

Our Ref: IM-FOI-2022-0372
Date: 04 March 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.

By calendar years 2017 to 2021;

- **The number of false imprisonment cases brought against the force where settlements have been reached / the amount of money paid in each case**
- **The number of threatened false imprisonment claims against the force where settlements have been reached / the amount of money paid in each case**

False Imprisonment is an English offence. The closest equivalents in Scots law would be unlawful detention and/or unlawful arrest. Accordingly, we have collated the data for these claims in order to respond to this particular request.

Cases frequently incorporate a number of heads of claim and it is not possible in the majority of claims to distinguish what proportion of the sums paid relate to each head of claim. This reflects the way in which such claims are recorded.

On that basis I can provide the following information.

- In 2017 there were nine cases in which sums were paid out which included a claim for unlawful arrest and/or unlawful detention.
- In 2018 there were seven cases in which sums were paid out which included a claim for unlawful arrest and/or unlawful detention.
- In 2019 there were four cases in which sums were paid out which included a claim for unlawful arrest and/or unlawful detention.
- In 2020 there were five cases in which sums were paid out which included a claim for unlawful arrest and/or unlawful detention.
- In 2021 there were four cases in which sums were paid out which included a claim for unlawful arrest and/or unlawful detention.

We are unable to provide any further information in relation to the value of any claim as this would result in sensitive financial information being produced about a potentially identifiable person.

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the individual cases detailed above.

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Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

- (a) states that it holds the information,
- (b) states that it is claiming an exemption,
- (c) specifies the exemption in question and
- (d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested.

The exemption that I consider to be applicable to the information requested by you is 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'

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.

Furthermore, in relation to any confidentiality aspect captured by the scope of these requests (i.e. contained within any agreement) section 36 provides that information is exempt where it's release could lead to a public authority being taken to court for a breach of confidence.

Section 36 (1) – Confidentiality. Any claim to confidentiality of communications relating to legal proceedings is exempt information. One type of communication covered by this exemption is that to which legal advice privilege, a form of legal professional privilege,

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applies. Legal advice privilege covers communications between lawyers and their clients in the course of which legal advice is sought or given.

This is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA.

There is a strong public interest in maintaining legal professional privilege and ensuring the confidentiality of communications between legal advisers and their clients. If there was any expectation that such agreements would be disclosed in the future, this would inevitably lead to similar advice or arrangements being much more circumspect and therefore less effective.

I accept that there is a general public interest in disclosure of the information under consideration, to allow scrutiny of the actions of the Service and contribute to transparency and public accountability. Nonetheless, the Commissioner acknowledges that the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client, on administration of justice grounds.

On that basis, the public interest in disclosing the information is outweighed by that in maintaining the exemptions.

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.