

Our Ref: IM-FOI-2022-0793
Date: 04 May 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.

- 1. How many times have Police Scotland road policing officers recorded a positive result from roadside drug swabs for cannabis misuse by a road user since the introduction of the test, by force area?**

Between October 2019 when they were first introduced and 7 April 2022, Police Scotland have recorded a total of 3,523 positive roadside drug wipe tests for cannabis.

- 2. How many times since the introduction of roadside drug swabs for cannabis misuse have a positive roadside drug swab for cannabis misuse by a road user resulted in a prosecution for driving under the influence, by force area?**

In terms of section 17 of the Act, I can confirm that Police Scotland do not hold data regarding prosecutions. You may wish to contact COPFS.

- 3. How many times have police Scotland road policing officers recorded a positive result from a roadside drug swabs for cocaine misuse by a road user since the introduction of the test, by force area?**

Between October 2019 when they were first introduced and 7 April 2022, Police Scotland have recorded a total of 1,522 positive roadside drug wipe tests for cocaine.

- 4. How many times since the introduction of roadside drug swabs for cocaine misuse has a positive roadside drug swab for cocaine misuse by a road user resulted in a prosecution for driving under the influence, by force area?**

In terms of section 17 of the Act, I can confirm that Police Scotland do not hold data regarding prosecutions. You may wish to contact COPFS.

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5. Is it standard Police Scotland practice or procedure for its officers to report the results from a roadside drug swab for cannabis by a road user to the DLVA Medical Department as grounds for proof of a medical condition?

In response to this question, I would refer you to the following information:

Extract from memo 60/2021 dated 23 July 2021

Where prosecution or criminal proceedings have been initiated against an individual, DVLA will not accept a D751/D751A, or initiate medical investigations, unless there is firm evidence that indicates the individual concerned is **persistently** misusing or dependent on alcohol and/or drugs.

Before medical enquiries can be legally commenced, DVLA **must** have **reasonable** grounds to believe that a license holder is suffering from a notifiable medical condition that will affect their ability to drive safely.

Persistent misuse or dependence of alcohol and drugs is a relevant disability, but drug or alcohol related criminal activity does not provide "reasonable grounds" to make enquiries. Neither is it sufficient evidence of a medical condition. Therefore, when enforcing the law, officers should only report the driver to the DVLA for medical investigation if there is evidence of **dependence / persistent** drug or alcohol misuse.

In the following scenarios, DVLA **would** consider there to be **reasonable** grounds to medically investigate the case. When a license holder is:

- regularly misusing or dependent on alcohol and/or drugs so as to demonstrably impair, or risk impairing, their ability to drive
- a known and proven alcohol and/or drug addict
- drawn to the police's attention on a number of occasions because they were demonstrably misusing alcohol and/or drugs.

In the following scenarios, the DVLA would **not** consider there to be **reasonable** grounds to medically investigate the case. When a license holder:

- Is going through criminal proceedings related to alcohol and/or drugs, but there is little or no evidence to suggest they are persistently misusing or dependent
- has merely been found in possession of drugs in his/her car
- is a drug dealer
- has been in a stop and search situation where he/she has been found in possession of drugs
- Is known to the police for occasional or one-off use of drugs.

Extract from Driver and Vehicle Licensing Guidance dated February 2021

5. Conditions/Fitness to Drive

Police officers may encounter driving licence holders apparently suffering from a medical condition which compromises their fitness to drive. Where such a person has been involved in a collision, is reported to have been driving erratically or has taken ill at the wheel, Form D751 is to be submitted to the DVLA Drivers Medical Unit without delay. Where a driving licence holder is involved in a non-driving incident and the police officer believes that the licence holder has a medical condition that may affect their fitness to drive, Form D751/A is to be submitted to the DVLA Drivers Medical Unit. This can be submitted by email to PST@dvla.gov.uk. This allows the medical investigation team to consider whether it is necessary to revoke a licence. It is worth noting that this is not an "instant" process by any means, as often the investigation can require medical assessments or liaison with the General Practitioner (GP) of the licence holder.

Where a driver fails a roadside eyesight test and officers consider that allowing the driver to continue will compromise the safety of the driver and/or other road users, officers can submit electronic form **D751E** directly to the DVLA. If the incident occurs Monday – Friday between 0800 hours and 2100 hours the DVLA should be contacted by telephone to alert them to the imminent arrival of a form and to the seriousness of the situation. The telephone numbers for eyesight referrals are listed at Appendix 'B'.

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6. **How many times have police Scotland road policing officers included a positive result from roadside drug swabs for cannabis to the DLVA Medical Department via form D-751 between 3rd of April 2016 & 4th of April 2021, by force area?**
7. **How many times have police Scotland road policing officers included “cannabis misuse” as grounds for a medical condition to the DLVA Medical Department via form D-751 between 3rd of April 2016 & 4th of April 2021, by force area?**
8. **How many times have police Scotland road policing officers included a positive result from a blood test for cannabis misuse to the DLVA Medical Department via form D-751 between 3rd of April 2016 & 4th of April 2021, by force area?**
9. **How many times have Police Scotland road policing Officers reported a member of the public as “unfit to drive through cannabis use” to the DLVA Medical Department between 3rd of April 2016 & 4th of April 2021, by force area?**
10. **How many times have Police Scotland road policing Officers reported an alleged “admission of habitual cannabis use” from a member of the public to the DLVA Medical Department between 3rd of April 2016 & 4th of April 2021, by force area?**
11. **How many times have Police Scotland road policing Officers reported a member of the public as “unfit to drive through cannabis use” to the DLVA Medical Department via form D-751 between 3rd of April 2016 & 4th of April 2021, by force area?**

In response to questions six to eleven above, I regret to advise 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, there is central process for the administration or recording of forms submitted to DVLA. Individual officers submit forms as and when appropriate and to attempt to research how many times this had been done/ in what circumstances, we would have to make contact with all officers and review their notebooks/ crime reports etc for the period in question.

12. **Does Police Scotland officially classify Cannabis misuse as a Medical Condition?**
13. **Does Police Scotland officially classify Cocaine misuse as a Medical Condition?**

In response to questions twelve and thirteen above, there is no information held by Police Scotland that specifically classifies drug misuse as a medical condition and therefore section 17 of the Act - *information not held* - applies. I would however refer you to our response to question five above and the DVLA reasonable grounds listed.

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14. Does police Scotland provide its road policing officers with any training as to the correct use and/or submission of DLVA Medical Department form D-751 – Reporting a medical condition?
- If So/not what Guidance does Police Scotland provide its road policing officers with as to the correct use and/or submission of DVLA form D-751 that includes Cannabis misuse as grounds for a medical condition?
 - If So/not what Guidance does Police Scotland provide its road policing officers with as to the correct use and/or submission of DVLA form D-751 that includes Cocaine misuse as grounds for a medical condition?

In response to these questions, I would refer you to our response to question five above. In terms of section 17 of the Act, I can confirm however that information regarding cannabis or cocaine misuse specifically is *not held* by Police Scotland.

15. For all roadside drug swabs reported to the DLVA Medical Department by police Scotland officers between 3rd of April 2016 & 4th of April 2021, what percentage included cannabis misuse as its grounds?
16. For all roadside drug swabs reported to the DVLA Medical Department by police Scotland officers between 3rd of April 2016 & 4th of April 2021, what percentage were for cocaine misuse as its grounds?
17. For all blood test results reported to the DLVA Medical Department by police Scotland officers between 3rd of April 2016 & 4th of April 2021, what percentage cited cannabis misuse in its grounds?
18. For all blood test results reported to the DVLA Medical Department by police Scotland officers between 3rd of April 2016 & 4th of April 2021, what percentage cited for cocaine misuse in its grounds?

In response to questions fifteen to eighteen above, I regret to advise 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.

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19. How many conduct complaints have been made against Police Scotland Road Policing officers between 3rd of April 2011 & 4th of April 2021, by force area?

Police Scotland aims to provide the best possible service to the people of Scotland however recognises that on occasion the service received falls short of the standards expected by the public and the police themselves.

To provide some context to our response, it may be helpful to first outline how the complaints and conduct process operates in Scotland and to provide some additional information sources.

Firstly, I would advise that complaints and conduct are distinct and separate matters with both having different assessment and recording processes on the Professional Standards Department (PSD) database. Consequently, complaints and conduct matters cannot simply be added together.

All complaints received by Police Scotland are managed in line with our [Complaints about the Police Standard Operating Procedure \(SOP\)](#).

Further details in relation to our complaints process can be found on the Police Scotland website via the following link: www.scotland.police.uk/complaints/

Once complaint matters are concluded, the circumstances may be referred for a separate conduct assessment. PSD manage conduct matters for police officers, whilst People & Development (P&D) manage conduct matters relative to members of police staff.

Police officer conduct is assessed against our [Standards of Professional Behaviour](#).

Should an officer's behaviour be assessed to breach the Standards of Professional Behaviour, a preliminary assessment will be carried out under Regulation 10 of [the Police of Scotland \(Conduct\) Regulations 2014](#).

Should the assessment provide that an investigation is required, the officer concerned will be served with a Notice of Misconduct Investigation form. The purpose of the investigation is to gather evidence to establish the facts and circumstances of the alleged misconduct and ascertain if there is a case to answer.

Our misconduct procedures aim to provide a fair, open and proportionate method of dealing with alleged misconduct and intend to encourage a culture of learning and development for individuals and the organisation. Notwithstanding, disciplinary action undoubtedly has a part to play, should circumstances dictate that this is required.

Once complaint matters are concluded, the circumstances *may* be referred for a Conduct Assessment to be undertaken.

This might not necessarily include every aspect of the complaint or every officer involved, however the same officer and circumstances could appear on both a complaint case and a conduct case.

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Furthermore, there can be one or more allegations contained within one complaint case and equally, there can be one or more subject officers relative to each allegation.

Conduct cases may contain multiple allegations, but are limited to one subject officer per case.

Please note that data is only available from 01/04/2014, when the national Professional Standards database became operational.

Information for the period prior is *not held* by Police Scotland and section 17 of the Act therefore applies.

For the purpose of this request, 'conduct complaint' has been interpreted to relate to a complaint as described above.

In order to respond as accurately as possible to your question we have also included local Divisional complaints which featured a Roads Policing Officer, as well as those in the national Operational Support Division.

A total of 1,278 complaint cases received between 01/04/2014 - 04/04/2021 involved subject officers from Road Policing.

Each complaint may involve multiple allegations and multiple subject officers. Some complaints may involve officers from other divisions or departments as a consequence, however all of these complaints involve at least one subject officer from Road Policing.

Data has been provided below based on subject officers attached to these complaints, which details the regional area within which each officer was based at the time of complaint. Each complaint may include multiple subject officers, therefore the number of officers may vary from the number of complaints detailed above.

You should note that as explained further in our [Officer Numbers](#) publications, Road Policing is a *regional* resource, part of our Operational Support Division.

Some parts of the division can be grouped into geographic sub-division but many parts are truly regional, making this the most appropriate way to display the breakdown requested.

Road Policing Officers subject to complaint, by area (01/04/2014 - 04/04/2021) ^{1 2 3}

Roads Policing East	520
Roads Policing North	238
Roads Policing West	840
Total	1598

1. Data is based on the case received date.
2. Unidentified subject officers are excluded from the table above.
3. Each complaint may include multiple subject officers, therefore the number of officers may vary from the number of complaints.

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20. How many conduct complaints have been made against Ayrshire Road Policing officer PC Gaffney (T540) between 3rd of April 2011 & 4th of April 2021?
21. Did any of the complaints recorded against Ayrshire Road Policing officer PC Gaffney (T540) between 3rd of April 2011 & 4th of April 2021 result in disciplinary action?
22. What were the nature of any complaints made against Ayrshire Road Policing officer PC Gaffney (T540), by category of complaint type?

In response to questions twenty to twenty-two above, I can neither confirm nor deny whether the information sought 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
The overwhelming public interest lies in protecting individuals' right to privacy and the expectation of confidence that they have as regards their personal information.
- If it was held, one or more of the exemptions set out in the Act would apply
In this instance, sections 38(1)(b) and 38(1)(2A) of the Act apply insofar as you have requested third party personal data, disclosure of which would contravene the data protection principles as defined in the Data Protection Act 2018.

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'

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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.

On that basis, it is my view that disclosure of the information sought would be unlawful.

23. How many complaints have been lodged against officers within the three command areas of Ayrshire's Road Policing division between 2011 to 2022, by force area?

Please note that data is only available from 01/04/2014, when the national Professional Standards database became operational.

Information for the period prior is *not held* by Police Scotland and section 17 of the Act therefore applies.

As explained above, Road Policing is a *regional* resource, part of our Operational Support Division.

What we are classing as Ayrshire Road Policing Unit for the purposes of this request was previously split into two categories - Irvine - Trunk Road Policing Group (TRPG) and Irvine - Divisional Road Policing Unit (DRPU).

This was amalgamated following a structure review that was implemented in February 2019 whereby the department became commonly known as the Ayrshire Road Policing Unit.

This remains the structure and figures are based upon this single entity.

You should note that there are other parts of Roads Policing West which are more regional in nature but could equally deploy within the Ayrshire area.

A total of 103 complaint cases received between 01/04/2014 - 04/04/2022 involved subject officers from Ayrshire's Road Policing Unit.

Each complaint may involve multiple allegations and multiple subject officers.

Some complaints may involve officers from other divisions or departments as a consequence, however all of these complaints involve at least one subject officer from Ayrshire's Road Policing Unit.

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a. What was the nature, by category, of all complaints lodged against officers within the three command areas of Ayrshire's Road Policing division between 2011 to 2022, by force area?

This is interpreted to be a continuation of question twenty-three above.

Please note that each complaint may involve multiple allegations, therefore the number of allegations may vary from the number of complaints.

Each allegation may also be linked to multiple officers.

Allegations linked to subject officers from Ayrshire's Road Policing Unit (01/04/2014 - 04/04/2022) ^{1 2}

Allegation Type	Number
Assault	9
Discriminatory Behaviour	4
Excessive Force	3
Incivility	38
Irregularity in Procedure	66
Oppressive Conduct/ Harassment	10
Other	1
Other - Criminal	3
Other - Non Criminal	7
Traffic Irregularity/Offence	12
Grand Total	153

1. Data is based on the case received date.
2. Each complaint may involve multiple allegations.

b. Did any complaints recorded against officers within the three command areas of Ayrshire's Road Policing division made between 1st of January 2010 & 4th of April 2022 result in disciplinary action?

This is interpreted to be a continuation of question twenty-three above.

Please note that each complaint may involve multiple allegations and multiple officers, with each allegation against each officer subject to an individual disposal.

Therefore, the number of disposals may vary from the number of allegations, subject officers and complaints.

For the purposes of this request, 'disciplinary action' has been interpreted as formal or management action. Please also note that complaints received may remain subject to live enquiry and therefore may not yet be concluded.

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Formal or Management Action disposals for allegations linked to subject officers from the Irvine Trunk Road Policing Group (01/04/2014 - 04/04/2022) ^{1 2 3}

Case Disposal	Number
Formal Action	2
Management Action	14
Grand Total	16

1. Data is based on the case received date.

2. Each officer against each allegation is subject to an individual disposal. Therefore, the number of disposals may vary from the number of allegations, subject officers and complaints.

3. Complaints received may remain subject to live enquiry and therefore may not yet be concluded.

24. What was the total number of complaints made against officers within the three command areas of Ayrshire Road Policing division between 2011 to 2022?

Please see response to question 19 above.

25. How many times have police Scotland road policing officers recorded a positive roadside drug swabs for cannabis misuse by a serving member of Police Scotland since the introduction of the test, by force area?

26. How many times since the introduction of roadside drug swabs for cannabis misuse have a positive roadside drug swab for cannabis misuse by a serving member of Police Scotland resulted in a prosecution for driving under the influence, by force area?

27. How many times have police Scotland road policing officers recorded a positive roadside drug swabs for cocaine misuse by a Police Scotland officer since the introduction of the test, by force area?

28. How many times since the introduction of roadside drug swabs for cocaine misuse has a positive result for cocaine misuse by a serving member of Police Scotland resulted in a prosecution for driving under the influence, by force area?

In response to questions twenty-five to twenty-eight above, I can advise you that for the period in question, there have been zero complaint, conduct or misconduct cases which involve allegations where a subject officer tested positive for drug use whilst driving or in charge of a motor vehicle.

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.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

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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.