

Our Ref: IM-FOI-2018-2179
Date: 12 October 2018



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.

When reporting a crime, does you force have the ability to input whether either the victim or perpetrator of a crime was from a transgender or "non-binary" background? If so, when was this introduced?

General Crime Recording

Depending on the legacy crime recording system being used, this information will either be recorded as one of the binary male or female options or within a free text area, where available. Police Scotland recognises and acknowledges that a person may not feel it appropriate for them to be assigned the binary options of male or female, but at this time many of our systems only have capacity to record those two options.

We still utilise a number of IT systems from legacy Forces, so there are disparities across police recording systems. Wherever possible, however, we will utilise free text areas to better define how they personally identify, if it is appropriate or significant to do so in terms of policing.

We require no evidence or certification as proof of biological sex or gender identity other than a person's self-declaration, unless it is pertinent to any criminal investigation with which they are linked and it is evidentially critical that we legally require this proof. We would look for the most sensitive way to acquire this information.

Where someone does not identify as male or female i.e. non-binary, gender fluid or a-gendered for instance, we would ask how they chose to identify when applying for a passport or drivers licence or in any other situation where only binary options are currently available.

Gender Recording - Perpetrator

In very general terms, a crime would be recorded without prejudice i.e. if a sexual offence were committed by any perpetrator it would be, for the purposes of charge, the same reported crime, immaterial of the perpetrator's gender. *Please note under terms of common law rape and Sect 1 Sexual Offences Scotland Act 2009 (rape) certain criteria would be required to be met for this crime to be committed.*

Therefore in terms of Section 17 of the Act, this letter represents a formal notice that information relating to the recording of gender identity in terms of the perpetrator is not held.

Hate Crime Recording

The Scottish Crime Recording Standard dictates a victim centred approach to the way in which crime and criminal acts are recorded where victims believe that offences have been committed against them. With this in mind, Police Scotland record where a victim is transgender, in order to accurately record the number of offences aggravated by prejudice, related to someone's transgender identity.

The current legislation dealing with sexual orientation, transgender status and intersex status hate crime is Section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 which was introduced in 2010. You may be interested in associated National or Official crime statistics, available at:

<http://www.copfs.gov.uk/images/Documents/Statistics/Hate%20Crime%202017-18/Hate%20Crime%20in%20Scotland%202017-18.pdf>

For interest, at this time, the characteristics of offenders are examined as part of the Scottish Crime and Justice Survey (SCJS), a large-scale social survey which asks people about their experiences and perceptions of crime and provides a complementary measure of crime to police recorded crime statistics;

<http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/crime-and-justice-survey>

Finally, I would advise that the Scottish Government is currently in the process of carrying out consultation linked to the Gender Recognition Act which includes "Options for the legal recognition of non-binary people – people who do not identify as male or female". Police Scotland await the outcomes of the Scottish Government consultation.

Should you require any further assistance please contact Information Management – Highland & Islands Divisional Headquarters on 01463 720508 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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