| Police Scotland logo | Freedom of Information Response Our reference: FOI 24-0854  Responded to: 11 June 2024 |
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Your recent request for information is replicated below, together with our response.

## The questions pertain to the new Hate Crime and Public Order (Scotland) Bill that will commence from 1 April 2024.

## Assumption: Third Party Reporting Centre is where a member of the public can report a hate crime such as those listed here: [https://www.scotland.police.uk/contact-us/reporting-hate-crime/third-party-reporting-centres/](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.scotland.police.uk%2Fcontact-us%2Freporting-hate-crime%2Fthird-party-reporting-centres%2F&data=05%7C02%7Cfoi%40scotland.police.uk%7Cd9fb0eb2402f4c138ddb08dc4cdcd3eb%7C6795c5d3c94b497a865c4c343e4cf141%7C0%7C0%7C638469758665927977%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C40000%7C%7C%7C&sdata=6hVK6OqcY2PPEJd427G3qrxyLcwZL6KZWZlcp0LI62o%3D&reserved=0).

## Where the question states Police Scotland or a Third-Party Reporting Centre, please give a response for both organisations OR confirm that Third Party Reporting Centres must be approached separately.

## QUESTIONS:

## If someone is reported for a hate crime under the new hate crime legislation, will the person accused by a complainant be informed by Police Scotland or a Third-Party Reporting Centre, that a complaint has been lodged against them:

## at the point the complaint is made?

## only where an investigation is initiated?

## only when charges are to be brought following an investigation?

The investigation of crime is exactly the same for hate crime as it is for any other crime/offence/incident reported to police.  Where a concerned party reports an incident to police which they believe is a crime, the evidence provided is assessed as to whether or not there is actually evidence that a crime is being or has been committed.  Where that evidence does not exist, the enquiry ends there.  We do not routinely inform people that they have been accused of a crime by a third party if no such crime has been committed.

## Please supply the time limit for which Police Scotland or a Third-Party Reporting Centre can retain complaint data as it relates to the hate crime legislation under the following circumstances:

## where there is an ongoing investigation?

## where there has been a decision that the accused will be charged?

## where there has been a decision that the accused will not be charged following an investigation?

## where there has been a decision that the accused will not be charged and where no investigation has taken place (see question 5)?

In response to question 2 and its subsidiaries, in terms of Section 17 of the Act, I can confirm that the information you have requested is not held by Police Scotland.

Third Party Reporting Centres (TPRC) do not hold any data, all reports to Police Scotland are made via a secure online form.

TPRC act only to support the reporting completing the secure online form on the Police Scotland website.

## If an accused is not charged for a hate crime as a result of an investigation under the hate crime legislation, will Police Scotland or a Third-Party Reporting Centre, automatically remove/erase any data relating to the complaint made against the accused?

Please be advised that information regarding the records retention process is publicly available. As such, 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.

I can confirm that Police Scotland holds the information that you have requested and the exemption that I consider to be applicable is set out at Section 25(1) of the Act - information otherwise accessible:

*“Information which the applicant can reasonably obtain other than by requesting it under Section 1(1) is exempt information”*

The Record Retention Standard Operating Procedure (SOP) is available on the Police Scotland website at the link below.

[Standard Operating Procedures P-S - Police Scotland](https://www.scotland.police.uk/access-to-information/policies-and-procedures/standard-operating-procedures/standard-operating-procedures-p-s/)

It is important to note that, TPRC do not investigate crime, nor do they store information.

## If Number 3 is the negative and Police Scotland or a Third-Party Reporting Centre retain the data, what is the procedure for the accused themselves to request that the complaint data be removed?

It is important to note that a TPRC does not store any personal data.

With respect to the right to erasure of data, I can advise that the GDPR and Data Protection Act 2018 provide the Right to Erasure, however this right is not absolute and does not apply in all circumstances. The links below provide further information for you to view.

[Your Rights - Police Scotland](https://www.scotland.police.uk/access-to-information/data-protection/your-rights/)

[Right to Rectification Form](https://www.scotland.police.uk/spa-media/2libywig/request-for-rectification-erasure-restriction-or-objection-to-processing-personal-data.docx)

## Please supply the circumstances under which Police Scotland may decide not to progress any investigation.

Any reports received by Police Scotland are investigated fully to establish the circumstances. Only where it is found that a crime has not been committed would any investigation cease.

## Are any complaints made to Police Scotland or a Third-Party Reporting Centre under the hate crime legislation reported to Disclosure Scotland under any of the following circumstances:

## prior to an investigation being initiated?

## during an investigation?

## where there is no charge (no investigation - see question 5) or there is no charge following an investigation?

Enhanced Disclosure and PVG checks include conviction information and *may* include other relevant information (ORI).

ORI is police information about the applicant that the Chief Constable reasonably believes:

* is relevant for the purpose of the disclosure
* ought to be included on the disclosure certificate

This may include reference to non-conviction matters.

We are unable to comment as regards what may or may not be disclosed as ORI in the future, as we would assess all of the information held in light of the applicant working with children and/ or vulnerable adults, and each application would be considered for relevance, accuracy, proportionality and passage of time, whilst taking into consideration the human rights of all relevant parties.

Hate crime matters are assessed using the same criteria as used for all other crime.

However, I can advise you that information shared with Disclosure Scotland as ORI would need to identify the applicant as an accused, perpetrator or suspect.

## What strategy will be employed by Police Scotland where there is:

## nefarious targeting of specific individuals?

## strategic repeated reporting by groups where political motivation is found to be the reason for reporting?

## Wasting Police time with non-compliant (with the law) complaints?

In response to this question, I must respond in terms of Section 8 of the Freedom of Information (Scotland) Act 2002.

Section 8 states that a request must seek recorded information. This question requests an opinion and as such is considered invalid.

I can advise that any reports received by Police Scotland are investigated fully to establish the circumstances.

## 8. Will anonymous complaints be investigated?

Any reports received by Police Scotland are investigated fully to establish the circumstances.

## 9. In order to manage any complaints that result from the new hate crime legislation, are Police Scotland and each Third-Party Reporting Centre compliant under the EU General Data Protection Regulation 2016 and Data Protection Act 2018 for data retention, management, and transfer to and from Police Scotland where any data transfer is required?

TPRC do not hold any data, all reports to Police Scotland are made via a secure online form available on the Police Scotland website, linked below.

[Reporting hate crime - Police Scotland](https://www.scotland.police.uk/contact-us/reporting-hate-crime/)

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](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) 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.