

Our Ref: IM-FOI-2022-1105
Date: 16 June 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.

The information I am requesting is:

1. How many police officers were convicted of rape, where the victim has been under 18 years old, in the last 3 years?
2. How many police officers arrested under suspicion of rape, where the victim was under 18 years old, in the last 3 years?

Questions 1 and 2 have been answered together in our response below.

To complete this enquiry all allegations which involved a 'sexual circumstance', attached to Complaints or Conduct/Misconduct cases received 01/04/2019 – 31/03/2022, were manually reviewed. This was to confirm whether these related to an allegation of rape against a child aged under 18 by a subject officer. Thereafter, it was checked as to whether the subject officer was arrested and subsequently convicted as a result.

Please note that cases received may remain subject to live enquiry and/or ongoing legal proceedings. Therefore, the volume of subject officers arrested and convicted remains subject to change.

Table 1: Subject Officers linked to allegations of rape against a child aged under 18 (Complaints and Conduct/Misconduct), by Category ^{1 2 3}

Category	Arrested	Convicted
Subject Officers linked to allegations (Complaint)	0	0
Subject Officers linked to allegations (Conduct)	0	0

As with any request which provides a nil response, I must respond in terms of Section 17(1) of the Act: Information not held.

3. How many police officers were convicted of indecency with a child in the last 3 years?
4. How many police offers were arrested under suspicion of indecency with a child in the last 3 years?

For ease of reference, questions 3 and 4 have been answered together in our response below.

For the purposes of these questions, “indecent with a child” has been interpreted as any allegation involving a ‘sexual circumstance’ involving a child aged under 18 – excluding Rape, as this has been requested separately within questions 1 and 2 above.

To complete this enquiry, allegations which involved a ‘sexual circumstance’ attached to Complaints or Conduct/Misconduct cases received between 01/04/2019 and 31/03/2022 were manually reviewed to confirm whether these related to a child aged under 18. Thereafter, it was checked as to whether the subject officer was arrested and subsequently convicted as a result.

Please note that cases received may remain subject to live enquiry and/or ongoing legal proceedings. Therefore, the volume of subject officers arrested and convicted remains subject to change.

Table 2: Subject Officers linked to allegations involving a sexual offence (excluding Rape) against a child aged under 18 (Complaints and Conduct/Misconduct), by Category only.

Category	Arrested	Convicted
Subject Officers linked to allegations (Complaint)	0	0
Subject Officers linked to allegations (Conduct)	5	3

1. Data is based on the case received date. This may vary from the date of arrest and the date of conviction (where applicable).

2. Each subject officer may be linked to multiple allegations. Subject officers are counted once per case.

3. Cases received may remain subject to live enquiry and/or ongoing legal proceedings. Therefore, the volume of subject officers arrested and convicted remains subject to change.

Please note that the Lord Advocate is the head of the systems of prosecution and investigation of deaths in Scotland, functions which she exercises independently of any other person.

The Crown Office and Procurator Fiscal Service (COPFS) is the sole prosecuting authority in Scotland. It receives reports about crimes from the police and other reporting agencies and then decides what action to take, including whether to prosecute.

All criminal allegations against the police are reported to COPFS. You may wish to contact COPFS at foi@copfs.gsi.gov.uk who may be able to provide you with further guidance in relation to conviction statistics.

Can I please have this information separated by local authority area?

I have considered this part of your request and in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with a breakdown by local authority area.

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

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(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(s).

In recent months we have published a significant amount of information in respect of complaints and conduct cases with either a sexual and/or other circumstance relating to the requested three year period.

In this instance, due to the low number of officers in this group, it is likely that individuals could be identified by providing any further information - and this is particularly true when any disclosure could easily be cross-referenced with corresponding details already in the public domain.

On that basis 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.

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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.