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Our Ref: IM-FOI-2022-2207
Date: 1st December 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.

Please accept our apologies for the delay in responding.

You may find it beneficial to note that we report on a quarterly basis to the Scottish Police Authority (SPA) Complaints and Conduct Committee and you may find useful information, as well as a copy of our quarterly report (Q2 22/23), at the following link.

www.spa.police.uk/meetings/complaints-and-conduct-committee/15-november-2022/

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 for your consideration.

Firstly, it is important to note that the complaint and conduct processes are distinct from each other and both have separate assessment and recording processes within the Professional Standards Department (PSD) database.

All complaints received by Police Scotland are managed in line with our [Complaints About the Police Standard Operating Procedure](#) (SOP) and further details regarding the process can also be found on the Police Scotland [website](#).

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 disciplinary matters relative to members of police staff.

Police officer conduct is assessed against our [Standards of Professional Behaviour](#) and should an officer's behaviour be assessed to breach those standards, a preliminary assessment will be carried out under Regulation 10 of the Police [Service of Scotland \(Conduct\) Regulations 2014](#) and the related [Police Scotland SOP](#).

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.

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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.

Importantly, it should be noted that the Police Service of Scotland (Conduct) Regulations 2014 and related processes apply only to serving police officers.

Once a police officer retires or resigns proceedings will automatically cease.

For ease of reference, your request and our response is detailed below.

For each calendar year 2019, 2020 and 2021 and 1 January to October 17 2022, please answer the following questions:

1.a How many of your officers faced misconduct or gross misconduct proceedings (i.e. officers employed by your force at the time the alleged misconduct took place)?

The use of the word 'proceedings' in this question compared with the use of the word 'investigations' in questions 1b and 3 of your request leaves this matter open to interpretation.

Part 2 of 'The Police Service of Scotland (Conduct) Regulations 2014' relates to Misconduct 'investigations' which commence with a Preliminary Assessment (Regulation 10) as previously mentioned.

This regulation applies if a misconduct allegation comes to the attention of the Deputy Chief Constable (DCC).

The DCC must assess whether the conduct which is the subject matter of the misconduct allegation would, **if that conduct were proved**, amount to misconduct, gross misconduct or neither.

The preliminary assessment may vary from the determination which is reached following a formal misconduct investigation.

Misconduct 'proceedings' are defined in Part 3 of the Regulations as *'hearings or meetings scheduled, following determination by the Assistant Chief Constable Professionalism & Assurance (or Divisional Superintendent, as the case may be) that the constable has a case to answer in respect of misconduct or gross misconduct.'*

This decision will be made at the conclusion of an investigation.

As your additional questions relate to 'investigations' rather than 'proceedings', data has been provided relating to 'Preliminary Assessment' decisions of Misconduct or Gross Misconduct.

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Table: Gross Misconduct or Misconduct at the Preliminary Assessment stage, by year of assessment ^{1, 2, 3}

Assessment Decision	2019	2020	2021	2022
Gross Misconduct	46	38	34	9
Misconduct	240	256	282	173
Grand Total	286	294	316	182

- 1. Data is based on the preliminary assessment date.
- 2. Each assessment is limited to one subject officer, with a maximum of one subject officer per case.
- 3. Data for 2022 covers the period of 01/01/2022 – 17/10/2022 inclusive.

1.b How many of your officers faced misconduct or gross misconduct investigations resigned from their position before the investigation was concluded (i.e. officers employed by your force at the time the alleged misconduct took place that resigned by choice)?

For the purposes of this question, “Officers faced misconduct or gross misconduct investigations resigned before the investigation was concluded” has been interpreted as any preliminary assessment decision of ‘Misconduct or Gross Misconduct’ where an officer has resigned or retired prior to the conclusion of conduct proceedings (including hearings or meetings).

As previously mentioned, Conduct Regulations apply only to serving officers: misconduct proceedings cease should an officer retire or resign at any stage during the process.

Finally, please note that data has not been included for live/ongoing proceedings, due to these matters having not yet been concluded.

Table: Gross Misconduct or Misconduct at the Preliminary Assessment stage where the subject officer has retired/resigned, by year of assessment ^{1 2 3 4}

Case Outcome	2019	2020	2021	2022
Retired/Resigned	12	16	16	4

- 1. Data is based on the preliminary assessment date. Please note that this will vary from the hearing or meeting date.
- 2. Each assessment is limited to one subject officer, with a maximum of one subject officer per case.
- 3. Data for 2022 covers the period of 01/01/2022 – 17/10/2022 inclusive.
- 4. Does not include data for live/ongoing proceedings, due to these matters having not yet been concluded.

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2. For each case, please provide the officer's name,

In terms of section 16 of the Act, I am refusing to provide you with the officer names.

Section 16 of the Act requires Police Scotland 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 the information sought is held by Police Scotland and the exemption I consider to be applicable is section 38(1)(b) - personal information.

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'

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.

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... rank

I am also refusing, for the most part, to provide you with the officer ranks - for the reasons outlines above. I can however provide data in respect of police constables and I have provided the remaining information in a category 'Sergeant or above'.

Table: Gross Misconduct or Misconduct at the Preliminary Assessment stage, by rank of subject officer and year of assessment ^{1, 2, 3}

Rank	2019	2020	2021	2022
Constable	229	244	261	149
Sergeant or above	57	50	55	33
Grand Total	286	294	316	182

1. Data is based on the preliminary assessment date.
2. Each assessment is limited to one subject officer, with a maximum of one subject officer per case.
3. Data for 2022 covers the period of 01/01/2022 – 17/10/2022 inclusive.

...and a description of the misconduct type (i.e. sexual misconduct, assault, discriminatory behaviour, etc)

With regards to the 'description of misconduct type', please note that each assessment may involve multiple allegations attached to a Conduct case and therefore, the number of allegations may vary from the number of assessments.

The types of allegation recorded are based on the 10 [Standards of Professional Behaviour](#). Data has been provided below based on the number of allegations linked to preliminary assessment decisions of Misconduct or Gross Misconduct.

Table: Allegations linked to Gross Misconduct or Misconduct at the Preliminary Assessment stage, by Allegation Type and year of assessment ^{1, 2, 3}

Allegation Type	2019	2020	2021	2022
Authority, Respect and Courtesy	47	63	61	28
Challenging and Reporting Improper Conduct	1	18	0	0
Confidentiality	17	57	37	8
Discreditable Conduct	280	214	261	154
Duties and Responsibilities	22	27	41	16
Equality and Diversity	0	3	3	1
Honesty and Integrity	44	28	21	8
Orders and Instructions	38	11	7	3
Use of Force	3	11	7	8
Grand Total	452	432	438	226

1. Data is based on the preliminary assessment date.
2. Each assessment may involve multiple allegations, therefore the number of allegations may vary from the number of assessments.
3. Data for 2022 covers the period of 01/01/2022 – 17/10/2022 inclusive.

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3. For each case, please confirm how many investigations resulted in an official hearing following the conclusion of the misconduct or gross misconduct proceedings; the outcome of the misconduct or gross misconduct proceedings; any disciplinary action taken and whether the officer remains employed by your force?

For the purposes of this question, “Investigations resulting in an official hearing” has been interpreted as any preliminary assessment decisions of Misconduct or Gross Misconduct which led to a concluded hearing or misconduct meeting.

As previously mentioned, ‘investigations’ within the context of the Regulations is a decision designated to the Assistant Chief Constable Professionalism & Assurance, as regards whether an investigator is appointed to complete a misconduct investigation.

Following a formal misconduct investigation, the Assistant Chief Constable determines whether or not the constable has a case to answer in respect of misconduct, gross misconduct or neither.

Only at this stage, would a decision to progress the case to a hearing or meeting be taken.

Please note that conduct meetings are an alternative to hearings, and apply only to matters assessed as Misconduct at this determination stage.

All matters assessed as Gross Misconduct at this stage following determination would progress to a hearing. Outcomes for both hearings and meetings have been provided in our response below.

Furthermore, although a hearing may be scheduled following the determination stage, this does not necessarily mean that a hearing has been held. As previously outlined, Conduct Regulations apply only to serving officers; misconduct proceedings cease should an officer retire or resign at any stage during the process.

Lastly, data has not been included for live/ongoing assessments due to these matters having not yet been concluded.

Table: Gross Misconduct or Misconduct at the Preliminary Assessment stage which resulted in a concluded hearing or meeting, by year of assessment ^{1, 2, 3, 4}

Case Outcome	2019	2020	2021	2022	Total
Resulted in a concluded hearing	11	4	3	1	19
Resulted in a concluded meeting	12	18	8	1	39
				Total	58

1. Data is based on the preliminary assessment date. Please note that this will vary from the hearing or meeting date.
2. Each assessment is limited to one subject officer, with a maximum of one subject officer per case.
3. Data for 2022 covers the period of 01/01/2022 – 17/10/2022 inclusive.
4. Does not include data for live/ongoing assessments, due to these matters having not yet been concluded.

With regards to the ‘outcome’ of proceedings, please note that each allegation is subject to an individual disposal. As each case may involve multiple allegations, the number of allegations may therefore vary from the number of cases.

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Data has been provided below which details the allegation disposals linked to the above 58 cases. It is important to note that this figure will be different to the number of officers linked to those disposals.

For clarity, it is important to note that a dismissal which took place in 2022, for example, may relate to a matter which was subject of a Preliminary Assessment in an earlier year. If you refer to the SPA Complaints and Conduct Committee report hyperlinked at the beginning of this response, you will note that 6 officers were dismissed this year for matters subject of an assessment which took place in previous years.

Table: Allegations linked to Gross Misconduct or Misconduct at the Preliminary Assessment stage which resulted in a concluded hearing or meeting, by allegation disposal and year of assessment ^{1, 2, 3, 4}

Allegation Disposal	2019	2020	2021	2022
Hearing - Dismissal With Notice	0	8	0	0
Hearing - Dismissal Without Notice	4	0	1	0
Hearing - Demotion in Rank	2	0	0	3
Hearing - Final Written Warning	6	1	6	0
Hearing - Written Warning	1	0	0	0
Hearing - No Action	11	5	0	0
Meeting - Final Written Warning	0	9	1	0
Meeting - Written Warning	4	8	9	0
Meeting - Verbal Warning	9	4	4	1
Meeting - Improvement Action	5	3	1	0
Meeting - No Action	9	11	2	0
Grand Total	51	49	24	4

1. Data is based on the preliminary assessment date. Please note that this will vary from the hearing or meeting date.
2. Each assessment may involve multiple allegations, therefore the number of allegations may vary from the number of assessments.
3. Data is linked to allegation disposals – this is different to the number of officers linked to those disposals.
4. Data for 2022 covers the period of 01/01/2022 – 17/10/2022 inclusive.
5. Does not include data for live/ongoing assessments, due to these matters having not yet been concluded.

As regards the employment status of the 58 officers subject to a Gross Misconduct or Misconduct at the Preliminary Assessment stage (from 01/01/2019 – 17/10/2022) which resulted in a concluded conduct hearing or meeting; 48 remain in service with Police Scotland.

Please note that this data is a snapshot taken at 07/11/2022 and remains subject to change.

Please also note officers subject to misconduct proceedings may leave the organisation for a number of reasons, including; retiral/resignation during the conduct process but prior to its conclusion, retiral/resignation following conclusion of the conduct process but prior to dismissal, or as a result of dismissal following conclusion of a conduct hearing.

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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.