

Our Ref: IM-FOI-2022-0117 & 0118
Date: 14 March 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, and because of the similarities both requests have been combined to include both timescales and subsequent clarifications. This is replicated below together with the response.

You subsequently clarified that you wanted us to include information on all Employment Tribunals *underway* during the dates specified in the respective FOI requests, irrespective of start dates - so therefore all Employment Tribunals underway during, or running from 2015 to 2018 and from 2018 to the current date.

You also clarified that you wanted us to include information for those employment tribunal cases which resolved short of an official determination hearing and to include any which progressed to an Employment Appeal Tribunal.

On that basis the following information is provided:

From a) 2015 to 2018 incl. and b) 2018 to date,

1. For each calendar year, how many Employment Tribunal cases in relation to Police Scotland and the Scottish Police Authority are Police Scotland currently involved in?

I can advise that at the time of request there are 26 such cases ongoing.

Table 1: Number of **ongoing** Employment Tribunal cases first recorded in each calendar year:

2014	2015	2016	2017	2018	2019	2020	2021	2022
1	2	0	1	2	3	6	10	1

**2. The duration of these cases their start and end dates or if the case is continuing?
3 i) Which lawyers, law firms and Counsel are being instructed by Police Scotland?**

For ease of response, questions 2 and 3 i) have been combined in table 2 below:

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Table 2: Breakdown of **all** Employment Tribunal cases by year, status and solicitor firm.

Line	Year	Start Date	Finish Date	Legal Firm	Counsel
001	2012	06/11/2012	31/01/2018	Morton Fraser	-
002	2013	21/10/2013	02/02/2015	None	-
003	2014	01/01/2014	Ongoing	Clyde & Co	Yes
004	2015	23/04/2015	Ongoing	Clyde & Co	Yes
005		15/07/2015	Ongoing	Clyde & Co	-
006		03/08/2015	31/01/2018	Morton Fraser	-
007		22/12/2015	01/04/2021	Morton Fraser	-
008	2016	13/05/2016	23/10/2019	Morton Fraser	-
009		07/06/2016	04/05/2017	Clyde & Co	-
010		01/12/2016	07/08/2017	None	-
011		01/06/2016	30/11/2017	Morton Fraser	-
012		11/01/2016	04/09/2018	Clyde & Co	-
013	2017	22/08/2017	04/02/2020	Morton Fraser	Yes
014		18/09/2017	19/03/2018	None	-
015		04/12/2017	26/07/2018	Clyde & Co	-
016		15/05/2017	01/12/2017	Morton Fraser	-
017		13/12/2017	Ongoing	Morton Fraser	-
018		13/09/2017	08/06/2018	None	-
019	2018	26/07/2018	03/09/2021	None	-
020		25/06/2018	02/03/2019	None	-
021		03/10/2018	08/03/2019	None	-
022		07/09/2018	04/10/2019	None	-
023		13/06/2018	Ongoing	Thorntons	Yes
024		29/05/2018	26/02/2019	Brodies	-
025		04/06/2018	25/02/2019	Morton Fraser	-
026		09/05/2018	18/12/2018	Thorntons	-
027		30/08/2018	06/06/2019	Clyde and co	-
028		11/09/2018	25/01/2019	Clyde and Co	-
029		19/03/2018	26/02/2020	Clyde and Co	Yes
030		28/11/2018	Ongoing	Clyde and Co	-
031		14/12/2018	11/03/2021	Morton Fraser	-
032		26/11/2018	30/07/2019	Clyde and Co	-
033		30/08/2018	22/01/2021	None	Yes
034		18/12/2018	12/08/2020	Morton Fraser	-
035	2019	23/01/2019	21/02/2019	None	-
036		02/12/2019	02/04/2020	Morton Fraser	-
037		13/12/2019	21/08/2020	Clyde and Co	-
038		19/03/2019	28/11/2020	Morton Fraser	-
039		02/03/2019	20/07/2021	Thorntons	Yes
040		09/10/2019	08/06/2021	Morton Fraser	-
041		26/07/2019	27/12/2019	Thorntons	-
042		12/03/2019	05/07/2019	Morton Fraser	-
043		26/09/2019	06/04/2020	Clyde & Co	-

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044		23/10/2019	05/10/2021	Morton Fraser	-
045		27/12/2019	16/06/2020	Clyde & Co	-
046		25/09/2019	05/08/2020	Morton Fraser	-
047		02/10/2019	01/01/2020	Morton Fraser	-
048		22/10/2019	31/01/2022	Morton Fraser	-
049		01/05/2019	01/09/2019	Morton Fraser	-
050		25/02/2019	11/03/2021	Morton Fraser	-
051		08/10/2019	01/08/2020	Morton Fraser	-
052		10/06/2019	10/11/2020	Morton Fraser	-
053		06/06/2019	Ongoing	Morton Fraser	-
054		04/12/2019	12/11/2020	Morton Fraser	-
055		23/05/2019	Ongoing	Morton Fraser	-
056		24/12/2019	Ongoing	Morton Fraser	-
057		12/02/2019	16/12/2019	Morton Fraser	-
058		23/07/2019	07/02/2022	Clyde & Co	-
059	2020	03/06/2020	19/02/2021	Morton Fraser	-
060		04/06/2020	09/12/2020	Morton Fraser	-
061		06/03/2020	28/05/2021	Morton Fraser	-
062		16/09/2020	02/11/2020	None	-
063		13/10/2020	07/12/2020	None	-
064		26/03/2020	Ongoing	None	-
065		04/11/2020	17/01/2022	Morton Fraser	-
066		12/06/2020	02/03/2021	Morton Fraser	-
067		06/10/2020	Ongoing	Ledingham Chalmers	-
068		05/06/2020	16/02/2022	Morton Fraser	-
069		10/12/2020	20/08/2021	Morton Fraser	-
070		12/05/2020	Ongoing	Morton Fraser	-
071		12/06/2020	Ongoing	Morton Fraser	-
072		14/12/2020	Ongoing	Morton Fraser	-
073		21/12/2020	Ongoing	Morton Fraser	-
074		15/12/2020	15/06/2021	Morton Fraser	-
075	2021	29/12/2021	Ongoing	None	-
076		08/12/2021	10/02/2022	None	-
077		07/09/2021	15/02/2022	None	-
078		22/06/2021	Ongoing	Ledingham Chalmers	-
079			Withdrawn 11/10/2021 15/11/2021	None	-
080		08/04/2021	23/11/2021	None	-
081		14/10/2021	Ongoing	None	-
082		08/01/2021	17/08/2021	None	-
083		13/04/2021	Ongoing	None	-
084		11/01/2021	28/01/2022	Clyde & Co	-
085		02/11/2021	Ongoing	None	-
086		17/06/2021	Ongoing	None	-
087		04/03/2021	Ongoing	None	-
088		01/02/2021	23/06/2021	None	-

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089		05/05/2021	Ongoing	Morton Fraser	-
090		07/09/2021	18/02/2022	None	-
091		20/10/2021	Ongoing	None	-
092		31/08/2021	Ongoing	None	-
093	2022	18/01/2022	Ongoing	None	-

Details of Individual solicitors / lawyers:

The above recorded information is considered to be exempt in terms of the Freedom of Information (Scotland) Act 2002 (the Act).

Section 16 of the Act requires Police Scotland 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.

Where information is considered to be exempt, this letter serves as a Refusal Notice that information is held and an explanation of the appropriate exemption is provided.

I can confirm that Police Scotland holds the information requested. The exemption that I consider to be applicable is:

Section 33(1)(b) - Commercial Interests

This provides that information is exempt information if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

The information requested is a specific part of the tender process with Police Scotland. As you may be aware the tendering process is open to competition and if utilised, companies are invited to submit their tender bid with details of the costs and processes they would use for the successful completion of the contract.

Accordingly, disclosure would prejudice Police Scotland's commercial interests in relation to future tenders.

Any relevant information supplied by a tender company is provided in the expectation that whilst remaining relevant, details within their tender bid, which is commercially sensitive, will be held by Police Scotland and not disclosed to another organisation which may gain a competitive advantage in receiving this information.

Legal advice and representation is a specialised, competitive area, and there are adequate concerns about the quality of service that would be provided, and the reputational damage to the service, through making the information available to competitors through public disclosure.

This level of detail is not generally publicly available, and any disclosure sets out the overall costs to the legal firm in each case.

This exemption is subject to the public interest test in section 2(1)(b) of FOISA.

It could be argued that disclosure of the requested information would allow greater scrutiny of the way public funds are spent and would increase accountability and transparency in terms of this spending. Police Scotland is a publicly funded organisation and therefore the Service has an obligation to obtain best value for money with particular services.

That said, the purpose of the tender process is to ensure that all options are presented to Police Scotland and from there the best option in terms of service and cost is selected. In order to do this, it is essential to maintain working relationships with companies that tender their services. As such, Police Scotland will not disclose any information that would impact on the ability to do both. The public interest would not be served if it were no longer possible to engage companies or individuals in a tender offer if they believed that conducting business with Police Scotland would result in their confidential financial information being released.

Counsel:

I have indicated within the table above where Counsel was instructed in seven cases.

I can confirm that sums paid to Counsel in respect of two of the cases from 2018 were £29,040 and £52,500 respectively.

Regarding the payments made in the other five cases, instruction was made via our external agents and those fees were included within the total external agent spend i.e. our external agents included this outlay within their invoices.

Accordingly we do not record this information separately and it has not been possible to ascertain the fees paid to counsel in five of the seven cases. In terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

3 ii) Details of any joint capacity or instruction with the Scottish Police Authority in connection with Tribunals?

We have not instructed any solicitors or counsel in any joint capacity with the SPA and for this reason I must respond in terms of Section 17 – Information not Held.

4. Payments (amounts) to lawyers, law firms & counsel, expert witnesses and any other witness costs (identifying role/job of witness) from a) 2015 to 2018 incl. and b) 2018 up to the date of this FOI request.

Year	Sum	Legal Firm
2012	£15,12.00	Morton Fraser
2013	-	-
2014	£7,401.60	Clyde & Co
2015	£16,482.00	Clyde & Co
	£7,493.60	Morton Fraser
2016	£22,565.40	Clyde and Co

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	£552.24	Morton Fraser
2017	£48,911.76	Morton Fraser
2018	£69,785.63	Clyde and Co
	£27,555.60	Thorntons
	£8,450.40	Brodies
	£9,833.44	Morton Fraser
2019	£31,548.48	Morton Fraser
	£28,337.48	Clyde and Co
	£11,642.99	Thorntons
2020	£23,735.76	Morton Fraser
	£1,494.00	Ledingham Chalmers
2021	£34,280.04	Clyde and Co
	£858.00	Morton Fraser
2022	-	-

Where any of the time periods have returned a zero return, in terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

Section 17 (information not held) is also applied in relation to expenses recorded relating to expert witnesses and/or any other witness costs.

To be of further assistance other information may be available in the public domain at: [Employment tribunal decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/employment-tribunal-decisions)

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.