

Our Ref: IM-FOI-2022-0420
Date: 01 March 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.

Protecting the public is a top priority for Police Scotland. In Scotland Multi Agency Public Protection Arrangements (MAPPA), provides a comprehensive response to a complex issue, using professional assessment and management to properly target resources at those who pose a risk to the public.

Police Scotland works in partnership with a number of agencies through MAPPA to ensure that all Registered Sex Offenders are robustly managed within the community. While we can never eliminate risk entirely, we want to reassure communities that all reasonable steps are being taken to protect them.

For ease of reference, your request is replicated below together with the response.

I have read an article in the daily record published in 2021 that Police Scotland say 16 sex offenders currently have an unknown whereabouts. The article states that Police can't publish the names of these individuals.

To first provide the correct context, Police Scotland definitions for missing and wanted Registered Sex Offenders (RSOs) are as follows:

A **Missing person** is defined as anyone whose whereabouts is unknown and:

- where the circumstances are out of character; or
- the context suggests the person may be subject to crime; or
- the person is at risk of harm to themselves or another.

A **Wanted** Registered Sex Offender is defined as those who are subject to the notification requirements of the Sexual Offences Act 2003 and who have a live warrant in force.

This information is published on a monthly basis on the Police Scotland website on or around the 15th of each month. I have provided a link below which currently covers the period up until 28th February 2022.

<https://www.scotland.police.uk/about-us/police-scotland/specialist-crime-division/national-offender-management-unit/registered-sex-offender-rso-numbers/>

I can confirm that as of 28/02/2022, Police Scotland had **16 Wanted** Registered Sex Offenders and **0 Missing** Registered Sex Offenders.

Enquiries to date indicate that 14 of the 16 wanted Registered Sex Offenders (RSO) have left the UK.

Under the FOI act, can the Police tell me if any of these individuals are:

- a) From Livingston / West Lothian**
- b) In their 60's**
- c) Have had their name published following conviction in an online article found in the Scottish Sun**

I have interpreted your request as seeking access to information which would confirm the a) last known address b) age and c) identity of the Wanted RSOs described above.

I have concluded that any such disclosure, particularly when combined with other information in the public domain, is very specific and likely to lead to the identification of those individual(s).

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(s) that I consider to be applicable to the information requested by you are;

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 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:

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'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 and that disclosure may well be necessary for that purpose, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject.

I can further advise you that the following exemptions also apply to your request.

Section 35(1)(a)&(b) - Law Enforcement

Information is exempt information if its disclosure under this Act would, or would be likely to prejudice substantially the prevention or detection of crime.

In terms of the Sexual Offences Act 2003, an RSO is compelled to register with the Police. The purpose of this registration is to enable the police and other relevant authorities to supervise and monitor RSOs with a view to assessing the risk of them re-offending.

In essence, this strategy of supervision and monitoring is aimed at preventing RSOs from committing a similar offence and protecting the wider community from any risk they pose. It relies on the compliance of RSOs with such supervision, in order that they can be adequately monitored and assessed.

It is important to bear in mind that that any disclosure under FOISA is a disclosure to the world at large, as it places the information requested into the public domain. If detailed information regarding any RSO was disclosed, this may lead to the physical harm of the RSO or, fearing identification and some form of reprisal attack, the RSO fleeing the area and the police losing contact with the individual.

An RSO, like any other individual, expects their data to be treated confidentially and if information was disclosed, any established trust between the RSO and the police would be broken making it more difficult for the police to ensure the RSO complies with the terms of their registration. Without the appropriate supervision and assessment, there would be a greater risk of these individuals re-offending.

Specifically there is an increased chance that individuals would, at worst, potentially target individuals, putting these individuals at greater risk of physical harm.

The potential consequence of disclosure in relation to such areas is such that it could eventually become impossible for RSOs to be housed in those areas because of the negative impact and likely disorder that would ensue.

If this occurred across a large number of areas it would become impossible for the police and their partner agencies to house and monitor RSOs appropriately.

Section 39(1) - Health and Safety

Information is exempt information if its disclosure would or would be likely to endanger the physical or mental health or safety of an individual.

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As previously stated, disclosure could lead to a serious detriment to the mental wellbeing of an RSO as well as a significant risk that they will come to serious physical harm. There are many examples of this having occurred across the UK.

Public Interest Test

Whilst I accept that there is a public interest in terms of better informing the public as to the management of registered sex offenders in the areas in which they live, there can be no parallel interest in the disclosure of information where there would be a detriment to the ability of Police Scotland to prevent and detect crime and keep people safe from harm.

Disclosure would undoubtedly increase the likelihood of an RSO being physically or mentally harmed and it would also impede the police in terms of carrying out their duties in relation to the assessment and supervision of RSOs.

It is therefore my view that where held, any information which identifies the details of specific individuals would be considered exempt from disclosure.

If you require further assistance or 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.