| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0257  Responded to: 16th February 2023 |
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Your recent request for information is replicated below, together with our response.

## I would like to request the following information in relation to the Scottish Borders Police e-Mail enquiry 2013 concerning officers in Galashiels and elsewhere. I am requesting full details of the enquiry. All officers involved and also all the name’s of the officers redacted from the enquiry and the rational for this decision. As this is a non criminal historical matter I can see no legal reason for my request for information being refused. In short I wish details of the full enquiry.

Following our request for additional clarification you replied:

## The enquiry in question was initially a Lothian Borders Police enquiry that came to light in February 2013 and was thereafter dealt with by Police Scotland from April 2013 until its conclusion approximately 3 years later. The nature of the enquiry was that a number of police officers had been sent inappropriate E-mails which could have been construed as sexist and racist in nature. The matter was disclosed to the media at the time by Lothian and Borders Police and blown out of all proportion. I would like a copy of the enquiry regarding the outcome of the enquiry and all the names and ranks at the time of all involved. I wish included the names and rank of all the individuals who’s names were redacted from the enquiry and were excluded from any disciplinary proceeding and the reason for this redaction. In short I am requesting a copy of the enquiry or as much information as can be provided. If you are unable to provide a report then all the details or at least ranks of those involved including the redacted ranks and the reason for redaction. This would obviously be far easier to provide. As I stated this matter is a non criminal historic matter and I’m sure a number of those concerned will no longer be even serving officers.

Police Scotland holds information in line with our [Record Retention Standard Operating Procedure](https://www.scotland.police.uk/spa-media/nhobty5i/record-retention-sop.pdf). As a result, and due to the passage of time, information may have been deleted or destroyed in accordance with these procedures.

In relation to your specific request, I can confirm that no report detailing the enquiry is held. As such, in terms of section 17 of the Act, this is official notification that the information you have requested is not held by Police Scotland.

Whilst no full or partial report is held, it may assist you to know that our database confirms that allegations were made against 11 officers, broken down by rank as follows:

Sergeant - 3  
Constable - 8

The outcomes of each of the 11 cases are recorded as follows:

Warnings - 8

Counselled - 1

Formal misconduct hearings - 2

In respect of the names or any other details pertaining to the individuals against whom allegations were made, the information is considered exempt and, in terms of section 16 of the Act, Police Scotland is required 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.

The exemptions applicable are as follows:

* Section 35(1)(g) & 2(a)/(b) - law enforcement

Disclosure would prejudice the ability of Police Scotland to ascertain whether a person has failed to comply with the law and / or is responsible for conduct which is improper.

Whilst we wholly recognise the need for transparency around officer misconduct allegations, this must be balanced with the need to ensure that no privacy laws are breached and that there is no compromise to the investigative process.

Police Scotland do not routinely release details of conduct investigations into the public domain and there is no expectation on the part of the officers subject to allegations (or indeed the individuals who provide information about the allegations) that the details will be publicly released.

Disclosure could lead to a situation whereby the ability of Police Scotland to effectively investigate conduct issues is compromised as a result of individuals being less willing to engage with the process for fear that the details will emerge publicly.

On balance, it is assessed that the public interest is sufficiently served by the routine disclosure of statistical information regarding officer conduct and that any further detail is not in the public interest.

* Section 38(1)(b) - personal information

Article 4 of the General Data Protection Regulation (GDPR) defines personal data 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 GDPR goes on to state that processing is lawful only if certain conditions are met - and the only potentially applicable condition is 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’

You should note that retirement or resignation from the organisation does not change this position and such individuals’ protection rights still apply. Whilst you may have a legitimate interest in the disclosure of this information, your interests are overridden by the interests, fundamental rights and freedoms of the data subjects and disclosure of the information requested would therefore be unlawful.

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.