



Our Ref: 007645/13

Your Ref:

Address Correspondence to: Steven Morris, Information Management

Date 21 January 2014

Dear T Scott,

Freedom of Information Act 2000

I write further to your request for information received 23/12/2013.

I note you seek access to the following information:

Please can the total number of Section 59 (Police Reform Act 2002) warnings, and orders be provided to myself for the past 5 years?

Can the total number of these that have also resulted in complaints also be provided?

Can the authority also provide a copy of their guidelines for officers using these measures, and how the public can appeal or complain if they feel these have been unfairly issued?

Following receipt of your request, searches were conducted within Leicestershire Police to locate information relevant to your request.

Your request for information has now been considered and the information asked for is as follows: -

Under Section 12 of the Freedom of Information Act 2000 police forces are only obliged to respond in full to requests that will take less than 18 hours to answer. In this case, every officer within the force would need to be contacted to see if they have issued a Section 59 warning as there is no simple way of retrieving this from the Police National Computer.

Even if we used the Police National Computer the information would not be 100% accurate as some vehicles may be unregistered (such as mini motos etc) and all officers would still need to be contacted. However, rather than refuse your request I have been able to answer all of the seizures that have occurred from 2009. Unfortunately our records do not go beyond 2009.

This information is as follows:

Leics Police Vehicle Seizures Sec 59 PRA 2002

	2009-	2010-	2011-	2012-	Apr 2013 - Dec
Financial Year	10	11	12	13	2013
Number of Seizures	44	42	32	30	19

Within the Force our officers have access to a legal database that describes Section 59 (see below). In order for a member of the public to make a complaint they can contact our Professional Standards Department via the following website

<http://www.leics.police.uk/contact-us/how-complain>

Section 59 of the Police Reform Act 2002 refers to vehicles being used in a manner which causes alarm, distress or annoyance. Where a vehicle is being used in this way, or otherwise amounts to careless or inconsiderate driving, a constable in uniform will have the powers set out in subsection (3) below.

*An example might be performing screeching 'handbrake turns' in a housing estate. The constable will also have these same powers where he has reasonable grounds for believing the vehicle has been used on **any occasion** in such a manner.*

The powers cannot be exercised unless the driver is BOTH using the vehicle anti-socially and is committing either the section 3 or the section 34 offence. Someone driving in a way that might be considered anti-social but not committing either of these offences is not liable to having his vehicle seized, nor is someone committing a different motoring offence.

*59(1) Where a constable in uniform has reasonable grounds for believing that a **motor vehicle** is being used on any occasion in a manner which -*

*(a) contravenes [section 3](#) or [34](#) of the Road Traffic Act 1988 (careless and inconsiderate driving and prohibition of off-road driving), and
(b) is causing, or is likely to cause, alarm, distress or annoyance to members of the public,*

he shall have the powers set out in subsection (3).

59(2) A constable in uniform shall also have the powers set out in subsection (3) where he has reasonable grounds for believing that a motor vehicle has been used on any occasion in a manner falling within subsection (1).

59(3) Those powers are -

*(a) the power, if the motor vehicle is moving, to order the person **driving** it to stop the vehicle;
(b) the power to seize and remove the motor vehicle;
(c) the power, for the purposes of exercising a power falling within paragraph (a) or (b), to enter any premises on which he has reasonable grounds for believing the motor vehicle to be;
(d) the power to use reasonable force, if necessary, in the exercise of any power conferred by any of paragraphs (a) to (c).*

Notes:

Failing to stop the vehicle as per (3)(a) above is a summary offence contrary to subsection (6) below.

59(4) A constable shall not seize a motor vehicle in the exercise of the powers conferred on him by this section unless -

*(a) he has warned the person appearing to him to be the person whose use falls within subsection (1) that he will seize it, if that use continues or is repeated; and
(b) it appears to him that the use has continued or been repeated after the warning.*

Notes:

With regard to the warning, a suggested wording that could be given to an individual driving a vehicle in this way is given at the bottom of this document.

59(5) Subsection (4) does not require a warning to be given by a constable on any occasion on which he would otherwise have the power to seize a motor vehicle under this section if -

- (a) the circumstances make it impracticable for him to give the warning;
- (b) the constable has already on that occasion given a warning under that subsection in respect of any use of that motor vehicle or of another motor vehicle by that person or any other person;
- (c) the constable has reasonable grounds for believing that such a warning has been given on that occasion otherwise than by him; or
- (d) the constable has reasonable grounds for believing that the person whose use of that motor vehicle on that occasion would justify the seizure is a person to whom a warning under that subsection has been given (whether or not by that constable or in respect of the same vehicle or the same or a similar use) on a previous occasion in the previous twelve months.

Offence

59(6) A person who fails to comply with an order under subsection (3)(a) is guilty of an offence.

59(7) Subsection (3)(c) does not authorise entry into a **private dwelling house**.

58(8) The powers conferred on a constable by this section shall be exercisable only at a time when [regulations](#) under section 60 are in force.

59(9) In this section -

driving

in this section has the same [meaning](#) as in the Road Traffic Act 1988.

motor vehicle

means any mechanically propelled vehicle, whether or not it is intended or adapted for use on roads; and

private dwelling house

does **not** include any garage or other structure occupied with the dwelling house, or any land appurtenant to the dwelling house.

Notes

*(i) A constable has the power to seize the vehicle **after warning** the person. If, after the warning has been given, the driving continues or is repeated then the vehicle can be seized. The requirement to give the warning does not apply where it is impracticable to do so or where it has been given on a **previous occasion** in that previous 12 months. A warning given on a **previous occasion** in that a previous 12 months would include a warning given that preceded a seizure. So if a driver is warned, vehicle seized, later reclaimed and warrants further seizure then, so long as this falls within a 12 month period since the earlier warning that resulted in seizure, then there is no need for a further warning before being able to seize again.*

*(ii) A warning given on a previous occasion in that previous 12 months does NOT have to have been given in respect of the same vehicle. The vehicle cannot be seized **unless** the warning is ignored. A previous warning given on the **same occasion** need not have*

been given by the same constable NOR does it have to have been given to the same person OR in respect of the same vehicle. It could have been given to the same person using another vehicle or to different person using the same vehicle. This covers the situation where a number of people gathered together are using their vehicles anti-socially and swapping them around.

(iii) It is not clear what constitutes the same 'occasion' under (5)(b) or (c). Must it be within minutes or hours? The safest interpretation would be to say that the earlier warning has been given during the same continuous attendance at the scene by that or another constable. A constable may enter premises (but not a private dwelling house) where he has reasonable grounds for believing he will find the vehicle. The process of seizing the vehicle is described in [The Police \(Retention and Disposal of Motor Vehicles\) Regulations 2002](#). Where a motor vehicle is seized, a [seizure notice](#) must be given to the person who appears to be the owner of the vehicle. See [suggested wording](#) for a seizure notice.

(iv) A designated community support officer has the same powers as those shown above, under [paragraph 9](#) of Schedule 4 of the Police Reform Act 2002, EXCEPT that he can only enter premises under subsection 3(c) above when in the company, and under the supervision of, a constable. (v)

(v) There has been a debate over the exemption in regulation 4(4) Item 7 of the Road Vehicles (Construction and Use) Regulations 1986 as to the legality of towing vehicles that are not broken down when using statutory powers. This exemption relates to any regulations concerning the construction/equipment of the trailer, but regulation 19 concerns the arrangements for the driver to use braking systems on the trailer and is not about the construction/equipment itself. This has led to confusion as to the actual legality of towing vehicles that are not broken down.

However, the senior police officer responsible for liaison with the DFT on traffic matters at a national level, has consulted the DFT and received assurances that the police and other partners can tow vehicle without a full lift off the ground, using their statutory powers.

Leicestershire Police provides you the right to ask for a re-examination of your request under its review procedure. Letters should be addressed to Information Manager, Professional Standards Department at the above address. If you decide to request such a review and having followed the Force's full process you are still dissatisfied, then you have the right to direct your comments to the Information Commissioner who will give it consideration.

Yours sincerely

Steven Morris

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