

Our Ref: IM-FOI-2022-2129  
Date: 02 November 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 warnings have been issued by Police Scotland officers for possession of a) Class A, b) Class B, and c) Class C drugs in each of the last three years, broken down by police division**

In response to these questions, 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, the system used to manage Recorded Police Warnings (RPWs) does not differentiate between the different classes of drugs.

The information would however be held in the corresponding crime report.

Crimes in Scotland are recorded in accordance with the Scottish Government Justice Department offence classification codes and they are not thereafter sub-categorised.

In this instance, the relevant classification would be *Possession of Drugs* however, the same classification is used for all drug types.

To research your request, it would be necessary to read the crime report associated with each RPW and extract and note the class of drug associated.

Given there are several thousand RPWs issued each year, this is an exercise I estimate would far exceed the cost threshold.

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I can however advise that for the period prior to 28 September 2021, there were zero RPWs issued for possession of Class A drugs.

By way of explanation, prior to the change in the Lord Advocate guidelines on 28 September 2021, anyone found to be in possession of a Class A drug was not suitable for an RPW so an RPW would not have been issued.

### 2) **How many arrests have been made by Police Scotland officers for possession of a) Class A, b) Class B, and c) Class C drugs in each of the last three years, broken down by police division**

In 2018, the Criminal Justice (Scotland) Act 2016 removed the separate concepts of arrest and detention and replaced them with a power of arrest without warrant - where there are reasonable grounds for suspecting a person has committed, or is committing, an offence.

When a person is arrested, a statement of arrest should be read over as soon as reasonably practical and details recorded in the arresting officer's notebook.

A person is 'Not Officially Accused' (a suspect) when arrested and not cautioned and charged. They are 'Officially Accused' once arrested and cautioned and charged.

If conveyed to a police station, the arrested person (of either classification) will have their details recorded in the Police Scotland National Custody System.

The Act however also provides for certain situations whereby a person must be released from police custody prior to their arrival at a police station - effectively allowing the police to 'de-arrest' that person where the reasonable grounds for suspicion no longer exist.

In those circumstances, the details of an arrested person are not held electronically.

As a result, we are unfortunately unable to collate comprehensive arrest data as case by case assessment of all officer notebooks would be required - in addition to the partial arrest data held in the National Custody System.

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.

In addition to the above limitations, whilst we do hold data regarding individuals arrested and brought into custody, that data would reflect the offence which is *possession of drugs* - with further information such as drug class being held in the associated crime report.

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**3) How many charges have been recommended to COPFS by Police Scotland for possession of a) Class A, b) Class B, and c) Class C drugs in each of the last three years, broken down by police division**

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, crimes in Scotland are recorded in accordance with the Scottish Government Justice Department offence classification codes and they are not thereafter sub-categorised.

In this instance, the relevant classification would be *Possession of Drugs* however, the same classification is used for all drug types.

We cannot search by drug type, nor is it possible to search only for detected crimes where the disposal was reported to COPFS.

All detected crime reports would have to be assessed for drug class and relevance as the outcome could be a variety of options - including reported to COPFS or RPW issued etc.

Given there are several thousand detected crimes each year, this is an exercise I estimate would far exceed the cost threshold.

**4) The total number of incidences recorded of Police Scotland officers finding someone to be in possession of a) Class A, b) Class B, and c) Class C drugs in each of the last three years, broken down by division**

If I interpret this question as seeking information about *recorded* as opposed to *detected* crimes then the explanation above would also apply as there would in fact be more crime reports to be assessed.

I have however considered whether you might be referring to the use of Stop and Search and on that basis, the information sought for the period up to March 2022 is available on our website:

[Data Publication - Police Scotland](#)

As the information sought is publicly available, I am refusing to provide you with it in terms of section 16 of the Freedom of Information (Scotland) Act 2002.

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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”*

Information for the period since April 2022 is due to be published in the next 12 weeks and so section 27(1) of the Act applies - Information intended for future publication.

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](mailto: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](mailto: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.