

8 July 2008

Your Ref:

Our Ref: 0577/2008

Ms Anne Thrope [request-995-
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Force Disclosure Unit
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Dear Ms Thrope

FREEDOM OF INFORMATION REQUEST REFERENCE NUMBER 0577/2008

I refer to your clarification correspondence of 8 July 2008, which was received by Strathclyde Police on the same date.

Your clarified question is:

I wish to know how many items have been seized (this means to deprive a person of their natural right to enjoy his or her property) by Strathclyde Police (this is yourself), from members of the public (these are your customers), and not returned to the member of the public, even although no report has been made to the Procurator Fiscal, no charges have been brought, and no conviction obtained (the member of the public has not done anything wrong).

In accordance with Sections 12(1) (Excessive cost of compliance) and 16(4) (Refusal of request) of the Freedom of Information (Scotland) Act 2002 (the Act), this letter represents a Refusal Notice.

By way of explanation, what you have defined by expanding upon your original question could be interpreted as the common law crime of theft i.e. the taking or appropriating of property without the consent of the rightful owner or other lawful authority. By definition therefore what you are asking for is either the number of times the force has feloniously appropriated the property of another person or, relates to property that has been lawfully seized either under statute or common law and not subsequently returned to that individual. Accordingly, in the absence of any criminal allegation, in its widest interpretation this would include any circumstance where property was lawfully seized.

You may be aware that police officers have statutory powers to arrest or detain persons and thereafter where property is found in the possession of a person to whom it is not likely to belong, questions may be put to him to ascertain where or from whom the property was obtained. Replies made to such questions are admissible in evidence. (*Costello v. MacPherson*, 59 S.L.R. 96). The police are entitled at common law to seize any article found in the possession of an accused person and used or calculated to be of use in the commission of the offence (*Mauchline v. Stevenson*, 15 S.L.R. 418).

This power of seizure applies to both common law and statutory offences even although the statute contravened makes no provision for seizure. The Criminal Justice and Police Act 2001 (Part 2) Sections 50 to 68 for example gives additional powers of seizure to officers as does the Local Government (Scotland) Act 1973: Byelaws Prohibiting the Consumption of Alcohol in Designated Public Places.

Possibly most closely fitting your definition is the Crime and Punishment (Scotland) Act 1997, relating to Confiscation of Alcohol where a constable has reasonable grounds for suspecting that a person in a public place is under the age of 18 and is in possession of alcoholic liquor, within the meaning of the Licensing (Scotland) Act 1976, may require that person to surrender that liquor to him, and may dispose of it in such manner as he considers appropriate; and he may also require that person to supply him with his name and address. In this case no report is submitted to the Procurator Fiscal for the primary offence nor is the property returned to the individual.

In order to find circumstances whereby the lawful seizure of property has been exercised and thereafter ascertain if any report has or more specifically has not been prepared for the information of the Procurator Fiscal, would require the force to examine every crime report, subject report, production book, property record, detention record, personal notebook as well as perhaps information contained on the national stolen property index to name but some possible sources of information, and would run to several hundred documents if not thousands over any meaningful time period.

Given the above, if I was to use the example that it took 5 minutes to check each report in order to confirm the involvement of property of whatever description be it alcohol, drugs, jewellery, clothing etc, the cost to do so would be considerably in excess of the £600 prescribed by the Scottish Ministers under the Act.

I hope this information is helpful, however, if you are not satisfied with the way in which your request has been dealt with, you are entitled in the first instance to request a review of the decision made by the Force. Should you wish to request such a review, please write to Mrs Sheena Brennan, Disclosure Manager at the above address within 40 working days of receiving this letter. Once informed of the Review Panel's decision, if you are still not satisfied, then you are entitled to apply to the Scottish Information Commissioner for a decision. Contact details are; Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS, telephone 01334 464610.

I should like to take this opportunity to thank you for your interest in Strathclyde Police. Should you require any further assistance concerning this matter please contact me directly on 0141 435 1205 quoting the reference number given.

Yours Sincerely

Graeme Cuthbertson
Inspector
Freedom of Information