| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-2084  Responded to: xx September 2023 |
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Your recent request for information is replicated below, together with our response.

## I am hearing stories about people in Scotland who wear masks on public transport and/or outdoors being harassed, verbally abused, stalked and photographed:

## 1) If whoever is attacked is immunocompromised, so they have to wear a mask to prevent themselves from getting sick, does this constitute a disability hate crime under Scottish law?

To first provide some general context;

Police Scotland defines a **hate incident** as ‘*any incident which is perceived by the victim or any other person to be motivated (wholly or partly) by malice and ill-will towards a social group but which does not constitute a criminal offence*.’

Police Scotland defines a **hate crime** as, ‘*any crime which is perceived by the victim or any other person, to be motivated (wholly or partly) by malice and ill-will towards a social group.*’

Social groups are identified in accordance with the Lord Advocates guidelines on Aggravations of Offences against Prejudice i.e. race, sexual orientation, religion/faith, disability or transgender identity.

As such, 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 and the exemption that I consider to be applicable is set out at Section 25(1) of the Act - information otherwise accessible:

*“Information which the applicant can reasonably obtain other than by requesting it under Section 1(1) is exempt information”*

Further guidance is contained on the Police Scotland website and is available via the following link:

[Advice & Information - Hate Crime](https://www.scotland.police.uk/advice-and-information/hate-crime/)

## 2) Have any cases been reported already?

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.

Unfortunately, there is no marker available on our systems which would indicate this type of behaviour including whether the victim was wearing a mask at the time so it would not be possible to search specifically for crime reports relevant to your request.

As such, the only way to provide an accurate response would be to individually examine every case of threatening and abusive behaviour/ assault on our systems, for the time period requested, to determine whether this had occurred.

This is an exercise which I estimate would far exceed the cost limit set out in the Fees Regulations.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.