

OFFICIAL



Heddlu Police

DYFED-POWYS

FOI Reference: 014/2020

Request:

- 1) Please tell me the number of recorded offences under s.15A of the Sexual Offences Act 2003, sexual communication with a child, (Home Office recording code 71/17) recorded from (and including) April 3, 2019, until (and including) October 2, 2019.
- 2) Where possible I would like to know the age and gender of the victim, broken down into age groups: 11 and under, 12-15, 16 and over.
- 3) Please tell me the age and gender of the youngest victim.
- 4) Please tell me all the forms of communication (eg. text message, Whatsapp, Facebook, Twitter, Instagram, Snapchat, Kik etc.) that have been recorded as having been used in connection with recorded offences under s.15A of the Sexual Offences Act 2003, sexual communication with a child, from (and including) April 3, 2019, until (and including) October 2, 2019.
- 5) Please tell me how many times a cyber flag was attached to the recorded crime for these dates.

Response 1:

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

- For the period requested there were a total of 14 crimes under Section 15a of the Sexual Offences Act 2003.

Response 2:

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

Please note: The below victim information may not tally with the response to question 1 as some crimes may be a result of reports from paedophile hunter groups.

Gender	Total
Female	7
Male	0
3 x ongoing investigations where Section 30(1) and 40(2) applies*	

(*Please see the end of the response document for an explanation of the applied exemptions)

Age groups (years)	Total
11 and under	3
12 – 15	3
16 and over	1
3 x ongoing investigations where Section 30(1) and 40(2) applies*	

(*Please see the end of the response document for an explanation of the applied exemptions)

Response 3:

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

Gender	Age of youngest victim
Female	Section 40(2) applies

Response 4:

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

Form of communication	Total
Facebook	1
Omegle	1
Snapchat/Yolo	2
Instagram	3
3 x ongoing investigations where Section 30(1) and 40(2) applies*	

(*Please see the end of the response document for an explanation of the applied exemptions)

Response 5:

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

- 12 crimes had a cyber flag attached

Explanation of applied exemptions:

Section 30(1)(a) Investigations and Proceedings conducted by Public Authorities Section 40(2) Personal Information

The Section 30(1)(a) exemption is a class-based qualified exemption. This means that the legislators when writing the legislation considered that the release of such information under the Freedom of Information Act 2000 would cause harm to the public authority or individual concerned. There is therefore no requirement to carry out a HARM Test in respect of such information. However there is a requirement to carry out a Public Interest Test in order to establish whether the public interest in maintaining the exemption may be outweighed by a wider public benefit in disclosure.

Section 40(2) is a class-based absolute exemption. This means that the legislators when writing the legislation considered that the release of such information under the Freedom of Information Act 2000 would cause harm to the public authority or individual concerned. There is therefore no requirement to carry out a HARM Test in respect of such information. There is also no requirement to carry out a Public Interest Test.

Section 30(1)(a) Investigations and Proceedings conducted by Public Authorities:

(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of -

(a) Any investigation which the public authority has a duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence, or (ii) whether a person charged with an offence is guilty of it

Public Interest Test

Considerations favouring disclosure:

Disclosure of the information would improve the public's knowledge and awareness in relation to crimes of a sexual nature involving children within the Dyfed-Powys Police area and would provide satisfaction to the public that these cases are investigated thoroughly and offenders are being dealt with accordingly.

Considerations favouring non-disclosure:

This exemption covers information held at any time for the purpose of an investigation, whether the case is ongoing, closed or abandoned. To release details of ongoing investigations, as in this case, could undermine and prejudice those investigations. This would impact on the forces' future law enforcement capabilities by hindering the prevention or detection of crime.

Balancing Test

After considering the advantages and disadvantages in disclosure, it falls upon Dyfed-Powys Police to conduct a balance test on the issues. The strongest argument for disclosure, which is public awareness, needs to be weighed against the strongest arguments for non-disclosure, which in this case is that the release would undermine and prejudice ongoing investigations, which would impact on the forces' future law enforcement capabilities by hindering the prevention or detection of crime.

Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 40(2) Personal Information:

Section 40(2) applies to third party personal data and is exempt from disclosure under the Freedom of Information Act 2000 if disclosure, in relation to data subject to law enforcement processing, would breach any of the data protection principles contained within Part 3 - Chapter 2 of the Data Protection Act 2018. Under Section 34 within Chapter 2 "The Controller in relation to personal data is responsible for and must be able to demonstrate, compliance with" Chapter 2. Such information would not be released under the Freedom of Information Act 2000 unless there is a strong public interest. One of the main differences between the Freedom of Information Act 2000 and the Data Protection Act 2018 is that any information released under FOI is released into the public domain, not just the individual requesting the information and disclosure under the Act must be made with that in mind. As such, any release

that identifies an individual through releasing their personal data, even third party personal data is exempt.

Personal data is defined under Section 3 of the Data Protection Act 2018 as:

“(2) ‘Personal data’ means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).

(3) ‘Identifiable living individual’ means a living individual who can be identified, directly or indirectly, in particular by reference to—

(a) An identifier such as a name, an identification number, location data or an online identifier, or

(b) One or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.”

All members of the public including those employed by the force have an intrinsic right to privacy and these rights are protected by virtue of the Human Rights Act, the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and a public authority must not interfere with that right. Any release of the information subject to the exemption is likely to compromise those rights.

Data Protection Act 2018

Part 3 – Law Enforcement – Chapter 2 Principles Section 35

The first data protection principle:

“(1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair.”

General Data Protection Regulation

Article 5 of the GDPR – ‘Principles relating to processing of personal data’ provides:

“1. ‘Personal data’ shall be

(a) Processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);

(b) Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest...

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 (‘accountability’).”

Dyfed-Powys Police would not want to disclose any information that could potentially identify an individual. In this particular case, to release the age of the individual, alongside the other details being disclosed could lead to the identification of the individual involved and to release such information would be a direct breach of Data Protection legislation. Therefore as a consequence I am satisfied that Section 40(2) Personal Information exemption is applicable to the release of the information.

The Section 40 exemption is in part qualified and in part absolute, in the present case it would be absolute as to release the information would breach Data Protection legislation and therefore there is no requirement to carry out a public interest test.

It should be noted that owing to the systems adopted by Dyfed-Powys Police in relation to the recording of such matters the information provided may or may not be accurate.

Police Forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recoding criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the data. It should be noted that for these reasons this Force's response to your questions should not be used for comparison purposes with any other response you may receive.

(This is a response under the Freedom of Information Act 2000 and disclosed on 03/03/20)