

OFFICIAL



Heddlu Police

**DYFED-POWYS**

**FOI Reference: 576/2022**

**Request:**

I am writing to make a request under the Freedom of Information Act for the following information:

The number of formal complaints made by members of the public against Dyfed-Powys Police officers, relating to:

- 1) Alleged racism by an officer
- 2) Alleged sexism by an officer
- 3) Alleged homophobia or other discrimination based on sexual orientation by an officer
- 4) Alleged transphobia by an officer
- 5) Religious discrimination by an officer (by officer-perceived religion of the complainant)
- 6) Other alleged discrimination by an officer (and the type of alleged discrimination).

Could I request these to be presented by calendar year, by type of complaint, and whether or not they were upheld (e.g. 2016, 4 complaints of racism, 2 upheld. 3 complaints of homophobia, 1 upheld. etc)

and:

- 7) Any information available on the specifics of complaints filed relating to transphobia

**Clarification sought:**

- 1) Can you please advise the time period you are requesting information for and is this calendar or financial years?
- 2) In relation to question 7 of this request - are you referring to a summary of the nature of the complaint?

**Clarification received:**

- 1) Please could I request the information in calendar years over the last 10 years?
- 2) Yes, thank you - I meant a summary of the nature of the complaint.

**Response 1 - 6:**

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

Please note: The information provided below relates to the categories that complaints were recorded under. In addition to this there was a change in complaint handling legislation

during the period of your request, which took effect on 1st February 2020. This involved changes to the way complaint allegations were categorised and the outcomes available. As a result there are two separate sets of data – Pre 2020 regulations and the post 2020 regulations (current legislation).

**Pre 2020 regulations:**

	Disability	Disability & Race	Gender	Gender & Age	Gender Reassignment	Mental Health	Other	Race	Religion/Faith	Sexual Orientation	Sexual Orientation & Race	Grand Total
<b>2013</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>
Disapplication - by Force	1	0	0	0	0	0	0	1	0	0	0	2
Local Resolution - by Division	1	0	0	0	0	0	1	0	0	0	0	2
Local Resolution - by PSD	1	0	0	0	0	0	0	0	0	0	0	1
Not Upheld - by Division	1	0	0	0	0	0	0	1	0	0	0	2
Not Upheld - by PSD	0	0	0	0	0	0	1	3	0	0	0	4
Withdrawn - by Force	0	0	0	0	0	0	0	1	0	0	0	1
<b>2014</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>
Local Resolution - by Division	1	0	0	0	0	0	0	0	0	0	0	1
Not Upheld - by Division	0	0	0	0	0	0	0	1	0	0	0	1
Not Upheld - by PSD	1	0	1	0	0	0	0	1	0	0	0	3
<b>2015</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>5</b>
Local Resolution - by Division	0	0	0	0	0	0	1	0	1	0	0	2
Not Upheld - by Division	0	0	0	0	0	0	0	1	0	0	0	1
Not Upheld - by PSD	0	0	0	0	0	0	0	1	0	0	0	1
Withdrawn - by Force	0	0	0	0	0	0	0	1	0	0	0	1
<b>2016</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>
Local Resolution - by Division	0	0	0	0	0	0	0	2	0	0	0	2
Not Upheld - by Division	0	0	1	0	0	0	0	0	0	0	0	1
Not Upheld - by PSD	0	0	0	0	1	0	0	0	0	0	0	1
Special Requirements	0	0	0	0	0	0	0	1	0	0	0	1
Upheld - by Division	0	0	0	0	0	0	0	1	0	0	0	1
Withdrawn - by Force	0	0	0	0	0	0	0	1	0	0	0	1
<b>2017</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>
Not Upheld - by Division	0	0	0	0	0	0	0	2	0	0	0	2
Not Upheld - by PSD	0	0	0	0	0	0	1	1	0	0	0	2
<b>2018</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>15</b>
Local Resolution - by Division	0	0	1	0	0	2	2	0	0	0	0	5
Not Upheld - by Division	0	0	0	0	0	0	0	3	0	0	0	3
Not Upheld - by PSD	0	0	1	1	0	0	1	3	0	0	0	6
Upheld - by PSD	0	0	1	0	0	0	0	0	0	0	0	1
<b>2019</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>4</b>

Disapplication - by Force	0	0	0	0	0	0	0	1	0	0	0	1
Not Upheld - by Division	0	0	0	0	0	0	0	0	0	1	0	1
Not Upheld - by PSD	0	0	1	0	0	1	0	0	0	0	0	2
<b>2020</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>2</b>
Not Upheld - by PSD	0	1	0	0	0	0	0	0	0	0	1	2
<b>Grand Total</b>	<b>6</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>26</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>54</b>

**Post 2020 regulations (current legislation):**

	Race	Religion or belief	Sex	Sexual Orientation	Grand Total
<b>2020</b>	16	1	2	5	<b>24</b>
De Recorded	1	0	0	0	1
No further action required	3	0	0	2	5
Not determined if the service acceptable	1	0	0	0	1
Resolved	2	0	0	1	3
The service provided was acceptable	6	1	2	2	11
The service provided was not acceptable	2	0	0	0	2
Withdrawn	1	0	0	0	1
<b>2021</b>	10	0	2	0	<b>12</b>
De Recorded	1	0	0	0	1
No further action required	1	0	0	0	1
Resolved	1	0	0	0	1
The service provided was acceptable	6	0	2	0	8
The service provided was not acceptable	1	0	0	0	1
<b>2022</b>	2	0	5	0	<b>7</b>
Resolved	0	0	2	0	2
The service provided was acceptable	1	0	3	0	4
Withdrawn	1	0	0	0	1
<b>Grand Total</b>	<b>28</b>	<b>1</b>	<b>9</b>	<b>5</b>	<b>43</b>

Please note: In addition to the above table there are two complaints which are still live/ongoing. The details of the two live/ongoing complaints have been exempted under Section 31(1)(g) subsection 2(b) - Law Enforcement and Section 40(2) - Personal information. Please see below for an explanation of the applied exemptions.

**Response 7:**

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

<b>Summary of Complaint</b>
An individual (the complainant) made a complaint that they were referred to as a different gender in communication between two members of the Dyfed Powys Police workforce

## **Explanation for the applied exemptions:**

### **Section 31(1)(g) subsection 2(b) – Law Enforcement**

Section 31 is a prejudiced-based qualified exemption and there is a requirement to articulate the harm that would be caused by disclosing the information, as well as carrying out a public interest test in order to establish whether the public interest in maintaining the exemption may be outweighed by a wider public benefit in disclosure.

### **Overall Harm:**

In this particular case the requestor has requested under the Freedom of Information (FOI) Act, information in relation to complaint/misconduct investigations. To disclose the details/information that has been recorded for the purpose of live complaint/misconduct investigation would or would be likely to prejudice the force of its function in relation to Law Enforcement. This would have an adverse effect not only on the force but also on any individual(s) involved.

### **Public Interest Test:**

#### **Factors favouring disclosure**

Disclosure of the information would provide a better awareness which may reduce crime or lead to more information from the public as well as provide transparency and satisfaction to the public that such investigations are conducted properly.

#### **Factors favouring non-disclosure**

To release the requested information would undermine and compromise the authorities approach to law enforcement in relation to complaint/misconduct investigations of such matters as a consequence of which the investigation would be prejudiced and an individual's right to a fair trial would be undermined. This in turn would hinder the prevention and detection of crime thereby placing individuals at risk.

### **Balancing Test**

After considering the advantages and disadvantages in disclosure it falls upon Dyfed-Powys Police to conduct a balance test on the issues. The strongest argument for release, which is public awareness, needs to be weighed against the strongest argument for non-release which in this case is effective law enforcement.

Effective Law Enforcement is the core function of the police service and is of paramount importance. The Force has a duty to ensure that it does not disclose information that would undermine or compromise its approach to law enforcement; which would result in complaint/misconduct investigation being prejudiced and an individual's right to a fair trial being undermined and the force failing in adhering to the policing purpose. In this case there would be no tangible community benefit by the release of the information which is the main focus in considering the public interest.

Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## **Section 40(2) Personal Information:**

Section 40(2) applies to third party personal data and is exempt from disclosure under the Freedom of Information Act 2000 if disclosure, in relation to data subject to law enforcement processing, would breach any of the data protection principles contained within Part 3 - Chapter 2 of the Data Protection Act 2018. Under Section 34 within Chapter 2 "The Controller in relation to personal data is responsible for and must be able to demonstrate, compliance with" Chapter 2. Such information would not be released under the Freedom of Information Act 2000 unless there is a strong public interest. One of the main differences between the Freedom of Information Act 2000 and the Data Protection Act 2018 is that any information released under FOI is released into the public domain, not just the individual requesting the information and disclosure under the Act must be made with that in mind. As such, any release that identifies an individual through releasing their personal data, even third party personal data is exempt.

Personal data is defined under Section 3 of the Data Protection Act 2018 as:

*"(2) 'Personal data' means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).*

*(3) 'Identifiable living individual' means a living individual who can be identified, directly or indirectly, in particular by reference to—*

*(a) An identifier such as a name, an identification number, location data or an online identifier, or*

*(b) One or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual."*

All members of the public including those employed by the force have an intrinsic right to privacy and these rights are protected by virtue of the Human Rights Act, the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and a public authority must not interfere with that right. Any release of the information subject to the exemption is likely to compromise those rights.

### Data Protection Act 2018

#### Part 3 – Law Enforcement – Chapter 2 Principles Section 35

##### The first data protection principle:

*"(1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair."*

##### General Data Protection Regulation

##### Article 5 of the GDPR – 'Principles relating to processing of personal data' provides:

*"1. 'Personal data' shall be*

*(a) Processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');*

*(b) Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest...*

*2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability')."*

Dyfed-Powys Police would not want to disclose any information that could potentially identify individuals. In this particular case, to release information in relation to live complaint/misconduct investigations would lead to the identification of individuals. To release such information would be a direct breach of Data Protection legislation i.e. the first data protection principle and as a consequence I am satisfied that Section 40(2) Personal Information exemption is applicable to the release of the information.

The Section 40 exemption is a class-based exemption. This means that the legislators when writing the legislation considered that the release of such information under the Freedom of Information Act 2000 would cause harm to the public authority or individual concerned and is in part qualified and in part absolute, in the present case it would be absolute as to release the information would breach Data Protection legislation and therefore there is no requirement to carry out a public interest test.

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**It should be noted that owing to the systems adopted by Dyfed-Powys Police in relation to the recording of such matters the information provided may or may not be accurate. It should be noted that for these reasons this Force's response to your questions should not be used for comparison purposes with any other response you may receive.**

(This is a response under the Freedom of Information Act 2000 and disclosed on 07/09/22)