| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 23-3118Responded to: 22nd December 2023 |
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Your recent request for information is replicated below, together with our response.

## I will be doing a story on the Registered Sex Offender (RSO) by postcode story for Inverness when the data for November is available at Registered Sex Offender (RSO) Numbers - Police Scotland

## However, there are three postcodes in Inverness that are exempted under FOI. Therefore, I'd like to request the figures for the following postcodes: IV23/IV28/IV41

Information with regard to Registered Sex Offender (RSO) numbers, by postcode, are published on the Police Scotland website:-

[Registered Sex Offender (RSO) Numbers - Police Scotland](https://www.scotland.police.uk/about-us/what-we-do/specialist-crime-division/sex-offender-policing-units/registered-sex-offender-rso-information/)

In terms of section 18 of the Act however, I can neither confirm nor deny whether any of these RSOs reside in the specific postcode area listed above.

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’

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.

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.

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

The Sex Offender Community Disclosure Scheme (Keeping Children Safe) was introduced across Scotland in 2011 and allows members of the public to request information where they have any specific concerns.

For more information please visit our website:

[The Sex Offender Community Disclosure - Police Scotland](https://www.scotland.police.uk/advice-and-information/child-abuse/the-sex-offender-community-disclosure/)

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 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 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.