| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-1057  Responded to: 07 June 2023 |
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Your recent request for information is replicated below, together with our response.

Please accept our apologies for the delay in responding.

## Since the inception of Police Scotland have there been any instances of Police Officers, or members of Police Staff, who have been convicted of a Section 38 (Threatening or Abusive behaviour) or Section 39 (common assault or battery), and NOT been dismissed from the force?

You further clarified your request as follows:

**With regards to Sect 38 it is the Criminal Justice and Licensing (Scotland) Act 2010 legislation I am referring to and would like to have figures on.**

**With regard to the Sect 39 I’ve alluded to, I’m effectively looking for charges and convictions of Common Assault, but if that could be further detailed where it has taken place within a ‘domestic’ setting, as well as in a ‘non domestic’ setting.**

**There is a Domestic Abuse (Scotland) Act 2018, which does not specifically mention assault, but refers to ‘abusive behaviour towards partner or ex-partner’. If that covers assault, then happy for that to be used in conjunction with any other act that would be used in Scotland for Common Assault, domestic or otherwise.**

**I would like both of the above to include whilst ‘on or off duty’ please, and finally, yes I’m happy that the figures proved are from April 2014 to most recent date recorded.**

Having considered your request in terms of the Act, I regret to inform 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 Act where section 12(1) (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

To explain, we have carried out a search of the Professional Standards Department (PSD) database for all on or off duty allegations where the matter was referred to the Crown Office and Procurator Fiscal Service between 01 April 2014 and 08 May 2023 under the following categories which include the offences/crimes mentioned in your request:

* On Duty Assault (complaints only)
* Common Assault (on and off duty complaint/conduct)
* Common Assault of an Emergency Worker (on and off duty complaint/conduct)
* Breach of the Peace (on and off duty complaint/conduct)

However, in order to ascertain whether any of the linked officers were convicted of an offence, each officer would have to be individually researched against the Scottish Criminal History System (CHS). Details of convictions are not held in the PSD database.

Given the numbers involved, our calculations estimate that such an exercise would cost more than £600 to complete.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.