| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 23-1373Responded to: 14 August 2023 |
| --- | --- |

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

## How many undetected rapes has there been with a named suspect in 2022 within C division alone.

In response to this question, I can advise that in 2022 there were 36 offences of rape recorded which remain undetected with a named suspect within C division.

## From this number how many have resulted in a proactive disclosure under dsdas ie named suspects partner given a dsdas.

Tackling domestic abuse is a priority for Police Scotland and we are committed to working with our partners to reduce the harm it causes and ultimately eradicate it.

Domestic abuse is a despicable and debilitating crime which affects all of our communities and has no respect for ability, age, ethnicity, gender, race, religion or sexual orientation.

Police Scotland will not tolerate it.

Police Scotland will proactively target perpetrators and support victims to prevent domestic abuse from damaging the lives of victims and their families.

Police Scotland defines domestic abuse as:

“Any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse may be committed in the home or elsewhere including online”

This definition is included in the Joint Protocol between Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS), “In partnership challenging domestic abuse” which is a public document that can be found at the Police Scotland website on [Police Scotland (scotland.police.uk)](https://www.scotland.police.uk/spa-media/ymzlwhwj/joint-protocol-between-police-scotland-and-copfs-in-partnership-challenging-domestic-abuse.pdf?view=Standard) or on the COPFS website on [Crown Office and Procurator Fiscal Service (copfs.gov.uk)](https://www.copfs.gov.uk/)

The Disclosure Scheme for Domestic Abuse Scotland (DSDAS) provides a formal way of sharing information about a partner’s abusive past, with a potential victim.

In making a disclosure, the scheme provides those individuals with information they may have been previously unaware of, giving them the power to review their situation, decide what is best for them and whether to continue their relationship.

The DSDAS operates with two main entry pathways for disclosure – the **Right to Ask (RTA)** and the **Power to Tell** **(PTT).**

**‘Right to Ask’**- Anyone can make a ‘Right to Ask’ application. The applicant may be concerned about themselves or may be making the application as they have concerns about someone else being at risk of domestic abuse.

**‘Power to Tell’** - This pathway is triggered when Police Scotland or partner agencies (statutory and/or third sector) receive or gathers information and/or intelligence about a person who may be at risk due to domestic abuse.

The individual who is in a relationship with a potential perpetrator of domestic abuse will be referred to as ‘Person **A**’.

The subject of the application who is in a relationship with person ‘A’ will be referred to as ‘Person **B**’.

As Police Scotland are committed to reduce the harm Domestic Abuses causes and ultimately eradicate it, with regret I must 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.

The relevant exemptions are:

Section 35(1)(a) Law Enforcement

Section 39(1) Health, Safety and the Environment

Section 35(1)(a) 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.

DSDAS aims to keep people safe by disclosing information held about potential perpetrators, ‘Person B’.

Using a rigorous process, an examination of the circumstances will be considered relative to the threat presented. Only after all factors have been considered and the threat carefully assessed will a decision be made to disclose information to ‘Person A’.

Consideration must also be given as to whether ‘Person B’ should be told that information about him/her may be disclosed to ‘Person A’. Such a decision must be based on an assessment of risk or harm to ‘Person A’, if ‘Person B’ were to be informed.

Due consideration must be given on whether the disclosure to ‘Person B’ would have the potential to escalate the risk of harm to ‘Person A’. If this were to be the case, no disclosure is to be given to ‘Person B’.

Specifically in this case to provide the number of disclosures made under DSDAS, for offences of rape with a named suspect in C Division alone could alert that named suspect that a disclosure may have been made about them to their partner and consequently increase the risk of Domestic Abuse to ‘Person A’.

Additionally, the type of information about ‘Person B’ which is likely to be under consideration in terms of the DSDAS is both “personal data” and “sensitive personal data” in terms of the Data Protection Act 2018.

There must be a balance of the rights of ‘Person B’ against the need to prevent crime. This involves considering the extent of the information which needs to be disclosed and it is worthy of note, that a disclosure may have been made regarding other behaviour by the perpetrator and not specifically because they were a named suspect in an undetected rape.

This is a non-absolute exemption and requires the application of the public interest test.

Section 39(1) Health, Safety and the Environment

Disclosure of the requested information has the potential to present a risk to an individual’s personal safety.

This is a non-absolute exemption and requires the application of the public interest test.

Public Interest Test

I would suggest that public accountability may favour disclosure, given that the information concerns the efficient and effective use of resources by the Service. Likewise, disclosure of the information would also inform the public debate on the issue of policing and contribute to the accuracy of that debate.

However, any disclosure under FOI legislation is a public disclosure and any information identifying the focus of policing activity could be used to the advantage of those with the intent of perpetrating abuse.

Consequently, in terms of the applicability of the exemptions listed above, the need to ensure the effective conduct of the service in relation to prevention and detection of crime and the public safety considerations involved in the delivery of policing clearly favour non-disclosure of the requested information.

I would argue that the need to ensure the efficient and effective conduct of the service favours non-disclosure of the requested information and on balance is significantly in the public interest. I cannot identify any corresponding viewpoint in disclosing the requested information and therefore the exemptions are upheld.

I must advise you that it is doubtful it could ever be in the public interest to disclose information which would jeopardise the delivery of policing, the safety of individuals and prejudice the prevention or detection of crime.

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.