| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 24-0797Responded to: 10 June 2024 |
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Your recent request for information is replicated below, together with our response.

## 1 what is Police Scotlands definition of ‘hate' that officers will use in determining if a report is indeed a crime?

Please be advised that information you have request is publicly available.

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”*

Definitions relating to the Hate Crime and Public Order (Scotland) Act 2021 are contained within the legislation - <https://www.legislation.gov.uk/asp/2021/14/introduction>

## 2 Will an officer be able to dismiss a report of hate crime if they so choose?

Police Scotland cannot dismiss a report of hate crime and will investigate each unique set of circumstances. The police have a duty under section 20 of the Police and Fire Reform (Scotland) Act 2012:

1) It is the duty of a constable—

(a) to prevent and detect crime,

(b) to maintain order,

(c) to protect life and property,

(d) to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice,

(e) where required, to serve and execute a warrant, citation or deliverance issued, or process duly endorsed, by a Lord Commissioner of Justiciary, sheriff, justice of the peace or stipendiary magistrate in relation to criminal proceedings, and

(f) to attend court to give evidence.

(2) When taking lawful measures in pursuance of subsection (1)(d), a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.

(3) Subsection (2) does not prejudice the operation of section 135(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

## 3 If someone is allocated a NCHI who decides to record it?

Following the publication of the MacPherson Report in 1999 police services within Scotland adhered to the recommendations in relation to the recording of non-crime hate incidents. Police Scotland on its establishment in 2013 has continued this practice.

Officers are not “allocated” Non-Crime Hate Incidents (NCHI) for investigation. Officers will only submit a Hate Crime Concern Report where there is an identified vulnerability for the subject of concern that involves a hate element.

## 4 If recorded a) who has access to it b) how long does it remain a record?

If a NCHI is recorded it can be accessed by officers and staff who have access to the database unless the incident is restricted. Only users with enhanced access can access restricted incidents.

With respect to the records retention period, I can advise that 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:

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Data within iVPD is subject to a nominal based weeding and retention policy and is not incident based. Nominals on iVPD are categorised according to their Vulnerability Person (VP) Type and a weeding date applied according to that type and weeding rules. These rules are published on the Police Scotland website here:   [Standard Operating Procedures P-S - Police Scotland](https://www.scotland.police.uk/access-to-information/policies-and-procedures/standard-operating-procedures/standard-operating-procedures-p-s/). Once all the nominals associated with an incident (Concern Report) are weeded, the Concern Report itself also weeds from iVPD.

## 5 In preparation for this legislation post the bills passing, how many hate crime incidents have you determined/guessed/forecast will be investigated in 2024, 2025 & 2026?

In terms of Section 17 of the Act, I can confirm that the information you have requested is not held by Police Scotland.

By way of explanation, Police Scotland have not forecast how many hate crimes will be investigated for the period noted. Police Scotland will assess each unique incident based its own merit and investigate where necessary.

## 6 if you determine a hate crime incident has occurred will it then be up to the CPS to determine if court action is required?

Police Scotland are the agents of the Procurator Fiscal.  Any decision to bring court action against any person within Scottish jurisdiction is the sole responsibility of the Crown Office and Procurator Fiscals Service (COPFS).

## 7 If the hate crime incident has been instigated on social media by an anonymous individual or group, how will you investigate and identify the culprit if social media companies (or other communication organisations) like X decline to provide account data, or, as is often the case, these accounts are set up with untraceable account details?

In response to this question, I must respond in terms of Section 8 of the Freedom of Information (Scotland) Act 2002. Section 8 states that a request must seek recorded information. This question requests an opinion based on a set of theoretical circumstances and as such is considered invalid.

To be of assistance, I can advise that to disclose any tactical information that would prejudice the prevention or detection of crime and the apprehension or prosecution of offenders would be considered exempt under section 35(a) and (b) Law Enforcement.

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.