

ANNEX A - 202100246930

As outlined in response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA), an exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to some of the information you have requested. For the remainder of your request, a formal notice of Section 17(1) of FOISA has been issued, as the Scottish Government does not have the information you have requested.

This annex therefore outlines where:

- an exemption under section 36(1) of FOISA (confidentiality in legal proceedings) has been applied; or
- where the Scottish Government does not have the information you have requested.

Furthermore, under section 15 of FOISA, the Scottish Government has a duty to, as far as it is reasonable to expect it to do so, provide advice to a person who has made a request for information to it.

As such, I have at points provided some additional information outwith the remits of FOISA legislation, to provide you with as full and complete a response as possible.

REQUEST PART (1)

“1) What is the meaning of social groups and cultural groups? And perceived religious affiliation? in regards to the Hate Crime and public order Scotland act?”

Extract- (3)The characteristics are—

(c)religion or, in the case of a social or cultural group, perceived religious affiliation,”

Response under FOISA:

An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to the information you have requested here, because it is legal advice and disclosure would breach legal professional privilege.

Additional information (outwith FOISA):

It might be helpful to explain that the terms quoted are not defined in the Hate Crime and Public Order (Scotland) Act 2021. This means that the terms will take their ordinary meanings as a matter of English. In such cases the courts will have regard to dictionary definitions but will also consider the ordinary meaning of the words in the context of the Act as a whole. You may wish to note that the terms in question currently form part of the religious prejudice aggravation contained in section 74 of the Criminal Justice (Scotland) Act 2003. That aggravation will be repealed and replaced by the aggravation in section 1 of the Hate Crime and Public Order (Scotland) Act 2021, once that Act is in force.

It is for the Police, Crown Office and Procurator Fiscal Service (COPFS) and Courts to interpret and enforce legislation, based on the facts and circumstances of each individual case.

REQUEST PART (2)

"2) Please identify which, if any, of the following groups also referred to as movements, the Scottish government consider and recognise, to be either a social group? Or a cultural group with perceived religious affiliation?, or both?

Antifa?

BLM?

LGBTQ?

Extinction rebellion?

Isolate Britain?

Supporters of Palestine?

Anti Vaccine group?

Anti abortion group?

Pro abortion group?

Pro Vaccine group?

Church of Scientology?"

Response under FOISA:

Section 17(1) of FOISA - the Scottish Government does not have the information you have requested. The Scottish Government does not hold the information that you have requested with regards to the "groups/movements" you have listed.

REQUEST PART (3)

"If none of the groups/movements above, are social or cultural groups, please identify which type of group these are, ie) political group?"

Response under FOISA:

Section 17(1) of FOISA - the Scottish Government does not have the information you have requested. The Scottish Government does not hold the information that you have requested with regards to the "groups/movements" you have listed.

REQUEST PART (4)

"and confirm which groups the Scottish government consider and recognise as being a social or culture group with perceived religious affiliation, that the section above of the HCPO act, would apply to and protect?"

Response under FOISA:

An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to the information you have requested here, because it is legal advice and disclosure would breach legal professional privilege.

Additional information (outwith FOISA):

Whether an offence has been committed in a given case is something for the police and COPFS to consider and, if proceedings are brought, for the courts to determine, on a case by case basis. The Hate Crime and Public Order (Scotland) Act 2021 states that an offence would be aggravated by religious prejudice if an offender demonstrates, or is motivated by, malice and ill-will towards a group based on the group being defined by reference to religion or, in the case of a social or cultural group, perceived religious affiliation. The Act also provides for an offence of stirring up religious hatred. This new offence would be committed if an offender behaves in a manner or communicates material that a reasonable person would consider to be threatening or abusive, with the intention of stirring up hatred against a group of persons based on reference to religion or, in the case of a social or cultural group, perceived religious affiliation. It will be for the Police and COPFS to consider and, if proceedings are brought, for the courts to determine if, in the facts and circumstances of each case, an offence has occurred and, if so, whether it has been aggravated by religious prejudice, or to determine if a stirring up religious hatred offence has been committed, in relation to the characteristic of religion or, in the case of a social or cultural group, perceived religious affiliation.

REQUEST PART (5)

“If I was to support and follow the beliefs, morals, values, causes and norms of any of the above groups, and experience any hate towards me for doing so, am I protected by the hate crime and public order act?”

Response under FOISA:

Section 17(1) of FOISA - the Scottish Government does not have the information you have requested.

Additional information:

[see ‘Additional information’ provided at Request Part (4)]

REQUEST PART (6)

“Or would I be potentially committing a hate crime by supporting and following the beliefs, morals, values, causes and norms of these groups/movements?”

Response under FOISA:

Section 17(1) of FOISA - the Scottish Government does not have the information you have requested.

Additional Information:

[see ‘Additional information’ provided at Request Part (4)]