

Our Ref: IM-FOI-2022-0581
Date: 25 April 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.

Police Scotland aims to provide a high quality service to the people of Scotland; however, it is recognised that the service can sometimes fall short of the expectations of the public and the police themselves.

To provide some context to our response, it may be helpful to first outline how the complaints and conduct processes operate in Scotland and provide some additional information sources.

I would first ask you to note that the complaint process and the conduct process are distinct from each other and both have separate assessment and recording processes within the Professional Standards Department (PSD) database. Due to these processes, the complaints and conduct matters cannot simply be added together.

All complaints received by Police Scotland are managed in line with our Complaints against the Police Standard Operating Procedures (SOP), details of which can be found at the following link:

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

Further detail in relation to Police Scotland and our complaints process can be found on our public facing website at the following link:

<https://www.scotland.police.uk/complaints/>

Once complaint matters are concluded, the circumstances may be referred for a separate conduct assessment. PSD manage conduct matters for police officers whilst People & Development (P&D) manage conduct matters relative to members of police staff.

In respect of police officers, their conduct is assessed against our Standards of Professional Behaviour, details of which can be found at the following link:

<https://www.scotland.police.uk/spa-media/2r3p0bsx/standards-of-professional-behaviour.pdf>

Police Scotland's Conduct Regulations can be found at this link:

[The Police Service of Scotland \(Conduct\) Regulations 2014 \(legislation.gov.uk\)](http://legislation.gov.uk)

A preliminary assessment is carried out under Regulation 10 of the Police Scotland (Conduct) Regulations 2014. Should an officer's behaviour be assessed to have breached the Standards of Professional Behaviour and an investigation is required, the officer is served with of a Notice of Misconduct Investigation form. The purpose of any investigation is to gather evidence to establish the facts and circumstances of the alleged misconduct and if there is a case to answer.

Our misconduct procedures aim to provide a fair, open and proportionate method of dealing with alleged misconduct. The procedures are intended to encourage a culture of learning and development for individuals and/or the organisation; however, disciplinary action can be undertaken when circumstances require.

Once complaint matters are concluded, the circumstances *may* be referred for a Conduct Assessment (not necessarily every aspect of the complaint, or every officer involved). There is therefore potential for the same officer/circumstances to appear on a complaint case and a conduct case.

Furthermore, there can be one or more allegations contained within one complaint case and, equally, there can be one or more subject officers relative to each allegation. Conduct cases may contain multiple allegations, but are limited to one subject officer per case. Subject officers are counted once per case; however, the same officer may be subject to multiple cases and therefore may appear more than once.

There is the potential for the same officer/circumstances to appear on a complaint case and a conduct case. This is because once a complaint has been concluded, the circumstances may be considered for a conduct assessment (not necessarily every aspect of the complaint, or every officer involved).

Again, I must underline that the complaint process and the conduct process are distinct from each other and both have separate assessment and recording processes within the Professional Standards Department (PSD) database. Due to these processes, the complaints and conduct matters cannot simply be added together.

a) A full list of all male and trans male employees of this organisation.

In response to your request for a 'full list' of all male employees, in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought.

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.

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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 I do not accept that disclosure is necessary for that purpose. Further, I am of the view that any interests are overridden by the interests or fundamental rights and freedoms of the data subject.

On that basis, it is my view that disclosure of the information sought would be unlawful.

To assist only in general terms, I can advise that that as at 31 December 2021 there were 11,529 police officers and 2,263 members of police staff recorded as male.

It is important to note that officers and staff *can volunteer* whether they are or previously considered themselves as transgender but there is no requirement for staff to provide this information.

b) Between 25/1/2019 - 25/1/2022, all recorded complaints of sex crime or violent crime raised against such employees along with the outcome of each complaint being found as innocent, not-proven or guilty by the criminal courts of Scotland or any other British criminal court.

Your reference to 'sex crime' is interpreted as requesting the number of reports whereby the subject matter involved a sexual circumstance. By way of further explanation, the PSD database has the facility to add a 'sexual circumstance' marker to any allegation that appears or is perceived to contain a sexual element, whether physical or non-physical,

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criminal or non-criminal. For the purpose of this part of your request, allegations containing this marker were extracted.

Where matters involving a serving police officer occur off duty as with any other member of the public an investigation will be undertaken by the relevant investigatory authority and reported to Crown Office and Procurator Fiscal Service (COPFS).

If the complaint is about an “on duty” criminal offence by a police officer or member of staff, Police Scotland will record the complaint and refer it to PIRC for assessment and investigation in consultation with the Criminal Allegations against the Police Division (CAAPD).

It is important to note that any officer who is reported to (Crown Office Procurator Fiscal Service) COPFS or Criminal Allegations against the Police Division (CAAPD) for a criminal matter, regardless of whether criminal proceedings are commenced and regardless of the outcome, all of the allegations are thereafter assessed by the National Conduct Unit for a final disposal.

As the question above relates to officers charged or convicted of a criminal offence, these matters will be captured on Conduct or Misconduct cases as any criminal charges issued will automatically result in a preliminary assessment under the relevant Conduct Regulations. It is worthy of note that on occasions an investigation can result in no action being taken and defined below:

Court Outcomes:

There are multiple reasons as to why a charge would not result in a conviction. These include; No complainer, the complaint did not amount to criminality, the report was made anonymously, insufficient information or evidence, the complainer failed to engage and that it was considered by COPFS and assessed that no proceedings should be taken.

Misconduct Hearings:

There are multiple reasons as to why a hearing or meeting would result in no action. These include; the evidence did not amount to a breach of the standards of professional behaviour, insufficient information or evidence, the witnesses failed to engage and that it was considered by the Chair that no action should be taken.

As per the specifics of your request, data has been provided below based on complaints received between 25/01/2019 - 25/01/2022. Please also note:

Sex crime has been interpreted as any criminal allegation with a sexual circumstance.

Violent crime is based on allegations which are classified as Crimes of Violence.

Given the specifics of your request, data has been provided at allegation level. Note that complaints may involve multiple allegations and therefore the number of complaints may vary from the number of allegations. Moreover, each allegation may be linked to multiple subject officers. Each allegation presented below is linked to at least one male subject officer.

Table 1: Sexual Crimes and Crimes of Violence allegations linked to male subject officers (Complaint cases only), by Allegation Outcome and Allegation Category (25/01/2019 - 25/01/2022) ^{1 2}

Allegation Outcome	Allegation Category	
	Crimes of Violence	Sexual Crimes
Allegations leading to court proceedings	0	0
Allegations which did not lead to court proceedings	2	22
Allegations ongoing - not yet concluded	0	4
Total	2	26

1. Data is based on the case received date.

2. Cases received may remain subject to live enquiry and therefore may not yet be concluded.

No allegations within the specifics of your request led to court proceedings and accordingly there are no court outcomes to provide. For this reason I must respond in terms of Section 17(1) of the Act: Information not held.

Please also note that cases received may remain subject to live enquiry and therefore may not yet be concluded.

c) All measures in place by this commission to protect women or transgender women from none-consensual action by male or transgender male employees of this organisation.

Please be advised this information is publicly available.

As such, in terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought. 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 and the exemption that I consider to be applicable is set out at Section 25(1) - information otherwise accessible. The information is available on the Police Scotland website, via the following links:

[Standard Operating Procedures - Police Scotland](#)

Equality and Diversity Monitoring SOP
Equality, Diversity and Dignity SOP
Crime Investigation SOP
Complaints against the Police SOP
Suspension SOP

[Guidance documents - Police Scotland](#)

Victim and Witness Care
Hate Crime Guidance

[Police Scotland Policies - Police Scotland](#)

Employee Relations Policy
Crime Recording Policy

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.