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Our Ref: IM-FOI-2022-2131
Date: 02 November 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 arrests have been made for breach for statutory breach of the peace by police officers in a) 2018, b) 2019, c) 2020, d) 2021, and e) 2022-to-date

Breach of the Peace is a common law offence in Scotland.

Notwithstanding, in 2018, the Criminal Justice (Scotland) Act 2016 removed the separate concepts of arrest and detention and replaced them with a power of arrest without warrant - where there are reasonable grounds for suspecting a person has committed, or is committing, an offence.

When a person is arrested, a statement of arrest should be read over as soon as reasonably practical and details recorded in the arresting officer's notebook.

A person is 'Not Officially Accused' (a suspect) when arrested and not cautioned and charged. They are 'Officially Accused' once arrested and cautioned and charged.

If conveyed to a police station, the arrested person (of either classification) will have their details recorded in the Police Scotland National Custody System.

The Act however also provides for certain situations whereby a person must be released from police custody prior to their arrival at a police station - effectively allowing the police to 'de-arrest' that person where the reasonable grounds for suspicion no longer exist.

In those circumstances, the details of an arrested person are not held electronically.

As a result, we are unfortunately unable to collate comprehensive arrest data as case by case assessment of all officer notebooks would be required - in addition to the partial arrest data held in the National Custody System.

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.

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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.

We could provide data on individuals arrested and brought into police custody if that would be of interest but if you are seeking to understand the prevalence of *breach of the peace* in Scotland, I would suggest you refer instead to our recorded/ detected crime data which is available online:

[How we are performing - Police Scotland](#)

Breach of the peace data is available under the 'Group 6 Miscellaneous Offences' heading.

2) Of the arrests made for breach of the peace, how many resulted in charges being recommended to the Crown Office in a) 2018, b) 2019, c) 2020, d) 2021, and e) 2022-to-date

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.

To explain, in order to research your request, all detected crime reports for *breach of the peace* would have to be individually assessed and the outcome (ie reported to COPFS) extracted and noted.

Between April and June 2022 alone, the most recent quarter for which data is readily available, there were 985 detected crime reports for *breach of the peace*.

3) Of the arrests made for statutory breach of the peace which did not result in a charge being recommended, how many resulted in arrested persons being held in custody on remand in a) 2018, b) 2019, c) 2020, d) 2021, and e) 2022-to-date.

When a person accused of an offence first appears in court, a *judicial decision* will be made as to whether they will be released on bail or be remanded into custody.

For a person to appear at court accused of an offence, they must first of all have been charged by the police.

It can sometimes be the case that a charge at court may have been adjusted by COPFS but that notwithstanding, it would not be possible for an individual to be remanded in custody for an offence without having been charged by the police.

On that basis section 17 of the Act applies and the information sought is *not held*.

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4) Of the arrests made for statutory breach of the peace between 2018 and 2022-to-date, what is the a) longest and b) average time for a person arrested to be held on remand

Police Scotland do not hold information regarding individuals remanded in custody and section 17 of the Act applies - the information sought is *not held*.

You may wish to contact the Scottish Prison Service.

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.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.