| Police Scotland logo | Freedom of Information ResponseOur reference: FOI 24-2308Responded to: 09 October 2024 |
| --- | --- |

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

## In a written submission to the Scottish Parliament, Police Scotland made the following statement about its recording policy:

## "The sex/gender identification of individuals who come into contact with the police will be based on how they present or how they self-declare, which is consistent with the values of the organisation. This practice adheres to legislative compliance, operational need...".

## See: [https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2022/pe1876/pe1876\_ff.pdf](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.parliament.scot%2F-%2Fmedia%2Ffiles%2Fcommittees%2Fcitizen-participation-and-public-petitions-committee%2Fcorrespondence%2F2022%2Fpe1876%2Fpe1876_ff.pdf&data=05%7C02%7Cfoi%40scotland.police.uk%7C1d3699acc174411926d508dcd039acdf%7C6795c5d3c94b497a865c4c343e4cf141%7C0%7C0%7C638614193899283451%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=QztVA5fo10xWYghDYJj6Z8ufTMiITB2GQa1ONyzR7H4%3D&reserved=0)

## Please provide details of a) the legislation that the policy is intended to comply with, and b) the 'operational need' cited in the response to the Committee.

A common theme runs through several of the relevant statutes; the Human Rights Act 1998, the Data Protection Act 2018, the Gender Recognition Act 2004 and the Equality Act 2010 all direct public bodies that their interference with an individual’s private life and recording of personal or sensitive data should be necessary (not just reasonable), pursue one of the recognised legitimate aims and is proportionate to that aim. While these legislative instruments have certain exemptions for the prevention, detection and reporting of crime this is a very narrow provision and in itself must be evidenced. For example, the provision of statistical crime information to the Scottish Government would not fall under this provision.

To navigate the legal provisions Police Scotland must examine our operational requirements for the prevention, detection and reporting of crime and the role gender and sex data plays within this. Upon review the operational requirements to hold gender or sex data is very narrow an include the identification of an individual (eg. suspect or missing person) where we obtain information based on how the person looks or is described, biological sex derived from DNA samples, and respectful and appropriate interactions with the public, relevant to the sensitive matter of supporting victims of certain offences, and in the duty of care within a custody environment where there is a requirement to search detained individuals. Charges reported to Crown Office and Procurator Fiscal Service (COPFS) is based on the act undertaken and does not require gender or sex information.

These considerations have formed the recommendations with the data recording report still to be ratified.

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.