| Police Scotland logo | Freedom of Information Response Our reference: FOI 25-1333  Responded to: 14 May 2025 |
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Your recent request for information is replicated below, together with our response.

## Q1.  When receiving a report of an on-duty criminal complaint against the police, how are the principles of the Scottish Crime Recording Standard applied in terms of

## - crime recording

## - 'record to investigate' rather than 'investigate to record'?

## - the principle of Following initial registration, an incident will be recorded as a crime in all cases if:

## the circumstances amount to a crime defined by Scots Law or an offence under statute; and

## there is no credible evidence to the contrary

## Once recorded, a crime will remain recorded unless there is credible evidence to disprove that a crime had occurred.

The process in respect of on-duty criminality is governed by Regulation 9(1) of The Police Service of Scotland (Conduct) Regulations 2014 which states that the police have a duty to refer a complaint to the Procurator Fiscal where “it can reasonably be inferred that a constable may have committed a criminal offence”.  Where there is a reasonable inference of criminality in respect of on-duty conduct by a member of Police Scotland the circumstances will be referred to the Criminal Allegations Against the Police Division (CAAPD) who are a specialist division of the Crown Office and Procurator Fiscal Service (COPFS) who independently investigate criminal allegations (including anti-corruption cases) made against Police Officers in Scotland acting in the course of their duty.  CAAPD will assess the matter and establish if the circumstances amount to criminality.  This governance enables a fair, independent and transparent process.  Therefore, until CAAPD confirm the circumstances amount to criminality only then will Police Scotland raise a crime report in accordance with the Scottish Crime Recording Standards.  This process is the only process followed in respect of on-duty criminality by officers and the application of SCRS.

## Q2. What is the criminal threshold for 'neglect or violation of duty' per s22(3) Police and Fire Reform (Scotland) Act 2012 when a report of this is received by PSD?

As stated in the previous question the process in respect of on-duty criminality is governed by Regulation 9(1) of The Police Service of Scotland (Conduct) Regulations 2014.  Where there is a reasonable inference of criminality in respect of on-duty conduct by a member of Police Scotland the circumstances will be referred to CAAPD.  Since this crime applies only to Police Officers it would be a matter for CAAPD to assess the circumstances of each individual incident and decide whether this would meet the criminal threshold for neglect of duty using the legislation, caselaw and other guidance available.  As such, the information requested is not held by Police Scotland and section 17(1)(b) of the Freedom of Information (Scotland) Act 2002 therefore applies.

If you require any further assistance, please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](https://www.foi.scot/appeal), by [email](mailto:enquiries@foi.scot) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.