

Our Ref: IM-FOI-2021-1394
Date: 15 July 2021



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.

Please accept our apologies for the delay in responding.

The common law crime of 'rape' was replaced with the statutory offence contained within the Sexual Offences (Scotland) Act 2009 and section 1 defines 'rape' as:

If a person (“A”), with A's penis

- a) without another person (“B”) consenting, and*
- b) without any reasonable belief that B consents, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B then A commits an offence, to be known as the offence of rape.*

The first point of note is that the Sexual Offences (Scotland) Act 2009 is gender neutral in respect of a section 1 offence (Rape). It defines the perpetrator and victim of the crime as 'Person A' and 'Person B' and section 4 specifically states:

In this Act - “penis” includes a surgically constructed penis if it forms part of A, having been created in the course of surgical treatment, and “vagina” includes

- a) the vulva, and*
- b) a surgically constructed vagina (together with any surgically constructed vulva), if it forms part of B, having been created in the course of such treatment.*

It is therefore irrelevant, for the commission of the crime, if the perpetrator is legally defined as male or female. It is only relevant that the perpetrator has a penis, and this includes a surgically constructed penis.

For ease of reference, your request is replicated below together with the response.

- 1a How many women were arrested for the crime of rape in the last calendar year (2020), if not the calendar year, the financial year of 2019/20.**
- 1b How many men were arrested for the crime of rape in the last calendar year, if not the calendar year, the financial year of 2019/20.**
- 1c How many women were arrested for the crime of rape in the calendar year of 2019. 2018. 2017 and 2016, if not the calendar year, the financial year of 2018/19, 2017/18, 2016/17 and 2015/16.**
- 1d How many men were arrested for the crime of rape in the calendar year of 2019. 2018. 2017 and 2016, if not the calendar year, the financial year of 2018/19, 2017/18, 2016/17 and 2015/16.**

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Firstly, we note that you have referred in these questions to *arrest* data.

On 25 January 2018 the Criminal Justice (Scotland) Act 2016 was enacted, removing the separate concepts of arrest and detention and replacing them with a power of arrest without warrant, where there are reasonable grounds for suspecting a person has committed, or is committing, an offence.

When a person is arrested, a statement of arrest should be read over as soon as reasonably practical and details recorded in the arresting officer's notebook.

When arrested under Section 1 of the Act (above) and not cautioned and charged, the person is known as 'Not Officially Accused' (a suspect).

When a person has been arrested and cautioned and charged, they are known as 'Officially Accused'.

If conveyed to a police station, an arrested person is processed as an 'Officially Accused' or 'Not Officially Accused' person and their details are recorded in the Police Scotland National Custody System - therefore *some* arrest statistics can be provided from that system.

The Act however also provides for certain situations whereby a person must be released from police custody prior to their arrival at a police station - effectively allowing the police to 'de-arrest' that person where the reasonable grounds for suspicion no longer exist.

Therefore, there are occasions where the details of an arrested person are not held electronically but are instead held in arresting officer's notebooks.

In relation to *arrest* statistics therefore, we are unable to provide comprehensive data for any offence as case by case assessment of all officer notebooks for the time period requested would be required (more than 17,000 officers currently).

As you may be aware the current cost threshold is £600 and we estimate that it would cost well in excess of this amount to process your request.

As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

To be of assistance, we have gone on to consider your request in terms of *recorded crime* data, to determine whether that information could be provided within cost.

Although high level crime statistics are easily retrievable and are routinely published, it *is not usually possible* to provide the gender breakdown requested in terms of the cost exemption articulated above.

The explanation lies partly in the recording and analytical systems we use, and partly in the complexity of your request.

The information you have requested is held in a number of disparate crime recording systems that were used by the legacy territorial forces prior to the establishment of Police Scotland and which remain in use today.

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These systems are designed to record the details of investigations undertaken by the police and are structured to enable retrieval of information about a named person or a crime and to enable officers to manage their own workload.

The crime recording systems were not designed primarily to yield statistical information.

Instead, when collating statistical information on the incidence of crime for management purposes, details are drawn from the crime recording systems into a data store that allows information on the nature and progress of individual cases to be treated as anonymised data, validated, analysed and reported.

Police Scotland uses a single data store to ensure that information from the various crime recording systems in use is reported consistently across all divisions.

As information is drawn into the data store from systems that are both structured and operate differently, data produced from the store is also subject to validation checks as part of the analytical process to make sure it is internally consistent.

Crucially, for your request, not all information is drawn through to the data store from the crime recording systems and this limits the ability of the Police Scotland to provide bespoke statistical reports other than for our own management and reporting purposes.

Information that is currently not drawn through to the data store includes personal information about individuals involved in an investigation.

This means that we are unable to interrogate the data store for information about the gender of suspects or accused individuals.

Extracting the information you have requested therefore relies on interrogating separately each of eight legacy crime recording systems for all recorded rapes to ascertain the gender of the suspect/ accused and note and aggregate the information manually.

However, on this occasion, and in recognition of the public interest in the subject matter, we have taken the decision to conduct some analysis and provide data in respect of females who have been recorded as a suspect/ accused for the crime of rape which we trust is of assistance:

Year	Suspect	Accused	Total
2016	1	1	2
2017	1	1	2
2018	0	0	0
2019	1	13	14
2020	4	6	10

All statistics are provisional and should be treated as management information.

All data have been extracted from Police Scotland internal systems and are correct as at 07/07/2021.

The data was extracted from crime management, UNIFI, IMAGE & Crime File using the crime's recorded date.

Statistics regarding the commission of sexual offences more generally can be found on our website:

www.scotland.police.uk/about-us/our-performance/

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Can you confirm in each of the questions how many of the females were a male-born person self-identifying or in the case of a male, a female-born person self-identifying.

Our crime management systems do not record the information requested.

As such, in terms of section 17 of the Freedom of Information (Scotland) Act 2002, the information sought is *not held* by Police Scotland.

However, in recognition of the public interest in this matter, a physical review of the 28 crimes (see table above - where a female is recorded as the suspect/ accused for the period 2016-2020) has been conducted.

We can confirm that none of the females recorded for the crime of rape were involved in the physical act itself i.e. the penetration of a vagina, anus or mouth with a penis or surgically constructed penis.

Their involvement was art and part (aiding or abetting in the perpetration of the crime).

2a How many women were convicted for the crime of rape in the last calendar year (2020), if not the calendar year, the financial year of 2019/20.

2b How many men were convicted for the crime of rape in the last calendar year, if not the calendar year, the financial year of 2019/20.

2c How many women were convicted for the crime of rape in the calendar year of 2019. 2018. 2017 and 2016, if not the calendar year, the financial year of 2018/19, 2017/18, 2016/17 and 2015/16.

2d How many men were [convicted] for the crime of rape in the calendar year of 2019. 2018. 2017 and 2016, if not the calendar year, the financial year of 2018/19, 2017/18, 2016/17 and 2015/16.

In response to these questions, Police Scotland does not hold conviction information.

As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information you seek is not held by Police Scotland.

You may wish to contact the Crown Office and Procurator Fiscals Service (COPFS) which holds conviction information for Scotland.

A request can be submitted to COPFS via email using the following address foi@copfs.gsi.gov.uk

Should you require any further assistance please contact Information Management - Dundee 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 foi@scotland.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

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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.

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