| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-2845  Responded to: xx November 2023 |
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Your recent request for information is replicated below, together with our response.

## I am writing to you about information held under the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021. From the beginning of 2022 to the current date:

## 1) How many crimes were recorded by Police Scotland under this legislation?

## 2) How many crimes were detected by Police Scotland under this legislation?

## 3) Can the recorded and detected statistics be broken down by divisional area?

For ease of response, Q1, Q2 & Q3 have been answered together;

Please be advised that recorded and detected crime statistics are publicly available.

As such, in terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought. 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

(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 and the exemption that I consider to be applicable is set out at Section 25(1) of the Act - information otherwise accessible:

*“Information which the applicant can reasonably obtain other than by requesting it under Section 1(1) is exempt information”*

The information you are seeking is available on the Police Scotland website, via the following link: [Crime data - Police Scotland](https://www.scotland.police.uk/about-us/how-we-do-it/crime-data/) – Group1.

You can select the relevant MMW area by council name in column 1 and ‘retail’ etc. in the crime column.

## 4) How many detected crimes resulted in a No Further Action?

In response I can advise you Criminal History System (CHS) receives electronic notifications from the Crown Office and Procurator Fiscal Service / Scottish Court and Tribunals Service.

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

## 5) How many detected crimes resulted in a Recorded Police Warning?

## 6) How many detected crimes resulted in a Fixed Penalty Notice?

For ease of response, Q5 & Q6 have been answered together;

I am refusing to confirm or deny whether the information sought exists or is held by Police Scotland in terms of section 18 of the Act. Section 18 applies where the following two conditions are met:

* It would be contrary to the public interest to reveal whether the information is held.
* *If* the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act.

Whilst we accept that Recorded Police Warnings (RPWs) are a matter of public interest, the overwhelming public interest lies in ensuring that the effectiveness of any measures utilised by Police Scotland to prevent and detect crime and keep people safe are not prejudiced.

Confirmation as to whether or not information was held would involuntarily disclose specific information contained within the Lord Advocate’s guidelines.

Police Scotland adheres to the Lord Advocate’s Guidelines on Recorded Police Warnings which instruct police on what action could be taken in certain circumstances. Details or copies of the guidelines have never been released into the public domain as to do so either directly or indirectly would compromise law enforcement strategy and allow offenders to rightly or wrongly believe they could commit some offences without fear of significant penalty.

The exemptions that would apply if the information sought was held are as follows:

Section 35(1)(a)&(b) – Law Enforcement

Information is exempt information if its disclosure under this Act would, or would be likely to prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders.

The disclosure of this level of detail would provide individuals intent on wrong doing with a tactical advantage when planning or perpetrating crimes and allow them to accurately assess the likely outcome of those actions. It would impact on the ability of the Police Service to prevent and detect crime and to release this information would be contrary to that purpose.

This is a non-absolute exemption and requires the application of the public interest test.

Section 39(1) – Health, safety and the environment

The disclosure of the information requested may have the potential to increase the risk to the personal safety of individuals and also the safety of the police officers responding to incidents.

This is a non-absolute exemption and requires the application of the public interest test.

Public Interest Test

While it could be argued that public debate and accountability in terms of the use of this measure would favour disclosure, it can be argued that any disclosure under FOI legislation is a disclosure to the world at large and any information identifying the focus of policing activity or tactics employed could be used to the advantage of criminals.

Furthermore, the impact of the release of this information into the public domain would threaten the efficient and effective conduct of the service in a key law enforcement role and the preservation of public safety.

On balance the public interest on this occasion favours non-disclosure of this data.

## 7) How many detected crimes resulted in a report to the Procurator Fiscal?

## 8) How many detected crimes resulted in Other Disposals?

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 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.

An initial check has returned over 1100 retail worker related offences recorded in the first quarter of 2022 alone. Unfortunately, there are no relevant markers which allow the automatic retrieval of this level of information. Any attempt to try and identify this level of detail would entail manual interrogation and cross referencing across a number of internal systems which are not designed for this type of statistical reporting. As such this is an exercise which I estimate would far exceed the cost limit set out in the Fees Regulations.

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.