

Scottish Crime Recording Board (SCRB) submission of 16 May 2023

PE1876/CC: Accurately record the sex of people charged or convicted of rape or attempted rape

Thank you for your letter dated 18th April 2023 on petition PE1876: *Accurately record the sex of people charged or convicted of rape or attempted rape.*

You wrote to me in my capacity as chair of the Scottish Crime Recording Board (SCRB), on behalf of the Citizen Participation and Public Petitions Committee. The Committee agreed on the 22nd March to seek clarity from the SCRB on the policy for recording the sex of individuals charged or convicted with sexual offences and whether this policy is under review.

It may help if I first set out the background to the SCRB. The Board was set up in 2015 with the specific aim of supporting wider efforts to redesignate (i.e. badge) Scotland's police recorded crime statistics as *National Statistics*. This was achieved in 2016, with the Office for Statistics Regulation confirming they met the highest standards of trustworthiness, quality and value as set out in the Code of Practice for Official Statistics¹. A further compliance check in 2019 confirmed a similar outcome².

The SCRB primarily fulfils its role through governing the Scottish Crime Recording Standard (SCRS)³, which guides police officers on how to classify breaches of the criminal law into useable operational data that can eventually be produced as the recorded crime *National Statistics*. All changes to the SCRS must be approved by the Board, which is independent of Ministers and seeks to operate by consensus (ultimately reporting to the Chief Statistician if necessary).

The SCRB is not responsible for the production of any other crime or justice-themed set of Official Statistics, including those related to criminal proceedings against individuals such as convictions. Our remit

¹ [Assessment of statistics on Recorded Crime in Scotland – Office for Statistics Regulation \(statisticsauthority.gov.uk\)](https://statisticsauthority.gov.uk)

² [Compliance Check of Statistics on Recorded Crime in Scotland – Office for Statistics Regulation \(statisticsauthority.gov.uk\)](https://statisticsauthority.gov.uk)

³ [Scottish crime recording standard: crime recording and counting rules - gov.scot \(www.gov.scot\)](https://www.gov.scot)

is focused solely on the police recorded crime *National Statistics*, which themselves measure crimes (not people) and like the SCRS, have never included the recording of demographic details on suspects or perpetrators.

As such, I can confirm that the SCRB and its membership has no role or responsibility in requiring Police Scotland or any other body to record the sex of people charged or convicted of crime, including rape, in a certain way and that the Scottish Government position remains that as outlined to the Committee in the response of the previous Justice Secretary in October 2022.

Further to the above, the Committee may also wish to note a more recent response on the 2nd May 2023 by the Cabinet Secretary for Justice and Home Affairs to a parliamentary question from Pam Gosal MSP⁴. This asked whether the Scottish Government plans to require Police Scotland, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service to record the sex of people charged with or convicted of rape or attempted rape.

The answer highlights that the Scottish Government has no plans to introduce such a requirement and that, as noted in the October response, it is a matter for those relevant public bodies collecting information on sex to establish the best approach in their individual institutional settings. In the case of those committing crime, this approach will rightly be shaped by how Police Scotland, the Crown Office and Procurator Fiscal Service and Scottish Courts and Tribunals Service operationalise the wider legal context (where for example an arrested person is not legally required to answer questions on their sex or gender) and any associated guidance on collecting data about sex and gender.

It is further noted that the recorded information on people's sex will be based on how they present unless an alternative gender is disclosed. It will have no impact on how cases are investigated or prosecuted, and in the case of rape or attempted rape, the presence of a penis or constructed penis must be established.

Finally, at the Committee meeting on the 22nd March it was suggested there may be a contradiction between the Scottish Government's position on this petition and the recent response to a Freedom of

⁴ [Written question and answer: S6W-16640 | Scottish Parliament Website](#)

Information (FOI)⁵ request seeking SCRB correspondence on the recording of sex and gender (also attached as an Annex to this letter).

I would like to use this opportunity to reassure the Committee that the FOI response was consistent with the Scottish Government's position. As stated above and in the FOI response itself, the recorded crime *National Statistics* and SCRS guidance do not include or refer to any information on those who commit crime. The only instance where demographic information is collected, bringing the subject into the SCRB's remit, is for some sexual crimes and those recorded under the Domestic Abuse (Scotland) Act 2018 – where the crime is operationally coded based on whether the victim was male or female.

For context, the response to the FOI shows a short conversation between officials from the Scottish Government's Justice Analytical Services division and Police Scotland following publication of the Chief Statistician's guidance on collection and publication of data on sex, gender identity and trans status. This related to those codes on victims of sexual crime and domestic abuse, whereby we reflected that any role for the SCRB should be consistent with the Chief Statistician's guidance, and that the collecting organisations (in this case Police Scotland) must decide themselves the most useful definition(s) to use to capture the data they need, including for operational reasons.

The FOI correspondence further highlights that it was then left open for Police Scotland to request feedback from the Board on their approach to recording information on victims of sexual crime and crimes recorded under the Domestic Abuse (Scotland) Act, with the initial suggestion that it might not be consistent with the victim-centred approach that underpins the recording of crime through the SCRS, to expect those victims to confirm their biological sex with officers for the purposes of producing statistics.

I hope this response is helpful to the Committee's work in this area.

Chair of Scottish Crime Recording Board
Justice Analytical Services
Scottish Government

⁵ [Scottish Crime Recording Board: FOI release - gov.scot \(www.gov.scot\)](https://www.gov.scot/foi-releases)

ANNEX

FOI response – 27 Feb 2023

Your request

In regards to the Scottish Crime Recording Board, you asked for copies of all internal and external correspondence and information held (minutes, notes, briefing etc.) in relation to the recording of sex and gender in crime statistics.

Response to your request

As this request is identical to an earlier one ([FOI/202100209851](#)), we have based the timeframe of our response from the date we received the first request (4th June 2021) to the date we received this request (30th January 2023).

The purpose and objectives of the Scottish Crime Recording Board relate to the Recorded Crime National Statistics. The data we receive from Police Scotland for the production of these statistics is a simple count of the number of crimes and offences, for each local authority, which the police have recorded. With the exception of a number of Sexual crimes and crimes under the Domestic Abuse (Scotland) Act 2018 (where the codes used to categorise the crimes indicate gender of the victim), the data do not include any information on the demographics of either victim or perpetrator.

There was some correspondence in October 2021 that related to the Scottish Crime Recording Board and the collection of data for those aforementioned crimes codes that specify a victim's gender (see Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG www.gov.scot attached as Document One and Two). While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because an exemption under section s.38(1)(b) (personal information) of FOISA applies to that information. Further redactions have also been applied where information does not fall into the scope of this request.

No further information is held in relation to this request. There has been one meeting of the Board since October 2021 (in February 2022). A note of the Agenda and resulting actions are available on the Scottish Government website ([SCRB meeting: 8 February 2022](#)). This didn't include any discussion on recording of sex and gender in crime statistics.

[FOI 202300340805 - Information Released - Document 1](#)

[FOI 202300340805 - Information Released - Document 2](#)