatal accidents help to save lives* and [www.trafikverket.se](http://www.trafikverket.se).

<sup>163</sup> In 2010, the economic welfare cost of reported collisions in Great Britain was estimated to be around £15 billion. This figure does not take account of collisions not reported to police which could increase the figure to £32 billion, see page 3 of Department for Transport, 29 September 2011 – *Reported Road Casualties in Great Britain: 2010 Annual Report Statistical Release*. In Scotland, the cost of reported collisions, using 2009 figures, was £1,151 million, see Transport Scotland, 25 October 2011 – *Reported Road Casualties in Scotland 2010*. These figures do not take account of the devastating social and psychological impact of collisions on victims and their families and friends.

<sup>164</sup> Such as proposed victims and witnesses legislation for Scotland to encompass the rights set out in the Directive of the European Parliament and the Council establishing *Minimum Standards on the Rights, Support and Protection of Victims of Crime* COM (2011) 275 final.

<sup>165</sup> Such as Austria, Latvia, Belgium and Finland.

<sup>166</sup> Directive of the European Parliament and the Council establishing *Minimum Standards on the Rights, Support and Protection of Victims of Crime* COM (2011) 275 final for which the UK has opted in.

completion of the investigation or on conclusion of criminal proceedings. If there are concerns about data protection then provisions could be included to ensure that all personal data<sup>167</sup> is redacted prior to release of the Investigations Documents. This would remove the current inconsistency and uncertainty and the need to resort to FOI legislation to obtain information at a very distressing time. In essence, it would reduce the risk of secondary victimisation of the family of a road death victim.

In the interim, amendments must be made to the RDIM,<sup>168</sup> the COPFS Book of Regulations and the Guidelines from the Lord Advocate to Chief Constables.<sup>169</sup> The RDIM already states that families “...should be considered as partners in an investigation...”<sup>170</sup> and the COPFS Book of Regulations contemplates disclosure of the Investigation Documents to the family of a road death victim. As the intention is already set out in the RDIM and the COPFS Book of Regulations, it should not be unduly onerous to go one step further and amend each of the RDIM, the COPFS Book of Regulations and the Lord Advocate’s guidelines to include a duty to provide copies of the Investigation Documents to the family of a road death victim on completion of the investigation or the conclusion of criminal proceedings where such documents are requested by the family.

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<sup>167</sup> As defined in section 1 of the Data Protection Act 1998.

<sup>168</sup> ACPOS, November 2008, Road Policing Business Area, *Road Death Investigation Manual: Adoption of Common National Standards*.

<sup>169</sup> Lord Advocate’s Guidelines – Road Traffic Deaths, July 2002, *Guidelines to Assist Chief Constables in the Investigation and Reporting of Road Traffic Deaths*, COPFS website publication.

<sup>170</sup> ACPOS Road Death Investigation Manual at page 96.

## Appendix 1

### Form of FOI Request

Vikki A Long  
Research Assistant  
School of Law  
University of Dundee  
Dundee  
United Kingdom  
DD1 4HN  
Email: [v.a.long@dundee.ac.uk](mailto:v.a.long@dundee.ac.uk)

[Contact details of organisation]

[Date] 2012

Dear Sir/Madam

This is a request under [insert FOI law of country].

Please send me a copy of the document or documents which set out the procedure to be followed by police or any other investigating body on the occurrence of a fatal road collision.

Please also send me information on the following: -

1. Which organisations are responsible for carrying out the investigation of a fatal road collision?
2. Please provide the name of, and a web-link to, the legislation, code of conduct or guidelines in which the procedure for investigating fatal road collisions is contained.
3. What types of information and/or evidence do the police or any other investigating body routinely collect and record following a fatal road collision? If a standard form is used to collate information following a fatal road collision, please provide a blank version of that form.
4. Is there a procedural requirement to provide, to the family of a victim, information and/or evidence collected by police or any other investigating body following a fatal road collision? If there is a procedure which sets out the information to be provided to the family of a victim of a fatal road collision, please send me a copy or provide a web-link to the document setting out the procedure.

5. Are there any guidelines setting out what information and/or evidence collected by police or any other investigating body following a fatal road collision can be shared with the family of a victim? If there are guidelines that set out what information can be shared with the family of a victim of a fatal road collision, please send me a copy or provide a web-link to the document containing those guidelines.
6. If there is no formal procedure or guidance in place for provision of information to the family of a victim of a fatal road collision, is there any informal practice or recommendation that is followed where the family of a victim of a fatal road collision requests information and/or evidence that is routinely collected by police or any other investigating body following a fatal road collision? If there is an informal practice or recommendation, please send a copy of the document setting out that practice or recommendation.
7. Where information would be routinely provided, whether under standard procedure, under formal guidelines or on the request of the family of a victim:-
  - 7.1 in what format would it be provided?
  - 7.2 what would be the content of the information?
  - 7.3 at what stage in the investigation would the information be provided?If there is a pro-forma report for providing information to the family of a victim of a fatal road collision, please send a copy of that pro-forma report.
8. Is there an analogous procedure or approach for collisions that cause serious injury?

Please send the above documentation and information to me electronically at [v.a.long@dundee.ac.uk](mailto:v.a.long@dundee.ac.uk) or, if the documentation and information is not available electronically, please send paper copies to the above address. Where possible, please provide the information requested in English.

I understand that you are required to respond to the above request within [insert number of days]. In any event, please respond within 28 days of the date of this request.

Please confirm receipt of this request within five working days. If you have any questions in relation to the above request or require further clarification please contact me at [v.a.long@dundee.ac.uk](mailto:v.a.long@dundee.ac.uk) as soon as possible.

Yours faithfully

Vikki A Long

## Appendix 2

Table of organisations to which FOI Request was sent

	Country	Organisation	Method Sent	Date Sent	Time limit	Response Received
1	Austria	Ministry of Home Affairs	Email	13 Mar 2012	8 weeks	3 Apr 2012
2	Austria	Federal Criminal Police Office	Email	13 Mar 2012	8 weeks	18 Apr 2012
3	Austria	Federal Ministry for Transport, Innovation and Technology	Email	13 Mar 2012	8 weeks	No response
4	Austria	Federal Office for Transport	Email	13 Mar 2012	8 Weeks	No response
5	Belgium	General Directorate Administrative Police	Post	14 Mar 2012	30 days	4 Apr 2012
6	Belgium	Ministry of Justice	Email	13 Mar 2012	30 days	23 Mar 2012
7	Belgium	Secretariat of the Commission of Local Police	Email	13 Apr 2012	30 days	No response
8	Belgium	Ministry of Transport	Email	13 Mar 2012	30 days	No response
9	Belgium	Belgian Institute for Road Safety (BIVV)	Fax	14 Mar 2012	30 days	Acknowledged receipt
10	Denmark	Ministry of Justice	Email	29 Feb 2012	10 days	8 Mar 2012
11	Denmark	Ministry of Transport	Email	2 Mar 2012	10 days	17 May 2012
12	Denmark	Danish National Police	Email	29 Feb 2012	10 days	7 May 2012
13	Denmark	Danish Road Traffic Accident Investigation Board (HVV)	Email	29 Feb 2012	10 days	6 Mar 2012
14	Denmark	Danish Transport Authority	Email	29 Feb 2012	10 days	5 Mar 2012
15	Finland	Ministry of the Interior	Email	29 Feb 2012	14 days	11 May 2012
16	Finland	National Traffic Police	Fax	2 Mar 2012	14 days	No response
17	Finland	Ministry of Transport and Communications	Email	29 Feb 2012	14 days	Acknowledged receipt
18	France	Ministry of the Interior	Post	14 Mar 2012	One month	No response
19	France	Ministry of Ecology, Sustainable Development, Transport and	Post	14 Mar 2012	One	No response

	Country	Organisation	Method Sent	Date Sent	Time limit	Response Received
		Housing			month	
20	France	Bureau d'Enquetes sur les Accidents de Transport Terrestre	Fax	14 Mar 2012	One month	No response
21	France	National Road Safety Council	Post	14 Mar 2012	One month	No response
22	Germany	Federal Ministry of the Interior	Fax	14 Mar 2012	One month	16 Mar 2012
23	Germany	Bavarian State Ministry of the Interior	Email	16 Mar 2012	One month	No response
24	Germany	Ministry of Home Affairs and Local of Nordrhein-Westfalen	Email	16 Mar 2012	One month	20 Mar 2012
25	Germany	Lower Saxony Ministry of Home Affairs and Sports	Email	16 Mar 2012	One month	16 May 2012
26	Germany	Federal Ministry for Transport, Building and Urban Development	Email	13 Mar 2012	One month	16 Mar 2012
27	Germany	Federal Motor Transport Authority (Kraftfahrt-Bundesamt)	Email	13 Mar 2012	One month	19 Mar 2012
28	Greece	Minister of Citizen Protection	Email	29 Feb 2012	60 days	27 Mar 2012
29	Greece	Hellenic Police Headquarters	Email	29 Feb 2012	60 days	7 Mar 2012
30	Greece	Hellenic Ministry of Infrastructure, Transport and Networks	Email	29 Feb 2012	60 days	No response
31	Latvia	State Police	Email	29 Feb 2012	15 days	30 Mar 2012
32	Latvia	Ministry of the Interior	Email	29 Feb 2012	15 days	30 Mar 2012
33	Latvia	Ministry of Transport and Communications	Email	29 Feb 2012	15 days	No response
34	Latvia	Latvian Road Safety Directorate	Email	29 Feb 2012	15 days	25 Apr 2012
35	Netherlands	Ministry of the Interior and Kingdom Relations	Fax	2 Mar 2012	14 days	8 Mar 2012
36	Netherlands	Ministry of Infrastructure and the Environment	Fax	2 Mar 2012	14 days	No response
37	Netherlands	Dutch Safety Board	Email	29 Feb 2012	14 days	2 Mar 2012
38	Norway	Ministry of Justice and the Police	Email	29 Feb 2012	3 days	No response

	<b>Country</b>	<b>Organisation</b>	<b>Method Sent</b>	<b>Date Sent</b>	<b>Time limit</b>	<b>Response Received</b>
39	Norway	Ministry of Transport and Communications	Email	29 Feb 2012	3 days	2 Mar 2012
40	Norway	Norwegian Public Roads Administration (NPRA)	Email	29 Feb 2012	3 days	23 Mar 2012
41	Romania	Ministry of Administration and the Interior	Email	2 Mar 2012	10 days	7 Mar 2012
42	Romania	Ministry of Interior and Administration Reform - General Inspectorate of Romanian Police	Email	2 Mar 2012	10 days	9 Mar 2012
43	Romania	Directorate for Road Police	Email	2 Mar 2012	10 days	9 Mar 2012
44	Romania	Directorate for Transport Police	Email	2 Mar 2012	10 days	5 Mar 2012
45	Romania	Ministry of Transportation and Infrastructure	Email	2 Mar 2012	10 days	24 Apr 2012
46	Romania	Romanian Road Transport Authority	Email	2 Mar 2012	10 days	15 Mar 2012
47	Sweden	Swedish National Police Board	Email	29 Feb 2012	3 days	27 Apr 2012
48	Sweden	Ministry of Justice	Fax	2 Mar 2012	3 days	28 Mar 2012
49	Sweden	Ministry for Enterprise, Energy and Communications	Email	29 Feb 2012	3 days	6 Mar 2012
50	Sweden	Swedish Transport Administration (Trafikverket)	Email	29 Feb 2012	3 days	19 Mar 2012
51	Sweden	VTI, Ministry of Industry	Email	29 Feb 2012	3 days	23 Apr 2012
52	Switzerland	Federal Office for Police	Fax	14 Mar 2012	20 days	22 Mar 2012
53	Switzerland	Federal Roads Office (FEDRO)	Email	13 Mar 2012	20 days	19 Mar 2012
54	Switzerland	Federal Department of the Environment, Transport, Energy and Communications (DETEC)	Email	13 Mar 2012	20 days	Acknowledged receipt
55	Switzerland	Swiss Accident Investigation Board (SAIB)	Email	13 Mar 2012	20 days	19 Apr 2012

## Appendix 3

### Form of request sent to non-governmental organisations

Vikki A Long  
Research Assistant  
School of Law  
University of Dundee  
Dundee  
United Kingdom  
DD1 4HN  
Email: [v.a.long@dundee.ac.uk](mailto:v.a.long@dundee.ac.uk)

[Contact details of organisation]

[Date] 2012

Dear Sir/Madam

#### **Research Project – Scotland’s Campaign against Irresponsible Drivers (SCID)**

I am a research assistant with the University of Dundee, Scotland. We are undertaking a research project on behalf of Scotland’s Campaign against Irresponsible Drivers (SCID). One of SCID’s main objectives is to help and advise the family of a victim of a fatal road crash. You can find out more about SCID by visiting <http://scid.org.uk>.

The aim of the research project for SCID is to establish whether there is a system in place in Europe by which police organisations or other investigating bodies provide, as a matter of procedure or on request, information to the family of a victim following a fatal road crash that could be deemed to be best practice and from which Scottish police forces or other investigating bodies could base their procedures.

As part of this project I am contacting various police organisations and government bodies in selected European countries, including [insert country], using Freedom of Information laws. However, I am unsure as to the quality of the response I will receive from those organisations. As the project is looking for a “best practice” procedure, I will also be contacting various NGOs in the road safety and crash investigation sector in order to obtain information on post-crash information provision to the family of a victim of a fatal road collision.

I am aware that [insert organisation] is actively involved in promoting improvements in road safety and post-crash analysis of fatal road collisions. At the conclusion of the research project, SCID and the University of Dundee are looking to produce a report with recommendations to the Scottish parliament for reform of the investigation procedures

following a fatal road crash in Scotland which will include the provision of information to the family of a victim of a fatal road crash. Any advice or assistance that you may be able to provide in relation to this project is greatly appreciated.

I am hoping to obtain a copy of the document or documents (if any) which set out the procedure to be followed by police or any other investigating body on the occurrence of a fatal road collision in [insert country].

In addition, I am seeking answers to the following questions as they apply in [insert country]: -

1. Which organisations are responsible for carrying out the investigation of a fatal road collision?
2. Is the procedure for investigating fatal road collisions set out in legislation or is it a code of conduct or otherwise?
3. What type of information and/or evidence do the police or any other investigating body collect following a fatal road collision?
4. Is the information and/or evidence collected by police or any other investigating body following a fatal road collision provided to the family of the victim as part of a standard procedure?
5. If there is no standard procedure in place for provision of information to the family of a victim of a fatal road collision, would the information and/or evidence collected by police or any other investigating body following a fatal road collision be provided to the family of the victim where it was requested?
6. Where information is provided, whether under standard procedure or on the request of the family of a victim: -
  - 6.1 in what format is it provided?
  - 6.2 what is the content of the information?
  - 6.3 at what stage in the investigation would the information be provided?
7. Is there an analogous procedure or approach for collisions that cause serious injury?

I would be most grateful if you could provide answers to any of the above questions as they apply to [insert country] or provide a web link to enable me to view documents that may provide the answers.

If you need any further information or clarification please do not hesitate to contact me at the above email address.

Many thanks in advance for your time and assistance.

Yours faithfully

Vikki A Long

## Appendix 4

Table of non-governmental organisations to which request for information was sent

	Country	Organisation	Method Sent	Date Sent	Response Received
1	Austria	Austrian Road Safety Board (KFV)	Email	13 Mar 2012	15 Mar 2012
2	Belgium	European Transport Safety Council (ETSC)	Email	13 Mar 2012	15 Mar 2012
3	Belgium	Belgian Road Safety Institute (IBSR)	Fax	14 Mar 2012	Acknowledged receipt
4	Belgium	Parents of Child Victims of the Road	Email	13 Mar 2012	No response
5	Belgium	Rondpunt	Email	13 Apr 2012	No response
6	Denmark	Danish Transport Research Institute (DTU)	Email	29 Feb 2012	No response
7	Denmark	Danish Road Safety Council	Email	29 Feb 2012	No response
8	Finland	Liikenneturva	Email	29 Feb 2012	No response
9	France	French Institute of Science and Technology of Transport, Development and Networks (IFSTTAR)	Email	13 Mar 2012	No response
10	Germany	German Road Safety Council (DVR)	Email	13 Mar 2012	No response
11	Germany	University of Osnabrueck	Email	16 Mar 2012	Acknowledged receipt
12	Greece	Hellenic Association for Road Traffic Victim Support ( E.Y.ΘY.T.A )	Email	29 Feb 2012	Acknowledged receipt
13	Netherlands	Institute for Road Safety Research (SWOV)	Email	29 Feb 2012	No response
14	Netherlands	Netherlands Safe Movement (VVN)	Email	29 Feb 2012	No response
15	Netherlands	University of Groningen	Email	24 Feb 2012	19 May 2012
16	Norway	Safe Traffic	Email	1 Mar 2012	No response
17	Sweden	National Society for Road Safety	Email	1 Mar 2012	No response

## Appendix 5

Table showing a breakdown of the responses to FOI Requests

	Country	Organisation	Detailed response received	Copy of police form received	Response Within Time limit	Not Appropriate Authority	Refused to provide response	Acknowledged receipt but no further response	No response
1	Austria	Ministry of Interior	Yes	Yes	Yes				
2	Austria	Federal Criminal Police Office	No	No	Yes		Yes		
3	Austria	Federal Ministry for Transport, Innovation And Technology	No	No	No				Yes
4	Austria	Federal Office for Transport	No	No	No				Yes
5	Belgium	General Directorate Administrative Police	Yes	No	Yes				
6	Belgium	Ministry of Justice	Yes	No	Yes				
7	Belgium	Ministry of Transport	No	No	No				Yes
8	Belgium	Belgian Institute for Road Safety (BIVV)	No	No	No			Yes	
9	Belgium	Secretariat of the Commission of Local Police	No	No	No				Yes
10	Denmark	Ministry of Justice	No	No	Yes		Yes		

	<b>Country</b>	<b>Organisation</b>	<b>Detailed response received</b>	<b>Copy of police form received</b>	<b>Response Within Time limit</b>	<b>Not Appropriate Authority</b>	<b>Refused to provide response</b>	<b>Acknowledged receipt but no further response</b>	<b>No response</b>
11	Denmark	Ministry of Transport	No	No	No	Yes			
12	Denmark	Danish National Police	Yes	No	No				
13	Denmark	Danish Road Traffic Accident Investigation Board (HVV)	No	No	Yes	Yes			
14	Denmark	Danish Transport Authority	No	No	Yes	Yes			
15	Finland	Ministry of the Interior	Yes	No	No				
16	Finland	National Traffic Police	No	No	No				Yes
17	Finland	Ministry of Transport and Communications	No	No	No			Yes	
18	France	Ministry of the Interior	No	No	No				Yes
19	France	Ministry of Ecology, Sustainable Development, Transport and Housing	No	No	No				Yes
20	France	Bureau d'Enquetes sur les Accidents de Transport Terrestre	No	No	No				Yes
21	France	National Road Safety Council	No	No	No				Yes
22	Germany	Federal Ministry of the Interior	Yes	No	Yes	Yes			

	<b>Country</b>	<b>Organisation</b>	<b>Detailed response received</b>	<b>Copy of police form received</b>	<b>Response Within Time limit</b>	<b>Not Appropriate Authority</b>	<b>Refused to provide response</b>	<b>Acknowledged receipt but no further response</b>	<b>No response</b>
23	Germany	Bavarian State Ministry of the Interior	No	No	No				Yes
24	Germany	Ministry of Home Affairs and Local of Nordrhein-Westfalen	Yes	Yes	Yes				
25	Germany	Lower Saxony Ministry of Home Affairs and Sports	Yes	Yes	No				
26	Germany	Federal Ministry for Transport, Building and Urban Development	No	No	Yes	Yes			
27	Germany	Federal Motor Transport Authority (Kraftfahrt-Bundesamt)	No	No	Yes	Yes			
28	Greece	Minister of Citizen Protection	Yes	Yes	Yes				
29	Greece	Hellenic Police Headquarters	Yes	Yes	Yes				
30	Greece	Hellenic Ministry of Infrastructure, Transport and Networks	No	No	No				Yes
31	Latvia	State Police	Yes	Yes	No				

	<b>Country</b>	<b>Organisation</b>	<b>Detailed response received</b>	<b>Copy of police form received</b>	<b>Response Within Time limit</b>	<b>Not Appropriate Authority</b>	<b>Refused to provide response</b>	<b>Acknowledged receipt but no further response</b>	<b>No response</b>
32	Latvia	Ministry of the Interior	Yes	Yes	No				
33	Latvia	Ministry of Transport and Communications	No	No	No				Yes
34	Latvia	Latvian Road Safety Directorate	No	No	No	Yes			
35	Netherlands	Ministry of the Interior and Kingdom Relations	No	No	Yes	Yes			
36	Netherlands	Ministry of Infrastructure and the Environment	No	No	No				Yes
37	Netherlands	Dutch Safety Board	Yes	No	Yes				
38	Norway	Ministry of Justice and the Police	No	No	No				Yes
39	Norway	Ministry of Transport and Communications	No	No	No	Yes			
40	Norway	Norwegian Public Roads Administration (NPRA)	Yes	No	No				
41	Romania	Ministry of Administration and the Interior	No	No	Yes	Yes			
42	Romania	Ministry of Interior and Administration Reform - General	Yes	Yes	Yes				

	<b>Country</b>	<b>Organisation</b>	<b>Detailed response received</b>	<b>Copy of police form received</b>	<b>Response Within Time limit</b>	<b>Not Appropriate Authority</b>	<b>Refused to provide response</b>	<b>Acknowledged receipt but no further response</b>	<b>No response</b>
		Inspectorate of Romanian Police							
43	Romania	Directorate for Road Police	Yes	Yes	Yes				
44	Romania	Directorate for Transport Police	No	No	Yes	Yes			
45	Romania	Ministry of Transportation and Infrastructure	No	No	No	Yes			
46	Romania	Romanian Road Transport Authority	No	No	Yes	Yes			
47	Sweden	Swedish National Police Board	No	No	No	Yes			
48	Sweden	Ministry of Justice	Yes	Yes	No				
49	Sweden	Ministry for Enterprise, Energy and Communications	No	No	No	Yes			
50	Sweden	Swedish Transport Administration (Trafikverket)	Yes	No	No				
51	Sweden	VTI, Ministry of Industry	No	No	No	Yes			
52	Switzerland	Federal Office for Police	No	No	Yes	Yes			
53	Switzerland	Federal Roads Office (FEDRO)	Yes	Yes	Yes				

	<b>Country</b>	<b>Organisation</b>	<b>Detailed response received</b>	<b>Copy of police form received</b>	<b>Response Within Time limit</b>	<b>Not Appropriate Authority</b>	<b>Refused to provide response</b>	<b>Acknowledged receipt but no further response</b>	<b>No response</b>
54	Switzerland	Federal Department of the Environment, Transport, Energy and Communications (DETEC)	No	No	No			Yes	
55	Switzerland	Swiss Accident Investigation Board (SAIB)	No	No	No	Yes			

## Appendix 6

**Table showing the response of organisations where they stated that they were not the appropriate authority to deal with the FOI request**

	<b>Country</b>	<b>Organisation</b>	<b>Forwarded request to correct organisation</b>	<b>Provided details of the appropriate organisation to contact</b>	<b>Provided a link to other suggested organisations</b>	<b>Referred to a response already provided by another organisation</b>	<b>Did not provide any assistance</b>
1	Denmark	Ministry of Transport		Yes			
2	Denmark	Danish Road Traffic Accident Investigation Board (HVV)		Yes			
3	Denmark	Danish Transport Authority	Yes				
4	Germany	Federal Ministry of the Interior		Yes	Yes		
5	Germany	Federal Ministry for Transport, Building and Urban Development		Yes			
6	Germany	Federal Motor Transport Authority		Yes			
7	Latvia	Latvian Road Safety Directorate	Yes				
8	Netherlands	Ministry of the Interior	Yes				

	Country	Organisation	Forwarded request to correct organisation	Provided details of the appropriate organisation to contact	Provided a link to other suggested organisations	Referred to a response already provided by another organisation	Did not provide any assistance
		and Kingdom Relations					
9	Norway	Ministry of Transport and Communications	Yes	Yes			
10	Romania	Ministry of Administration and the Interior	Yes				
11	Romania	Directorate for Transport Police	Yes				
12	Romania	Ministry of Transportation and Infrastructure	Yes				
13	Romania	Romanian Road Transport Authority	Yes				
14	Sweden	Swedish National Police Board	Yes				
15	Sweden	Ministry for Enterprise, Energy and Communications		Yes			
16	Sweden	VTI, Ministry of Industry		Yes			
17	Switzerland	Federal Office for Police				Yes	
18	Switzerland	Swiss Accident Investigation Board					Yes

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## Abbreviations and Definitions

<b>ACPOS</b>	Association of Chief Police Officers in Scotland
<b>COPFS</b>	Crown Office and Procurator Fiscal Service
<b>DSB</b>	Dutch Safety Board
<b>ETSC</b>	European Transport Safety council
<b>FEDRO</b>	Federal Roads Office (Switzerland)
<b>FEVR</b>	European Federation of Road Traffic Victims
<b>FMIC</b>	Finnish Motor Insurers' Centre
<b>FLO</b>	Family Liaison Officer
<b>FOI</b>	Freedom of Information
<b>IPS</b>	Inspectorate of Prosecution in Scotland
<b>KLPD</b>	Netherlands Police Agency
<b>NGOs</b>	Non-Governmental Organisations
<b>NPRA</b>	Norwegian Public Roads Authority
<b>NRW</b>	North Rhine Westphalia
<b>PF</b>	Procurator Fiscal
<b>RDIM</b>	Road Death Investigation Manual
<b>RP SIO</b>	Road Policing Senior Investigating Officer
<b>SCID</b>	Scotland's Campaign against Irresponsible Drivers
<b>STA</b>	Swedish Transport Administration
<b>the FOIS Act</b>	The Freedom of Information (Scotland) Act 2002
<b>the Foundation</b>	Foundation for Police Reports, the Netherlands

**the Investigation Documents**

the police report and collision investigator's report and associated documentation, including sketches and photographs, compiled by the police, the procurator fiscal and other experts and agencies during the investigation into a fatal road collision.

**the Selected Countries**

together Austria, Belgium, Denmark, Finland, France, Germany, Greece, Latvia, the Netherlands, Norway, Romania, Sweden and Switzerland.

**VIA**

Victim Information and Advice