

Our Ref: IM-FOI-2022-0045
Date: 4th February 2022



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.

· Please give us details of how many LGBTQ+ hate crimes have been reported in Scotland between October 1, 2017 and October 1, 2020 inclusive. Please show these in a year by year format. Please include any details of the incidents which you are able to.

In regards to the number of LGBTQ+ hate crimes that have been reported in Scotland between October 1, 2017 and October 1, 2020, please see the table below which provides figures regarding Recorded Hate Crimes with a Transgender and/or a Sexual Orientation Aggravator.

In response to your request for specific details of these crimes within Scotland, I regret to inform you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations.

As you may be aware the current cost threshold is £600 and I estimate that it would cost well in excess of this amount to process your request.

As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

By way of explanation, in order to provide you with details of specific offences each report would need to be manually assessed to determine what information could be disclosed. In this case 4,608 hate crimes with a transgender or sexual orientation aggravator were recorded and would need to be manually checked. I estimate that it would take approximately 2 minutes to examine a single record which equate to over 153 hours of work, greatly exceeding the cost threshold set out within the Act.

Police Scotland have assessed that the £600 cost limit within the Act equates to 40 hours of work and so this part of your request would breach the cost threshold.

Whilst it may be possible to reduce the scope of your request to one that would not trigger a cost exemption, it is almost certain that a personal information exemption under Section 38(1)(b) of the Act would have applied if the records could have been reviewed.

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Title: Recorded Hate Crime With a Transgender and/or Sexual Orientation Aggravator ^{1,2}

Period: 1st October 2017 - 1st October 2020 inclusive (broken on calendar year)

| | 2017* | 2018 | 2019 | 2020* |
|-----------------------|-------|------|------|-------|
| Police Scotland Total | 319 | 1340 | 1577 | 1372 |
| Highland and Islands | 5 | 34 | 39 | 13 |

All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 20th January 2022.

1. The data was extracted using the incident's raised date and extracted from iVPD by selecting hate crime aggravators.

2. Please note, recorded hate crimes with the aggravators T (Transgender) and/or N (Sexual Orientation) have been selected. A hate crime can have more than one aggravator attributed. Table 1 is a count of unique hate crimes, and not aggravators.

Police Scotland does not retain any information for statistical purposes once a record has been weeded from iVPD. When a record is weeded, it is removed from the system, and there is no retention of data outside the weeding and retention policy. Please note, the weeding and retention policy states that if a person is recorded as "no concern / not applicable" then this will only be retained for 6 months.

Please note that these data are collated from the Police Scotland iVPD system, which has an automated weeding and retention policy built on to it. A copy of the retention policy is available on the Police Scotland internet site (<https://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log/2021/june/21-1479-sop-records-retention/>).

- Please give us details of how many LGBTQ+ hate crimes have been reported in the Highlands between October 1, 2017 and October 1, 2020 inclusive. Please show these in a year by year format. Please include any details of the incidents which you are able to.

In regards to the number of LGBTQ+ hate crimes have been reported in the Highlands and Islands area between October 1, 2017 and October 1, 2020, please see the table included in my answer to question 1 which provides figures regarding Recorded Hate Crimes with a Transgender and/or a Sexual Orientation Aggravator.

In response to your request for specific details of these crimes within Scotland, in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

- (a) states that it holds the information,
- (b) states that it is claiming an exemption,
- (c) specifies the exemption in question and
- (d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested.

The exemption that I consider to be applicable to the information requested by you is section 38(1)(b) - Personal Data.

Personal data is defined in Article 4 of the General Data Protection Regulation (GDPR) as:

'Information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an

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online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person'

Section 38(2A) of the Act provides that personal data is exempt from disclosure where disclosure would contravene any of the data protection principles set out at Article 5(1) of the GDPR which states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'

Article 6 of the GDPR goes on to state that processing shall be lawful only if certain conditions are met.

The only potentially applicable condition is set out at Article 6(1)(f) which states:

'Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child'

Whilst I accept that you may have a legitimate interest with regards the disclosure of this information I do not accept that disclosure is necessary for that purpose.

Further, I am of the view that any interests are overridden by the interests or fundamental rights and freedoms of the data subject.

On that basis, it is my view that disclosure of the information sought would be unlawful.

Should you require any further assistance please contact Information Management 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.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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