

Our Ref: IM-FOI-2022-0072
Date: 25 January 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.

Is it correct procedure that each person who is subjected to a stop and search by Police Scotland should be afforded the following rights under section 73 of criminal justice Scotland act 2016

73 Contents of code of practice

(1) The Scottish Ministers must make a code of practice about the carrying out of a search of a person who is not in police custody.

(2) A code of practice must set out (in particular)—

(a) the circumstances in which a search of such a person may be carried out,

(b) the procedure to be followed in carrying out such a search,

(c) in relation to such a search—

(i) the record to be kept,

(ii) the right of someone to receive a copy of the record.

(3) A code of practice is to apply to the functions exercisable by a constable.

(4) In this section—

“constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“police custody” has the same meaning as given for the purposes of Part 1 (see section 64).

(5) In this Chapter, a reference to a code of practice means one required by subsection (1) (but see also section 74(5)).

Please be advised that stop and search information is 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.

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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 links: [Stop and Search - Police Scotland](#)

<https://www.scotland.police.uk/spa-media/jbulaw2y/stop-and-search-sop.pdf>

Should you require any further assistance please contact Information Management - Dundee on foidundee@scotland.pnn.police.uk 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.

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.

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