| Police Scotland logo | Freedom of Information Response Our reference: FOI 25-2505  Responded to: 14th October 2025 |
| --- | --- |

Please, first of all, accept my sincere apologies for the delay in providing a response to your request.

Your recent request for information is replicated below, together with our response.

## Please confirm whether, as reported in the news, that Police Scotland has implemented a policy that requires its employees to use toilet or changing facilities only of their "biological" sex. Such a policy may be formerly documented as a document, an announcement via bulletin, email or via word of mouth.

Interim guidance has been published.

There is a provision in place confirming that all single-sex spaces should be used based on biological sex. The Police Scotland estate is highly varied with a variety of mixed-sex, single-occupancy, and single-sex spaces. The guidance advises individual users who may be impacted and supports managers to seek further guidance where required, so that tailored consideration can be given, ensuring that Police Scotland meets the needs of our diverse workforce.

## If this Policy has been implemented, please identify whether it is a formal document, or an announcement via bulletin or other means.

## If the Policy is in force, please provide a copy of all documentation relating to it; ie the policy document, bulletin announcement etc.

A copy of the guidance and associated Intranet bulletin are attached within the document titled ‘Applicant Data’.

You will note that individual’s names have been redacted. The information sought is held by Police Scotland, but I am refusing to provide it in terms of section 16(1) of the Act on the basis that the section 38(1)(b) exemption applies.

**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 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.

## If the Policy is in force, to any extent that is not privileged, notes of meetings, discussions, whether formal or informal as the reasons for the change in Policy

The information sought is not held by Police Scotland and section 17 of the Act therefore applies.

## If the Policy is in force, the rationale for departing from the existing 2015 Code of Practice of Employment which is not subject to any changes or consultation at this time.

## If the Policy is in force, whether Police Scotland took into account the so called "interim guidance" issued by the EHRC.

Our ‘interim’ provision has been subject to draft Equality and Human Right Impact Assessment. The recent Supreme Court Judgement and Commission guidance has also been taken into account, alongside legal and Human Rights advice as we have been drafting our provision.

## Who made the decision to initiate a review.

Police Scotland committed to a review of all its policy and practice in light of the Supreme Court Judgement. As a result, there is ongoing work related to space, data, search etc.

1. **Whether the force obtained outside legal advice and by whom. We consider this not to be privileged and not something that can be denied, If Counsel belongs to the so called "Gender Critical" group, that will be important in future action against Police Scotland**

Police Scotland has a contract with Jane Gordon Legal Consultancy for the provision of Human Rights Consultancy Services.

## If the Policy requires separation based on "biological sex", if the above documents do not define that term, please provide the interpretation of that term used to enforce this Policy

‘Biological sex’ is defined within the interim guidance as ‘the sex of a person at birth’.

The Supreme Court Judgement uses the term biological sex in reaching determination related to the protected characteristic of sex.

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](https://www.foi.scot/appeal), by [email](mailto:enquiries@foi.scot) 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.