

Our Ref: IM-FOI-2022-2309
Date: 16th November 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.

We have been told that there is a possibility that a sex offender is living in the flats next to us. Under the Freedom of Information Act I would like to ask if this can be confirmed as I would like to know being the parent of a young child.

The address I am interested in finding out this information is G75 0JS

Registered Sex Offender (RSO) data, by postcode, are available online:

[Registered Sex Offender \(RSO\) Numbers - Police Scotland](#)

There are currently 34 RSOs resident in the G75 area.

In terms of section 18 of the Act however, I can neither confirm nor deny whether any of these RSOs reside the G75 0JS area specifically.

Section 18 applies where the following two conditions are met:

- It would be contrary to the public interest to reveal whether the information is held

Whilst we accept that you may have a particular personal interest in being informed as to whether or not the information sought is held, the overwhelming public interest lies in protecting individuals' right to privacy and the expectation of confidence that the public have in Police Scotland as regards their information.

- If the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act. In this case:

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'

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Given the population level of the area in question, I am of the view that the potential for an offender to be identified is significant, making any statistical information 'personal data'.

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 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.

Furthermore, the personal data in question would reveal information about an individual's:

- criminal convictions
- offences
- related security measures

Whilst that does not in itself render the information special category personal data, it is our view that section 10 of the Data Protection Act 2018 makes clear that such information should be treated in a very similar way.

Article 9 of the GDPR only allows special category data to be processed in very limited circumstances and it is assessed that none of those circumstances are relevant here.

Taking all of the above into account, it is my view that disclosure of the information sought would be unlawful.

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, a Registered Sex Offender (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.

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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.

If information regarding RSOs last known location was disclosed, this may lead to communities 'outing' sex offenders. This in turn, could either 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 speculate and at worst, potentially target individuals (often mistakenly) which puts 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.

As previously stated, disclosure could lead to communities 'outing' sex offenders resulting in a serious detriment to the mental wellbeing of an RSO (or an individual mistakenly identified as 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.

Disclosure would also harm the mental health of an RSO, in the sense that they would, as a minimum, be living in fear of being identified and possibly absconding as a result.

Public Interest Test

Whilst I accept that there is a public interest in terms 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 (or an innocent individual mistakenly identified) 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.

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It is therefore my view that where held, any information which exists would be considered exempt from disclosure.

Should you require any further assistance please contact Information Management Dundee, 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.