

Our Ref: IM-FOI-2021-2484  
Date: 6 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.

Please accept our apologies for the delay in providing a response.

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

**I am writing to obtain information about Police Scotland's use of the Regulation of Investigatory Powers Act 2000 (RIPA) and the Regulation of Investigatory Powers Act 2000 Scotland (RIPSA). To outline my query as clearly as possible, I am requesting:**

- 1. How many times has Police Scotland authorised operations or investigations under RIPA or RIPSA in the periods:**
  - a) 1 Jan 2017 – 31 December 2017?**
  - b) 1 Jan 2018 – 31 December 2018?**
  - c) 1 Jan 2019 – 31 December 2019?**
  - d) 1 Jan 2020 – 31 December 2020?**

In response to these questions, I can provide you with the following information:

2017 - 240  
2018 - 206  
2019 - 188  
2020 - 172

**e) 1 Jan 2021 – 28 October 2021?**

In response to this question I must advise you that 'part year' data will not be released into the public domain.

Please however feel free to apply for 2021 full year data at a future date.

Having considered your request in terms of the Freedom of Information (Scotland) Act 2002, I am therefore refusing to confirm or deny whether the information sought exists or is held by Police Scotland in terms of section 18 of the Act.

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Section 18 applies where the following two conditions are met:

- It would be contrary to the public interest to reveal whether the information is held
- If the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act

The following exemptions are considered relevant:

Section 34(1)(b) - Investigations

Section 35(1)(a)&(b) - Law Enforcement

Section 38(1)(b) - Personal information

Section 39(1) - Health and Safety

It is acknowledged that matters relating to the use of these measures are of public interest and such awareness may favour confirming or otherwise the existence of further information of relevance, as it would contribute to the public debate surrounding the issue.

However I would argue that the integrity of any protective measures would be significantly undermined if we were to confirm the extent of information held, through FOI or otherwise, and any such disclosure would substantially prejudice the ability of Police Scotland with regards the prevention and detection of crime and the apprehension or prosecution of offenders.

The key test when considering where the balance of public interest lies is to establish whether, in all the circumstances of the request, the public interest in confirming or denying the information is held is not outweighed by maintaining the exemption(s).

Although I consider that public awareness would favour a disclosure as it would contribute to the public debate surrounding the application of these measures, we must ensure that the integrity of the investigative techniques used is not in any way undermined.

In conclusion, it simply cannot be in the public interest for Police Scotland or any police force to confirm whether activity of this nature is taking place during specific periods of time.

To do so would be of significant intelligence value to criminals who could determine from the data whether or not their activities at a particular time were subject to these measures by Police Scotland.

This explanation should not be taken as indicative or conclusive evidence that the information you have requested does or does not exist.

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2. **Provide a spreadsheet detailing, in each instance: date approved; the nature of the offence (e.g. graffiti, fly tipping etc.) being investigated; technique(s) used (eg hidden cameras, bugs, undercover agents, monitoring of communications traffic data); date surveillance cancelled; details of if authorization resulted in prosecution/conviction.**

In relation to *the nature of the offence being investigated* and whether or not the *authorisation resulted in prosecution/ conviction*, I regret to advise 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.

By way of explanation, it would be necessary to read through the records associated with each case to locate and note any information of relevance.

It is estimated that this process would take somewhere between 270 and 540 hours to complete, based on a sample exercise conducted.

In relation to the *date approved*, *date cancelled* and *techniques used* I am refusing to provide you with the information sought.

Section 16 of the Freedom of Information (Scotland) Act 2002 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 exemptions that I consider to be applicable are as follows:

Section 34(1)(b) - Investigations  
Section 35(1)(a)&(b) - Law Enforcement  
Section 38(1)(b) - Personal information  
Section 39(1) - Health and Safety

Disclosure of the information sought would lead to particular operations and investigations being identifiable.

Such information would be of significant intelligence value to criminals seeking to determine whether or not their activities were known to the police and the types of investigative techniques being used - or indeed not used.

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Whilst we accept that there is a public interest in increasing public awareness as to the use of such measures, particularly where there may be privacy concerns associated, there can be no parallel interest in disclosing information that would be of value to criminals and which would therefore undermine the integrity of the investigative process.

The disclosure of annual data on the subject, combined with the oversight processes in place are assessed as sufficiently addressing any public interest in the subject matter.

**3. For each of the periods from (1), how many times was Police Scotland referred to the Investigatory Powers Tribunal as part of a complaint regarding its use of RIPA/RIPSA? Please provide any documents detailing the outcome of these complaints.**

In response to this part of your request I can advise that we hold no record of any referral to an Investigatory Powers Tribunal since 1 January 2017.  
As such, section 17 of the Act, information not held, applies.

Should you require any further assistance please contact Information Management quoting the reference number given.

If you 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.