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Our Ref: IM-FOI-2022-1462
Date: 3rd August 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.

In relation to buskers within Edinburgh City Centre and for a period of the last 6 years unless stated:

Please provide me with a copy of any training materials or directions issued to 101 call handlers with respect to such noise nuisance.

In regard to the period 2016-2019 the guidance that was held at this time is no longer retained. Our C3 guidance site was replaced in 2019 and so only guidance from this date onwards is held. As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the 2016-2019 information requested is not held by Police Scotland.

In regards to the guidance in place after 2019, please find the requested information below:

Busking in itself is not illegal, although many local authorities have passed byelaws prohibiting busking. However, the vulnerability, conduct and behaviour of the busker should be considered to ascertain if they are committing any other crime or offence or require assistance, and an incident created if required using the most appropriate Storm Code.

Children under 14 years may not busk.

How many such 101 calls have been received? How many complaints have been received through any other channels?

How many calls have resulted in police attendance?

What is the average response time between a complaint being received and police attending? How many calls resulted in timely attendance, i.e., while the noise nuisance continued?

Where police have attended, how many such complaints resulted in the police:

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- (i) Taking no action.**
- (ii) Asking for volume to be reduced, but otherwise allowing it to continue unmonitored.**
- (iii) Requesting that it stop.**
- (iv) Issuing a 'yellow warning notice', as described, e.g., on the BBC News.**
- (v) Issuing a Fixed penalty notice', as described, e.g., in The Times.**
- (vi) Confiscating of equipment under Section 54, as described in the joint Police-Council 'Hit the Right Note' publication.**
- (vii) Charging the busker, as described in the joint Police-Council 'Hit the Right Note' publication.**
- (viii) Referring a case to the Procurator Fiscal's Office.**

For context, on how many occasions has Police Scotland referred a case where a busker has caused a noise nuisance to the Procurator Fiscal's Office over the whole of Scotland over the last 12 years?

In regards to your 5 questions and 8 sub questions noted above, 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 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, whilst our incident recording system does have an incident type for Noise Complaints (AB-53) and Public Nuisance (AB-24) it does not have a specific incident type for buskers or busking. It is likely that incidents of busking the police were made aware of would be included with the categories noted above. Unfortunately, these include a large number of other incident types and the only way to determine if they related to busking would be to manually review each one.

In the last 6 years (01/01/2016 to 31/12/2021) there were 130,072 Noise Complaint and Public Nuisance incidents in Edinburgh Division. At a conservative estimate of 5 minutes per record, this equates to over 10,800 hours of work to just obtain which incidents are relevant to your request. Further work would then be required to obtain the specific information requested for each of your questions.

Police Scotland have assessed that the £600 cost limit within the Act equates to 40 hours of work and so this part of your request would breach the cost threshold.

I would normally suggest that a refined timescale is requested in order that some information can be provided but in this instance, even taking a single year such as 2021 would result in 23,312 records to check which equates to over 1,900 hours of work to complete. I cannot think of any way your request could be refined to be completed within the cost threshold set out under the Act.

On several occasions, officers have made reference to arrangements with or the policy of Edinburgh Council. I request a copy of any information sourced from

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Edinburgh Council that has impacted how Police Scotland has handled such complaints. Furthermore, I request a copy of all communication between Edinburgh Council and Police Scotland referencing buskers causing an annoyance or noise nuisance.

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 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, we have previously attempted to conduct similar keyword searches to the one that would be required. In this case a search for emails containing the phrases "busker" or "buskers" would be required.

Despite extensive efforts to retrieve emails requested by keyword it has become clear that whilst we do have the facility to conduct a keyword search but we do not have the facility to limit this to a particular date range.

This means that any mention of the keywords on any date would be returned. These are returned as individual full mailbox archive files for each mailbox that contains these keywords.

Once these archives are retrieved, a manual process is required to confirm which emails within each file contain the keyword required, which date it was sent or received on and finally if it was between Police Scotland and the City of Edinburgh Council. This is further complicated by the fact that we will simply know there is at least one email within the mailbox archive that contains the keyword. There could be 1 or 100 and so each email would need to be manually checked.

During previous similar keyword requests we have conducted a rough estimate using one of our divisions (A Division) which accounts for a bit over 1,300 mailboxes. It is estimated that 100-200 of these may contain the keywords requested. Edinburgh Division will hold more mailboxes than this and this is before the mailboxes of national units or those in our C3 Division who deal with our service centres are considered. At a rough estimate of 400 to 500 mailbox files to review and at an average estimate of 30 minutes to check each mailbox file concerned, this equates to around 200 to 250 hours of work to complete.

This is before we consider a review of any other correspondence held by Police Scotland which would again require a degree of manual searching. It is likely a full check of all documents held by the force would add thousands of additional hours to the time it would take to comply with the request.

Police Scotland have assessed that the £600 cost limit within the Act equates to 40 hours of work and that your request would breach the cost threshold.

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In order to be of assistance, you may wish to consider reducing the scope of your request to a group of mailboxes or staff which may allow it to be progressed.

On how many occasions has Police Scotland sought an anti-social behaviour order in response to pipers causing excessive noise?

On how many occasions has Police Scotland sought an anti-social behaviour order in response to buskers using amplification equipment causing excessive noise?

In regards to these two questions, anti-social behaviour orders can be applied for by either a local authority or a registered social landlord. Police Scotland do not apply for these orders and our involvement is rather to enforce them when in place. As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

To be of some assistance, I have included a link to our Anti-Social Behaviour Standard Operation Procedures which are available on our website.

<https://www.scotland.police.uk/spa-media/3pul1gjf/antisocial-behaviour-sop-v9.pdf>

Please provide me with a copy of any training materials or directions issued to officers as to how such complaints are to be handled, including any advice issued on Section 54 of the Civic Government (Scotland) Act 1982 and Section 62 of the Control of Pollution Act 1974.

Finally, buskers here are almost always selling associated merchandise without a licence to do so, which I understand is often the principal motivation for their noise-causing activity. Please provide me with a copy of any training materials or directions issued to officers as to how complaints relating to such offences against the Civic Government (Scotland) Act 1982 (S7(1)), the Roads (Scotland) Act 1984 (S129(9)) and (where amplification is used to advertise such sales) the Control of Pollution Act 1974 (S62(1b)) have been handled.

In regards to these two questions, there are no references to busking specifically within the current lesson notes used but rather references to noise pollution along with the relevant legislation namely Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004 and Section 54 of the Civic Government (Scotland) Act 1982.

As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

To be of some assistance however, please find the relevant information in regards to the broader topics covered.

Noise Pollution

Although legislation will be utilised mainly by trained Local Authority employees, police officers should have an awareness of its contents in order to properly advise members of the public who make a complaint regarding noise.

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Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004 contains provisions in relation to noise nuisance. In particular the Act:-

- gives local authorities additional powers to deal with noise nuisance;
- tackles the problems of night noise in dwellings

Noise nuisance is a serious problem for many people in the community and has to be dealt with accordingly. There are cases where the problem is clearly a contravention of criminal law such as a noisy party. In the case of residing next to a noisy factory or industrial estate, then this matter has to be dealt with under civil law, provided the noise is associated with the manufacturing process.

In the case of noise pollution associated with manufacturing or other work you will have to tactfully explain to the complainer that this is a civil matter and advise them to make a formal complaint to either the local authority or seek advice from an agency such as Citizens' Advice.

There are occasions where a complaint about noise can be dealt with as a breach of the peace, however, there are other acts that you can use.

Section 54 of the Civic Government (Scotland) Act 1982

This offence can be committed anywhere and not just in a public place, e.g. in a house or other private place. It is designed to be dealt with by a warning in the first place and if this fails then appropriate action can be taken.

This section creates an offence for any person to:-

- sound or play any musical instrument; or
- sing or perform; or
- operate any radio, television, record player, tape player, or other sound producing device,

if it gives any other person reasonable cause for annoyance and the offender refuses to desist on being required to do so by a Constable in uniform.

Note: The offence is not complete until the accused has failed to desist.

This offence can be dealt with by means of a Fixed Penalty Notice providing the person responsible has attained the age of 16 years and is not subject to a supervision order.

In many circumstances people will have no idea that they are causing a noise problem and will take heed of the warning you give them. There are occasions when you will have to return and if so then the offender, who will generally be the occupier, will be charged.

Under this legislation, police officers are empowered to enter premises without warrant and to seize noise-making equipment if it is reasonably suspected that an offence under the foregoing Section 54 has been committed, and to use reasonable force in doing so.

This section also empowers the police to retain the equipment and hold it for 28 days, whereupon the owner may reclaim the property being liable for any storage costs.

If the performance is considered disorderly a Breach could be considered alternatively if the activity blocks a public footpath and the performers prevent persons passage, Section

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53 of the Antisocial Behaviour Etc. (Scotland) Act 2004 could be considered (Obstruction of/by pedestrians).

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.