

Our Ref: IM-FOI-2021-0765  
Date: 26 April 2021



## FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

**I am requesting information in regard to Code of Ethics for policing in Scotland therefore I would hope it's information you hold to ensure compliance.**

I must first advise you that the Freedom of Information (Scotland) Act 2002 only extends to the provision of *recorded* information.

Police Scotland is not obligated to speculate or offer any opinion where no such *recorded* information exists as we are not required to do so by the Act.

Nonetheless it is recognised that there is a general public interest in transparency by public authorities and as such we have provided as full a response as possible.

For context, the general principles of Policing in Scotland are enshrined within the Police and Fire Reform (Scotland) Act 2012 as well as at common law.

The Scottish common law principles are complemented by the Human Rights Act which is devolved to Scotland by the Scotland Act 1998 and the European Convention on Human Rights (ECHR) which is a living instrument and seeks to take account of changes in society and the prevalent values recognised within it.

On that basis, the Code of Ethics for Policing in Scotland sets out the standards expected of all of those who contribute to policing in Scotland. This is available via the following link:

<http://www.scotland.police.uk/about-us/code-of-ethics-for-policing-in-scotland/>

*\*I will not undertake high-risk activities or use force other than where strictly necessary in order to attain a legitimate objective and only after I have balanced all the competing priorities I am aware of. (Article 2)*

**1) How many complaints have been made between March 2020 and the present day where an officer has been accused of using force when not strictly necessary?**

This question has been interpreted as referring to allegations of Excessive Force.

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On that basis a total of 591 On Duty allegations of Excessive Force were received between 01/03/2020 - 31/03/2021 inclusive.

For clarity, the data is based on the 'case received' date.

### 2) How many of these complaints have been investigated?

All allegations received are assessed, recorded and allocated by the Professional Standards Department (PSD).

Further details surrounding the process for managing allegations is contained within the Complaints about the Police Standard Operating Procedures, which are available at the following link;

<https://www.scotland.police.uk/spa-media/fifhh5vo/complaints-about-the-police-sop.pdf>

### 3) How many of these complaints came from public? How many from internal complaints?

A total of 517 complainers were attached to the 591 allegations of Excessive Force received between 01/03/2020 - 31/03/2021 inclusive. All complainers were recorded as members of the public. None were recorded as Police Officers or Police Staff.

Please note that complainers are counted once per complaint case. Each case may include multiple allegations, including multiple allegations of Excessive Force. Each allegation may also have multiple complainers. Therefore, the number of complainers may vary from the number of relevant allegations.

### 4) How many times between March 2020 and the present day has it been found that a Police Scotland officer undertook high risk activities or used force when it was not strictly necessary?

Again, this question has been interpreted as referring allegations of Excessive Force described above. Moreover, 'found' in relation to the above question is interpreted as instances where those allegations were 'upheld' following enquiry.

Allegations can only be upheld at the point when the enquiry into the allegation has been completed, therefore data has been provided based on allegations closed between 01/03/2020 - 31/03/2021 inclusive.

On that basis a total of 12 On Duty allegations of Excessive Force were upheld between 01/03/2020 - 31/03/2021 inclusive. Data is based on the allegation closed date.

Please note, allegations closed during this period are not necessarily those received within this period, as allegations may have been received prior to the timeframe specified.

*\*I will not encourage, instigate or tolerate any act of torture or inhuman or degrading treatment under any circumstance nor will I stand by and allow others to do the same. I understand that the*

*humane treatment of prisoners is an essential element of policing and that the dignity of all those I am trusted to care for remains my responsibility. (Article 3)*

**5) What constitutes an act of torture, inhuman or degrading treatment in accordance with this code and oath that a police Scotland officer will not encourage, instigate or tolerate?**

Police Scotland recognises the definition of torture under Article 3 of the European Human Rights Convention (ECHR) which declares: The Human Rights Court has stated that torture is 'deliberate inhuman treatment causing very serious and cruel suffering' and goes on to further expand inhuman or degrading treatment.

Police Scotland has published their Code of Ethics (see link above) which sets out the standards expected of all those who contribute to policing in Scotland.

Any conduct by staff or officers which are perceived to be unfair, inappropriate or unlawful can be reported to Police Scotland and will be investigated.

*\*I understand that people have an equal right to liberty and security. Accordingly, I will not deprive any person of that liberty, except in accordance with the law. (Article 5)*

**6) In understanding people have this right, What does liberty and security mean in accordance with the police Scotland code of ethics and oath?**

I must again refer you to the European Human Rights Convention (ECHR) which provides the basis for the Code of Ethics for Policing in Scotland, which sets out the standards expected of all of those who contribute to policing in Scotland and ensures that policing activity treats people with integrity, fairness and respect and only within the law.

A person's liberty will only be removed by a constable through powers provided by law and in accordance with the code of ethics.

**7) What laws allow police Scotland to deprive any person of that liberty?**

In line with ECHR, Police Scotland will only deprive persons of their liberty with lawful cause.

To clarify, a person can have their liberty removed under the following legislation:

Part I of the Criminal Justice (Scotland) Act 2016 allows for a person to be arrested where they are suspected of having committed a crime and their presence in police custody is necessary and proportionate. This is subject of supervisory review.

There are Non-Criminal Justice Act arrest powers which include:

- Sections 6D and 7(5A) of the Road Traffic Act 1988;
- Section 40 of the Prisons (Scotland) Act 1989;
- Sections 19(6), 19AA(12) and 28(1) of the 1995 Act;
- Section 4(1) of the Protection from Abuse (Scotland) Act 2001;

- Section 5 of the Extradition Act 2003;
- Section 28 of the Adult Support and Protection (Scotland) Act 2007
- Terrorism Act 2006
- Transport and Workers Act 1992.

There are also additional powers to detain and search under various other pieces of legislation.

*\*I will investigate crimes objectively and be sensitive to the particular needs of affected individuals whilst following the principle that everyone who is the subject of criminal investigation is innocent until found guilty by a court. (Article 6)*

### **8) How many arrests have police Scotland made for breaking coronavirus laws since March 2020 to present day?**

The information you request in relation to arrests is particularly difficult to retrieve as the police in Scotland have the power to arrest an individual where there is sufficient evidence to support a charge against them. However this figure will not include all instances where a report has been sent to the Crown Office & Procurator Fiscal Service (COPFS) and should not be interpreted as such. The power of arrest should be exercised only if it is necessary in the interests of justice that the offender should be taken into custody and if citation will prove equally effectual, an arrest may not be made.

On that basis, initial checks indicate that between 1st March 2020 and 9th April 2021 there were 324 persons arrested for Coronavirus related offences.

### **9) How many people have been charged for Coronavirus offences for same period?**

Police Scotland have recorded 20,665 charges between 01/03/2020 and 09/04/2021 – these are both Fixed Penalty Notices (technically still charged) and reports to COPFS under the regulations.

### **10) How many people for the same time period were arrested and charged reached court?**

On the assumption that the figure requested relates to those arrested for Coronavirus related offences, and have since had an appearance at court, the figure is as follows

Held for court - 79

Released on undertaking AND the Undertaking to Appear date has already passed (as at 9th April 2021) - 118

### **11) How many for the same time period were found guilty of the offence at court and not guilty?**

Police Scotland does not hold data regarding prosecutions and this is a matter for the Crown Office and Procurator Fiscal Service. You may wish to make this request directly to the FOI Officer, Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA.

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Information relating to convictions for offences relating to this request would be held by the Scottish Courts and Tribunals Service. You may wish to make this request directly to the FOI Officer, Scottish Courts and Tribunals Service Headquarters, 1A Parliament Square, Edinburgh, EH1 1RF.

Therefore under Section 17 of the Freedom of Information (Scotland) Act 2002 I must inform you that we do not hold the information you have requested.

### **12) When investigating coronavirus crimes what needs of affected individuals are Police Scotland taking into account when investigating objectively and being sensitive to these particular needs of affected individuals?**

Police Scotland's activities are in line with the Code of Ethics (above) and the Crime Investigation Standard Operating Procedure which provides Officers and Police Staff with a general guide to the investigation of crime.

A link to this is available below:

<https://www.scotland.police.uk/access-to-information/policies-and-procedures/standard-operating-procedures/standard-operating-procedures-c/>

*\*In carrying out my duties I shall respect everyone's fundamental rights. I will only interfere with privacy or family life when I am legally authorized to do so. (Article 8)*

### **13) What legislation and what sections/parts of the legislation gives police Scotland the authority to interfere with a civilians fundamental rights to privacy or family?**

Again, I must refer you to the ECHR.

By way of further assistance I have also provided the link to the following document;

<https://www.scotland.police.uk/spa-media/gksk40zp/equality-and-human-rights-impact-assessment-sop.pdf>

*\*I will respect individual freedoms of thought, conscience or religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions. (Articles 9,10,11)*

### **14) When this section of code cannot be affected by any laws, what has allowed Police Scotland to issue fines and arrest people for expressing their freedom of thought and conscience both in the action of peaceful assembly or in movement when and how they have a right to do?**

The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 were created by Scottish Government in March 2021 and passed through the Scottish Parliament in response to a pandemic and subsequent public health crisis.

Additional and supplementary legislation has since been passed through the Scottish Parliament in response to the changing landscape caused by the pandemic.

Parts of the legislation were shaped to prevent large gatherings and widespread transmission of the COVID-19 virus, essentially making gatherings of specified numbers unlawful.

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Police officers have a duty to investigate crime and take enforcement action if necessary. This applies to both Common Law and Statutory laws which have been passed through parliament and therefore includes the above statutes. As large gatherings became unlawful with the passing of the legislation, officers of Police Scotland have power to investigate and enforce alleged breaches of the law.

Notwithstanding, Police Scotland's approach has remained unchanged throughout the pandemic and continues to promote 'Engage, Explain and Encourage' methods prior to 'Enforcement' action being taken. It remains the position that officers may move more quickly through this process if they perceive that persons are engaging in a blatant, conscious and inexcusable breach of regulations, or where absence of enforcement would have a significant impact on public health and/ or public confidence.

### **15) In regards to coronavirus or lockdown measures only, how many times have Police Scotland moved on or broken up a peaceful assembly between March 2020 to present day where people were expressing freedom of thought or conscience?**

I regret to inform you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations.

As you may be aware the current cost threshold is £600 and I estimate that it would cost well in excess of this amount to process your request.

As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

An accurate response would require extensive research into each coronavirus intervention recorded as having occurred in a public place over the past year, an exercise which would greatly exceed the cost limitations of the Act.

To put this into context between 01/04/2020 and 31/03/2021 there were 11,345 incidents of intervention under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 in a public place involving 74,139 individuals.

### **16) Also (how) many fines have been issued for the same period by Police Scotland to people when they were exercising their rights to movement? Please provide for both movement of vehicles and movement of pedestrians?**

Between 01/04/2020 and 31/03/2021, 832 FPNs were recorded on Police Scotland's Coronavirus Intervention System as being issued to people in respect of Covid travel restrictions under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (*data correct as at 15 March 2021*). This is not broken down to whether they were in a vehicle or not.

To be of further assistance I have provided a link below which provide further information and data about engagement with the public, fixed penalties issued and number of arrests for whole of Scotland.

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<https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

If you require further assistance or are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions.

Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to [foi@scotland.pnn.police.uk](mailto:foi@scotland.pnn.police.uk) or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision. You can apply [online](#), by email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info) or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.