

Our Ref: IM-FOI-2021-2890
Date: 27 January 2022



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.

1) How many complaints have you received about the Cabrach Estate, Moray from 2016 until 2021 to date (broken down for each year)?

2) Can I ask whether this can be broken down into type of alleged offences?

Whilst Police Scotland endeavours to provide information whenever possible, we may refuse a request in terms of section 18(1) of the Act where

- if the information existed and was held by the authority, it would be exempt from release under any of Sections 28 to 35, 38, 39(1) or 41 of the Act; and
- the authority considers that to reveal whether the information exists, or is held by it, would be contrary to the public interest.

In this instance, it is considered that to reveal whether the information you have requested exists, or is held by Police Scotland, would be contrary to the public interest as the population data is so low that any disclosure would allow conclusions to be made (either rightly or wrongly) about those resident in a very specific demographic area.

If the information was held, I consider that the following exemptions would be applied:

Section 38(1)(b) - Personal Data

Personal data is defined in Article 4 of the General Data Protection Regulation (GDPR) as:

'Information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person'

Given the population levels of the area in question, I am of the view that the potential for an individual to be identified (or misidentified) with police attendance to the area is significant, making any statistical information 'personal data'.

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Section 38(2A) of the Act provides that personal data is exempt from disclosure where disclosure would contravene any of the data protection principles set out at Article 5(1) of the GDPR which states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'

Article 6 of the GDPR goes on to state that processing shall be lawful only if certain conditions are met.

The only potentially applicable condition is set out at Article 6(1)(f) which states:

'Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child'

Whilst I accept that you may have a legitimate interest with regards the disclosure of this information and that disclosure may well be necessary for that purpose, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject.

Taking all of the above into account, it is my view that disclosure of the information sought would be unlawful.

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 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 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.