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Our Ref: IM-FOI-2022-2402  
Date: 12<sup>th</sup> December 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.

**Can you please provide me with a list of the last fifty transgender-related hate crimes recorded by your force, that includes a written description of what transpired as recorded at the time of the report, as well as what the offence was classified as?**

Please find the last fifty recorded incidents that had a Transgender aggravator from our Interim Vulnerable Persons Database (iVPD). Please note that as more than one crime can be associated with an incident, 56 offences were returned.

<b>Offence</b>	<b>Number</b>
Common Assault	11
Fireraising excluding muirburn	1
General post office/telecommunications offences	8
Group 2 crime	4
Threatening or abusive behaviour	31
Vandalism	1

In relation to the description of events in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the requested information.

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 exemptions that I consider to be applicable to the information requested by you are:

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Section 34(2)(b) – Investigations  
Section 35(1)(a)&(b) – Law Enforcement  
Section 38(1)(b) - Personal Data.

### **Section 34(2)(b) – Investigations**

Section 34(2)(b) of the Act provides that information is exempt information if held at any time by a Scottish public authority for the purposes of any other investigation being carried out by virtue of a duty to ascertain; or for the purpose of making a report to the procurator fiscal as respects the cause of death of a person.

As you have asked for the 50 most recent offences in regards to transgender-related hate crime, a number of the offences noted will be subject to active and ongoing criminal enquiries. Any disclosure under FOI legislation is a disclosure to the world at large and any information released at this time could interfere, jeopardise or prejudice ongoing enquiries.

This is a non-absolute exemption and requires the application of the public interest test.

#### Public Interest Test

I do appreciate that there is a degree of interest in the release of the information you have requested and that to do so would help inform public debate on policing in Scotland.

However it is essential that any release of information does not interfere or prejudice the ongoing public enquiry into this matter. To do so would put the proceedings at risk and to do so would be vastly against the public interest.

The balance lies in withholding the information requested at this time.

### **Section 35(1)(a)&(b) – Law Enforcement**

The request information, if disclosed, could be used by those subject to enquiry to gauge whether they had been detected for an offence or whether they were still being sought by police. Those with criminal intent would then be in a position to more accurately estimate police responses or confirm their activities had remained undetected. Disclosure could therefore have a negative effect on the detection of individuals involved in crime.

This is a non-absolute exemption and requires the application of the public interest test.

#### Public Interest Test

I do appreciate that there is a degree of interest in the release of the information you have requested and that to do so would help inform public debate on policing in Scotland.

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.

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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 and the safety of individuals and prejudice the prevention or detection of crime.

### **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:

*‘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.

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

You may wish to consider requesting information that is more statistical in nature rather than for descriptions of events.

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

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[foi@scotland.police.uk](mailto: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](mailto: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.