| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-1261  Responded to: 31st August 2023 |
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Your recent request for information is replicated below, together with our response.

In follow-up to request FOI 23-0972:

**As you have stated please send me all policy/procedures/legislation that applies and should be followed when Police question/interview 9 year old children at school as potential victims/witnesses.**

**Sadly I can see that in England/Wales they have PACE which clearly states that every effort should be made to contact parents when this happens but I cannot source anything for Scotland. I need to know.**

Following a clarification request you confirmed you were content to drop the “at school” part of your request as it was unlikely specific policy in this regard would be held. You also confirmed amending your request to children in general rather than 9 year old children specifically was acceptable.

Firstly, please accept my apologies for the delay in getting back to you.

I would like to clarify police officers in Scotland can and will have occasions to speak with children out with the presence of a parent or guardian, this decision is not made solely by police, but is made in conjunction with our statutory child protection partners of social work and on occasion health. Parents and carers would ideally be informed that there is a plan to interview their child, but this is determined by risk, which may be unknown if parents or carers were to be made aware. In the main, any decision to interview without consent of a parent or carer is assessed on a case by case basis and is not a decision that is made lightly.

The National Scottish Government Child Protection Guidance Scotland 2021, which outlines the roles and responsibilities of statutory child protection agencies stipulates “consent of a parent or guardian is not required prior to undertaking a Joint Investigative Interview” and that “the child must be helped to understand the purpose and process of the interview as part of preparation and support for willing engagement. The child’s consent is not explicitly required.”

Joint Investigative Interviews (JII) are formal, video recorded interviews, conducted with a child by specialist trained police officers and social workers in Scotland. They take place when there is a concern that a child is a victim of, or witness to criminal conduct, and where there is information to suggest that the child has been, or is being abused or neglected or may be at risk of significant harm. JIIs are therefore undertaken as part of child protection investigations​​​​​​. Social workers and police officers have a duty to investigate as detailed in [section 60 of the Children’s Hearings (Scotland) Act 2011](https://www.legislation.gov.uk/asp/2011/1/section/60) [and section 20 of the Police, Fire and Reform Act 2012](https://www.legislation.gov.uk/asp/2012/8/section/20).

Planning and preparation is key to any JII, with a trauma informed and sensitive approach, placing a firm of emphasis on the needs of the child, which are paramount. The basis for interviewing a 9 year old child at school as a potential victim or witness is usually a decision that will be made by police/social work in conjunction with health when concerns about possible harm to a child from abuse, neglect or exploitation are raised. Concerns that a child may be a risk from harm can be raised in different ways including; in response to a particular incident, as a result of direct observations, assessment over a period of time, something a child has said, a report received by or from an agency or received anonymously, bearing in mind this list is not prescriptive and a concern in respect of a child can be received through various means.

All concerns which may indicate risk of significant harm to a child must lead to an inter-agency referral discussion (IRD) which is a discussion between the statutory agencies of Police, Social Work and Health to start the formal process of information sharing, assessment, analysis and decision-making following reported concern about abuse or neglect of a child or young person up to the age of 18 years, in relation to familial and non-familial concerns, and of siblings or other children within the same context. This includes an unborn baby that may be exposed to current or future risk. An IRD may decide on the need for a Joint Investigative Interview with a child which is conducted by a Police Officer and a Social Worker, a decision will be made at the IRD as to whether or not parents or guardians of the child will be informed. Determining factors can include any negative influence this may have on the child when being interviewed.

Further information in respect of child protection processes and JIIs can be found within the Scottish Government Nation Child Protection Guidance (2021). A link to this is provided below.

As they are publicly available, 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”

Documents :

[National Guidance for Child Protection in Scotland 2021 (www.gov.scot)](https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/09/national-guidance-child-protection-scotland-2021/documents/national-guidance-child-protection-scotland-2021/national-guidance-child-protection-scotland-2021/govscot%3Adocument/national-guidance-child-protection-scotland-2021.pdf)

[Child Protection - Standard Operating Procedure (SOP)](https://www.scotland.police.uk/spa-media/boxmpeao/child-protection-sop.pdf)

In particular section 12 on page 16

[Domestic Abuse Investigation - Standard Operating Procedure (scotland.police.uk)](https://www.scotland.police.uk/spa-media/fuaflohy/domestic-abuse-investigation-sop.pdf)

Whilst there is a brief section in this document that relates to speaking to children in relation to domestic abuse, in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information requested.

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 35(1)(a)&(b) – Law Enforcement.

The information relates to specific police tactics used when investigating domestic abuse. The requested information, if disclosed, could be used to try and work out how police would respond to such incidents. Those with criminal intent would then be in a position to more accurately estimate police tactics and take measures to evade detection.

**Public Interest Test**

As you may be aware, the exemption listed above is non-absolute and requires the application of the Public Interest Test. I would suggest that public accountability would favour disclosure, given that the information concerns the efficient and effective use of resources by the Service. Likewise, disclosure of the information would also inform the public debate on the issue of policing and contribute to the accuracy of that debate.

Furthermore, the applicability of the exemptions listed above, the need to ensure the effective conduct of the service in relation to prevention and detection of crime and, the public safety considerations involved in the delivery of operational policing clearly favour non-disclosure of the information requested.

On balance I would contend that the public interest in disclosing the information is outweighed by that in maintaining the exemptions listed, as, it is doubtful if it can ever be in the public interest to disclose information which would jeopardise the delivery of policing.

To be of some assistance however, having reviewed the information I do not believe it would be relevant to your specific request. The link to the full document which includes this redaction (on page 4) has been included for context.

[ACPOS Scottish Investigators' Guide to Child Protection (whatdotheyknow.com)](https://www.whatdotheyknow.com/request/152969/response/381979/attach/3/ACPOS%20guidelines.pdf)

This has a section on the Investigative Interviewing of Children on page 60 as numbered on the document (page 70 of the PDF file).

[Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland (www.gov.scot)](https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2011/12/guidance-joint-investigative-interviewing-child-witnesses-scotland/documents/0124263-pdf/0124263-pdf/govscot%3Adocument/0124263.pdf)

This covers joint interviews with police officers and social workers which would be pre planned.

## Children (Equal Protection from Assault) (Scotland) Act 2019

Please find an extract of the relevant section of this document below. I would point out that this document relates to the Children (Equal Protection from Assault) (.Scotland) Act 2019. I have included the summary of the document as well for context

“The EP Act repeals Section 51 of the Criminal Justice (Scotland) Act 2003 and removes the defence of ‘justifiable assault’ carried out in exercise of a parental right or of a right derived from having charge or care of a child.”

**“6. Interviews**

To ascertain the nature of the incident which has taken place, brief details can be noted at the locus at the time of the report. Officers are encouraged to progress such enquiries in “slower time” without the need to take enforcement action immediately. It must be remembered that such action can have a traumatic impact on all concerned, in particular the child.

When investigating an EP incident, the interview of the child or suspect should be a last resort. Therefore all investigatory avenues must be fully explored to avoid the need to interview either the child or the suspect. It is imperative that officers remember that EP is defined as the most minor incidents and a proportionate response to the investigation is essential.

It is imperative that any rationale for not interviewing the suspect or the child is fully set out in the crime report. The suspect and/or the person with parental rights must be updated in such circumstances.

Officers are reminded that a Concern Report must still be submitted for the child.

If officers consider an interview of the child is necessary, OR, if there are other concerns regarding the child out-with the EP criteria, officers must seek guidance from their supervisor and will likely have to contact their Public Protection Unit in order to help progress the enquiry. It is unlikely that such circumstances will constitute an EP incident and any Joint Investigative Interview will first require an Interagency Referral Discussion (IRD).

As per any other incident where a child has been victim of or witness to a crime, officers should note any comments verbatim made by the child. They should also consider using simple, open, non-leading questions to clarify facts such as; “What happened? What did you see/hear?” which may prevent the child requiring formal interview at a later time.

When speaking with the child, officers should consider;

* • The location, public place or private – are the surroundings familiar to the child;
* • The privacy of the child;
* • The child’s demeanour and emotional state;
* • Speak calmly and reassuringly.

This evidence may be sufficient to corroborate the complaint and, if the wider circumstances permit, allow the offer of a RPW.”

Fife Council Child Protection Inter-Agency Guidance 2011

There are two sections within the document the relate to officers interviewing children.

## In relation to the initial assessment

“The police through the establishment of their new internal processes at the Public

Protection Unit (PPU) will undertake an initial screening of all the “Cause for Concerns”

they receive. The majority of these “Cause for Concerns” will come from frontline police

officers who rightly pass on concerns about children to the PPU. Staff who have built

up an expertise in assessment at the PPU will search police systems and liaise with

social work colleagues, who complete SWIFT (Social Work database) checks, to

determine if a more detailed assessment is required.”

## In relation to joint interviews with social work:

“Consent of Child and Parents/Carers

96. It is the responsibility of the Police and the Social Workers carrying out the investigation to:

• arrange for the relevant parent/carer, and child if appropriate, to be informed of an alleged child protection concern;

• obtain their consent for any interviewing;

• ensure that parents are aware that their consent will normally be required for any medical examination of their child;

• ensure that interpreters and/or translators are used when required;

• ensure that the religious/cultural upbringing of the child and family are taken into consideration when decisions are being made.

NB: It is the responsibility of the medical practitioner to ensure that consent is obtained for the medical examination of the child.

97. Parental consent will be obtained unless:

• the child is mature enough to give his/her own consent taking into consideration the Age of Legal Capacity (Scotland) Act 1991;

• to do so would seriously impede the criminal investigation;

• to do so would significantly increase the risk of harm to the child.

98. It should also be noted that Consent is not legally required from parents or children before interviewing them or before visually recording the interview.

99. In Scotland, a person of twelve years or more is presumed to be of sufficient age and maturity to give consent.”

“The police through the establishment of their new internal processes at the Public

Protection Unit (PPU) will undertake an initial screening of all the “Cause for Concerns”

they receive. The majority of these “Cause for Concerns” will come from frontline police

officers who rightly pass on concerns about children to the PPU. Staff who have built

up an expertise in assessment at the PPU will search police systems and liaise with

social work colleagues, who complete SWIFT (Social Work database) checks, to

determine if a more detailed assessment is required.”

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.