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Our Ref: IM-FOI-2022-0057
Date: 31st March 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.

I am writing to enquire what, if any, changes Police Scotland have made to their policies, procedures or practices since the judgement in the case Commissioner of Police of the Metropolis v DSD and Another [2018] UKSC 11. The case, broadly speaking, has set the precedent that police services have a duty to effectively investigate serious offences (i.e., sexual offences and serious violence) committed by a perpetrator under Article 3 of the European Convention on Human Rights. Where they fail to do so, and these police failings amount to substantial and significant errors, the victim of crime can now sue the police for compensation.

In August 2012, the Police and Fire Reform (Scotland) Act 2012, received Royal Assent. The Act placed statutory requirements on the police in terms of conducting investigations. The act outlined the Chief Constable's responsibility for the policing of Scotland (Sections 17) as well as functions and jurisdiction in respect of Constables (Sections 18 and 20).

Section 20(1) of the Police and Fire Reform (Scotland) Act 2012, placed a statutory obligation on a Police Constable to prevent and detect crime. Section 22(3) of the Police and Fire Reform (Scotland) Act 2012, made it an offence for a Constable to neglect or violate the constable's duty.

Further to the statutory obligations placed on the police to prevent and detect crime, Police Scotland employ a Standard of Professional Behaviour, which sets out standards expected from all individuals who contribute to policing in Scotland as defined under the Police Service of Scotland (Conduct) Regulations 2013.

Police Scotland also have a code of ethics. These Ethics, namely, integrity, fairness, respect and Human Rights, govern the way in which all investigations are conducted. In line with the European Convention of Human Rights, Article 3, all police investigations are conducted in such a manner as to have Human Rights central to all decisions made during the course of the investigation.

All police investigations are open to scrutiny by the Police Investigations & Review Commissioner (PIRC), to ensure they are conducted to a professional and competent level. Independent of Police Scotland, PIRC's aim is to scrutinise police actions and ensure lessons are learned to improve the standard of service given to the public.

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If there have been changes made to policies, procedures or practices, please indicate what these are and attach any relevant and available documentation regarding these changes.

Police Scotland have not made any changes made to policies, procedures or practices as a result of the Commissioner of Police of the Metropolis v DSD and Another [2018] UKSC 11.

If there have not been any changes, please indicate why this is the case.

Police Scotland continually review their policies, procedures or practices to ensure they are legal and fully ECHR compliant.

Further, I ask if Police Scotland have had any claims launched through this route since the judgment from other victims. Please provide any details possible if so.

Police Scotland has notice of two claims raised since the date the DSD judgment was delivered in February 2018. Express reference to DSD is not made in either claim. However, both claims involve an alleged breach of Article 3, ECHR.

In respect of one claim, breach of Article 3 is alleged regarding an investigation into a stalking allegation against the claimant. This claim is subject to ongoing litigation and no further information can be provided.

A second claim also concerns an allegation of stalking against the claimant, in respect of which the claimant was charged. A breach of Article 3 is alleged. This claim is subject to ongoing litigation and no further information can be provided.

Finally, has Police Scotland developed or adapted any training to include discussion of the judgement in the case Commissioner of Police of the Metropolis v DSD and Another [2018] UKSC 11 or the implications of said judgement? If so, how so?

Police Scotland has not developed or adapted any training to include discussion of the judgement in the case Commissioner of Police of the Metropolis v DSD and Another [2018] UKSC 11.

If not, why not?

Unfortunately I must conclude that as this question does not seek a copy of recorded information, it is not a valid request in terms of Section 8 of the Freedom of Information (Scotland) Act 2002.

By way of explanation, your question is seeking an opinion which is not considered recorded information as per the Act.

Should you require any further assistance please contact Information Management quoting the reference number given.

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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.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalarnock, 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.