

This Freedom of Information request to the Scottish Criminal Cases Review Commission relates to statistics concerning applications for the review of motoring convictions.
The request / responses were conducted by email over a period of less than 2 weeks in July 2020.
The emails have been edited to reduce repetition and to improve formatting.

The following is a summary of the information that was provided:
Since the Commission's inception in 1999, 106 applicants have applied to have their convictions reviewed.
Since 25% of applications are repeats, around 132 actual applications are thought to have been made.
17% of applicants wanted to appeal convictions that involved custodial sentences. These were usually cases of causing death by dangerous driving or dangerous driving alone.
60% of applicants wanted to appeal convictions for minor motoring offences. These were for misdemeanours including careless driving, speeding and documentation offences.
There was no information available on a further 13% of cases.

15/07/2020

Dear Sir,

I did try your Contact form on the website to ask this question but, with no response, I am trying this route:

Can your research team tell me how many applications involving driving offences have been made to the SCCRC, since its inception?
Of those applications, how many have been referred on to the Appeal Court?

If there is any breakdown of the figures, eg convictions involving death, custodial / non- custodial etc, I would be pleased to have these.
Thank you very much.

Yours etc,
Stephen Bateson

18/07/2020

Dear Mr Bateson,

I thank you for your email of 15 July.

You have requested three sets of information:

- 1) *Can your research team tell me how many applications involving driving offences have been made to the SCCRC, since its inception?;*
- 2) *Of those applications, how many have been referred on to the Appeal Court?; and*
- 3) *If there is any breakdown of the figures, eg convictions involving death, custodial / non- custodial etc, I would be pleased to have these.*

I consider that your request is one made under the Freedom of Information (Scotland) Act 2002 (FOISA) as amended by the Coronavirus (Scotland) Act 2020. As you may be aware, the Commission has 20 working days from the date of its receipt of your request in which to give you a substantive response. In the event that I believe that it may take longer than 20 working days in which to give you a substantive response,

I shall inform you of the date by which the Commission will respond.

I shall now determine whether or not the Commission holds the information you have requested. If the Commission does not hold the information, I shall inform you of that fact and, if possible, where I believe you may be able to locate the information. If the Commission does hold the information, I shall decide, in considering the FOISA and other appropriate legislation, whether to disclose all, some or not any of the information.

If I decide not to disclose all the information you have requested, I shall give you my reasons for that decision. In addition, I shall advise of your right to have my decision reviewed by Mr Chris Reddick, the Commission's Director of Corporate Services, who will not be involved in the initial decision-making process. If the Commission's decision is unchanged following a review, you have the right to ask the Scottish Information Commissioner to review the Commission's decision.

I can advise you at this stage that the exemption in s25 FOISA (<https://www.legislation.gov.uk/asp/2002/13/section/25>) applies to your second request. The information is accessible here: <https://www.sccrc.co.uk/conviction> and here: <https://www.sccrc.co.uk/sentence>. In terms of s1(3) FOISA (<https://www.legislation.gov.uk/asp/2002/13/section/1>) could you please clarify if your request at number 3 relates to all the applications made to the Commission involving driving offences or only those that may have been referred. That is to say is it a follow on request from number 1 or 2. I require this to identify the information requested.

It may also be the case that the case management system the Commission uses does not have the information you request at 1 in a searchable format. To gather the information to you it may necessitate myself or one of my colleagues searching through every application made to the Commission to satisfy that request. If that is the case then it maybe that I will have to issue a fees notice in terms of s9 FOISA. (<https://www.legislation.gov.uk/asp/2002/13/section/9>). I will confirm the position next week but in the meantime could you clarify the above. I trust that this letter explains the Commission's position.

Regards,
David Fitzpatrick, Solicitor
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18/07/2020

Dear Mr Fitzpatrick,
Thanks for your response.
I understand the note about the exemption for my request (2), which is OK.
My request (3) related to all driving offences, not only those referred to the Appeal Court.

I just wanted to gain an idea of the severity of the driving offences reviewed by you.
Charging a fee would be fine (within limits!).
Regards,
Stephen Bateson

21/07/2020

Hello Mr Bateson,
I am told that we ought to be able to search the case management system to obtain the information requested without it involving a wholesale search of every application. The office is not fully open yet due to the restrictions caused by the Covid 19 pandemic and we do not have remote access to the system. The admin officer responsible for running searches will be in on Friday 24 July and will attend to your request then. It may therefore be next week before the Commission provides a substantive response.

If the information requested at 3) is not recoverable by a simple search then it might be that the search run to get the info at request 1) below identifies the relevant driving applications and that in turn should allow me to identify the information at 3). I have no idea how many driving applications there will be but it will likely be over one hundred and probably much greater than that. If that is the case and I require to go through each driving application to identify 3) then it is likely to take a substantial amount of time and the provision mention below at s9 FOISA (governing the issuing of fees notices) may apply. If so I will notify you of the cost.

I hope that makes sense.

Best

David Fitzpatrick, Solicitor

24/07/2020

Mr Bateson,
There appear to be 118 individuals who have applied to the Commission seeking it to refer their driving convictions (and or sentences) to the appeal court. Some of these individuals have applied more than once. I will require to go through the system for each individual to ascertain whether the charges are the same each time they have applied and thereafter whether the charges involve a death and whether they received a custodial sentence. I will work out on Monday, the next day that I will be in the office and have access to our case management system, how long it will take to provide all the information you requested and thereafter whether the Commission will require to charge a fee in line with s9 FOISA.

Regards,

David Fitzpatrick, Solicitor

27/07/2020

Dear Mr Bateson,

I refer to your email of 15 July.

Regarding requests 1 and 3. The Commission has reviewed approximately 106 individual's driving convictions and or sentences arising from driving convictions. Many of these applicants have applied on numerous

occasions to challenge the same convictions/sentence so the number of actual applications is far greater. Of those convictions 10 involved cases where a witness had died. There were 17 cases in which the applicant had received a prison sentence. There was one case involving the death of a witness but which did not result in the applicant being imprisoned. There are 14 cases which returned a search on our case management system that the matter involved a road traffic conviction but I am unable to confirm whether than involved a death or prison sentence due to the information no longer being held - per the Commission's data retention policy and although we still hold the decision, in some cases, that does not disclose the information that you requested. As a result of that this is a notice in terms of s17 FOISA.

If you believe that the decision is incorrect you have the right to request the Commission to review it. Your request should set out why you are dissatisfied with the outcome. Your request should be made within 40 working days of the receipt of this letter, and the Commission will reply within 20 working days of its receipt of your request. The review will be undertaken by Mr Chris Reddick, the Commission's Director of Corporate Services Portland House, 17 Renfield Street, Glasgow G2 5AH, who was not involved in the original decision-making process. If the Commission's decision is unchanged following a review, you have the right to ask the Scottish Information Commissioner to review the decision.

I trust you find the above in order.

Regards

David Fitzpatrick, Solicitor

28/07/2020

Dear Mr Fitzpatrick,

I appreciate your hard work in uncovering the figures.

Could I ask you to confirm I have interpreted them correctly?

Out of roughly 106 applicants, you say that 1 involved a death but no custodial sentence. This implies that there were custodial sentences in the 10 cases involving deaths of witnesses.

You say, I think, that a further 17 applicants were imprisoned;

presumably, these cases did not involve any deaths.

There were 14 additional cases with no information.

That leaves around 64 applicants. Is it fair to assume that these are relatively minor cases where there were no deaths and no imprisonment?.

Thanks again.

Regards,

Stephen Bateson

28/07/2020

Mr Bateson,

There were 10 cases in which an applicant was convicted of a road traffic offence in which an individual (a witness is not the correct way to describe them legally or factually - my fault) died. In 9 of those cases the applicants received custodial prison sentences. There was 1 case which involved death but which the applicant was not imprisoned. Beyond those cases there were a further 8 cases in which the applicants were convicted of an offence which did not involve death but the applicant was given a custodial sentence these were usually cases of dangerous driving or disqualified driving under s2 and s103 RTA

respectively. There were a total of 17 applicants who had received prison sentences regardless of whether a death was involved.

The vast majority - I am working from home today and do not have access to my notes to be more accurate - of the applicants had applied seeking to challenge more minor offending such as speeding, driving without insurance, careless driving or driving whilst using a mobile phone but where there was no imprisonment.

I hope that clarifies matters.

regards

David Fitzpatrick, Solicitor

28/07/2020

Dear Mr Fitzpatrick,

Yes it does (clarify matters). Thanks.

Your penultimate sentence is an unexpected conclusion.

A highly experienced solicitor once told me it was not worth contesting minor driving convictions.

Plenty of people obviously think otherwise.

Regards,

Stephen Bateson