

14 October 2019

Our ref: IR201905478

Mr Colin White

By email: **request-604065-  
4f0005e7@whatdotheyknow.com**

Dear Mr White

### **Your request for information**

I refer to your email of 17 September 2019. In your correspondence you ask for Human Rights Act Article 3 and Discrimination information. Your request has been processed in line with the Freedom of Information (Scotland) Act 2002 (FOISA), and I can now respond as follows.

As you may be aware, section 1 of FOISA entitles a person to request information that is held by the SPSO in a recorded form. It does not place a duty on a public authority to create new information in a recorded format in order to explain actions.

Below is our response to your request, structured by reference to each part of your request, marked in bold.

**1. Any prepared policy and guidance for dealing with complaints against public bodies where "degrading treatment" or "degraded" forms part of the complaint the service user wants investigated.**

In terms of section 17 of FOISA, we do not hold information falling within the scope of this part of your request.

**2. From 2016-2018 how many complaints from public service users requested "degrading treatment" or "degraded" formed part of the investigation complaint ?**

**3. How many complaints that were investigated 2016-2018, subsequently investigated whether the service user had been subjected to "degrading treatment" or "degraded" or similar wording as the basis of the complaint?**

Section 12 of the Scottish Public Services Ombudsman Act 2002 requires that an investigation by the Ombudsman must be conducted in private, and section 19 of our



Act specifically prohibits the Ombudsman from releasing information obtained in connection with any matter in respect of which a complaint has been made, except for specified purposes. Disclosing information under FOISA is not one of those specified purposes. This means we consider that information about the nature of complaints made to us will be exempt from disclosure under section 26(a) of FOISA (prohibited by or under an enactment). This is an absolute exemption, which means there is no requirement to apply the public interest test under FOISA.

While we publish our official complaint statistics reports once a year on our website at <https://www.spsso.org.uk/statistics>, we do not categorise complaints by these specific subjects. However, we also publish reports of our investigations on our website at <https://www.spsso.org.uk/our-findings> and you can search these using key words. From a quick search of our published reports using relevant key words I have identified the following:

Decision reports: 201401646; 201203388; 201600035, 201502802; 201406738, 201508660, 201803694

Investigation reports: 200600276

This information has already been published by the SPSO and is therefore exempt from disclosure by virtue of section 25 of FOISA, as it can be reasonably obtained by you by other means. Section 25 is an absolute exemption.

**4. Please provide information regarding whether SPSO investigations meet or are meant to meet the legal requirements of Article 2 / Article 3 of the European Convention on Human Rights that requires an "effective investigation" of complaints of torture, inhuman or degrading conduct.**

**5. Please provide information that shows how a request for investigation into a public service, where the service user alleged the public service breached Article 3 of the Human Rights Act 1998 would be dealt with. eg Would the SPSO specifically investigate whether a public body had violated a service user's Article 3 or other Human Rights ( Human Rights as specified in Articles 1 to 14 of the Human Rights Act 1998)?**

Our remit and role are set out in the Scottish Public Services Ombudsman Act 2002, which you can find at <http://www.legislation.gov.uk/asp/2002/11/contents>. This information is exempt from disclosure by virtue of section 25 of FOISA, as it can be reasonably obtained by you by other means. I have also attached an extract (Section B2) from our internal Complaints and Investigations Procedures and Guidance (Human Rights).



**6. If a service user complained of discrimination by a public body, as defined by the Equality Act 2010 s13 or s15, or victimisation as defined at s27, what is the policy of the SPSO regarding investigation of complaints of discrimination or victimisation?**

In terms of section 17 of FOISA, we do not hold information falling within the scope of this part of your request.

**7. In 2016-2018 how many complaints has the SPSO investigated where "discrimination" or "discriminated" or "discriminatory" or "victimised" or "victimisation" formed the basis of the complaint?**

Due to the strict confidentiality provisions in our legislation noted above at part 3, we consider that the information will be exempt from disclosure under section 26(a) of FOISA. From a quick search of our published reports using relevant key words I have identified the following:

Decision reports: 201001204; 201002895; 201003180; 201003933; 201004650; 201100281; 201100925; 201101605; 201102078; 201103655; 201104206; 201104967; 201104975; 201105490; 201105501; 201200093; 201201421; 201201889; 201202149; 201203204; 201204932; 201205112; 201205187; 201300625; 201301653; 201302087; 201302885; 201304003; 201304223; 201304742; 201306050; 201400115; 201404746; 201406982; 201500612; 201502802; 201507674; 201508700; 201606618; 201700318; 201700352; 201701060; 201703229; 201707720; 201809490

Investigation reports: 200602414; 200402393; 201306190; 201000168; 200602270; 200402093 200500680; 200501334; 200503282; 200501681; 200800888 200800890

This information has already been published by the SPSO and is therefore exempt from disclosure by virtue of section 25 of FOISA.

**Your Right to Request a Review and of Appeal**

You have a right under FOISA to request a review of any part of this decision, or of the handling of your request, and of appeal to the Scottish Information Commissioner if you remain dissatisfied. Details about requesting a review and appealing to the Commissioner are set out on page 3 of the attached information leaflet 'Your Information Rights & SPSO'.



Yours sincerely

Helen Littlemore

Corporate Information Governance Officer

Enc. 1. Information leaflet 'Your Information Rights & SPSO'

2. Extract (Section B2) from SPSO internal Complaints and Investigations  
Procedures and Guidance