

Against Sexual Harassment and Stalking

A Guide for Practice



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FREIBURG

Albert-Ludwigs-Universität Freiburg

Albert-Ludwigs-Universität Freiburg



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Preface

At the University of Freiburg, like at any other large organization, sexual harassment and stalking are unfortunately a part of reality. However, we at the university are taking an active stand against them, exhausting all legal means at our disposal and imposing any sanctions provided by law to protect victims. We would like to make it clear that sexual harassment and stalking are forbidden. They are not tolerated at the University of Freiburg.

Calling sexual and stalking harassment by name makes them visible, and making them visible already constitutes an initial step toward counteracting them. The guide “Against Sexual Harassment and Stalking” was created with this idea in mind. The goal is to offer concrete help to those affected and to provide supervisors with a concept for intervening when they become aware of a case of sexual harassment or stalking, thus enabling them to fulfill their duty to look after their employees. In addition, it shows offenders that their actions will not be tolerated at the university and will have serious consequences.

This guide defines concepts and describes suggestions for taking action as well as procedures for lodging complaints. It also delineates measures and consequences that can be applied in cases of sexual harassment or stalking. The university conducts special trainings to increase awareness for these problems among supervisors and staff and also takes preventive measures over and above the publication of this guide.

The University of Freiburg attaches great importance to ensuring that the personal integrity and dignity of all its members are duly respected. Every person who studies or works at the University of Freiburg has this right to do so without fear of intimidation, discrimination, and molestation.



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Sexual Harassment

In Section 3, Subsection 4 of the General Equal Treatment Law (AGG) of the Federal Republic of Germany, sexual harassment is described as discrimination involving “unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images,” that has “the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.”

Examples of sexual harassment include:

- Unwanted touching, fondling, fingering
- Suggestive and insulting remarks
- Obscene jokes and remarks with a humiliating effect
- Insistent sexual offers
- Hanging up or showing around photos or drawings with lightly clothed or naked persons or sexual content
- Requests to perform sexual favors or acts

Sexual harassment is particularly reprehensible and severe in cases in which the perpetrator takes advantage of a position of power in order to promise the person concerned personal or professional advantages or threaten them with disadvantages.

Sexual harassment is distinct from sexual discrimination and sexual violence. Sexual discrimination refers to placing someone at a disadvantage on the basis of their gender, for instance discriminating against men who apply for positions typically held by women or vice versa. Sexual violence refers to acts like criminal assault, coercion, and rape. Sexual violence is a criminal offence.

Stalking

The German Penal Code (StGB) specifies in Section 238, Subsection 1, that unlawful, persistent stalking is a criminal offence punishable by up to three years imprisonment or a fine. In Subsections 1 to 5, persistent stalking is described in more detail: 1. seeking proximity, 2. trying to establish contact by means of telecommunications or other means of communication, 3. abusing personal data for the purpose of ordering goods or services, 4. threatening the victim with loss of life or limb, damage to health or deprivation of freedom, and 5. committing similar acts.

Examples of stalking include:

- Unwanted telephone calls
- The leaving of messages on the internet, by e-mail, mobile telephone, or on the answering machine
- Surveillance or observation of a particular person
- The taking of unwanted pictures or videos (photo, video, mobile phone)
- Demonstrative presence (waylaying) in a lecture hall, seminar room, at the workplace, or at other places on university premises
- Pursuit, approaching, attempts to make contact
- Unwanted gifts or ordering of goods

Although the word “stalking” has entered into the German vocabulary, it does not exist in German legal terminology. Instead, the related term “Nachstellung” is used, which means roughly to make persistent advances on a person against their will. Stalking means pursuing a person obsessively to the point of harassment. Stalkers repeatedly observe, follow, or insistently hassle their victims in an unacceptable way. The quality of life of the victims is severely constricted, and they often become sick. They are afraid, experience helplessness or despair, or become increasingly distrustful.

Victims should thus always take a stand against a stalker as early as possible. They may take recourse to several legal means provided by civil and criminal law.



Guidelines for Victims

Sexual harassment and stalking have far-reaching consequences for victims. They can cause physical or mental disorders or have a negative effect on academic or professional achievement, motivation, and private life. In any case, it is important for aggrieved parties to take their feelings seriously and set the limits themselves. Victims of sexual harassment and stalking should seek advice and support from persons they trust or turn to professional counseling services.

The failure to react already constitutes a reaction to sexual harassment or stalking. However, taking a passive, defensive stance and ignoring the advances, avoiding the perpetrator, or making light of the situation only seldom lead to success. Victims have a much better chance at putting a stop to the harassment or stalking if they react actively.

I. Take a Stand Immediately

An initial active step is to draw a line using clear language. In this way, the aggrieved party makes it clear that he or she objects to the behavior and will not tolerate it. Saying “No, I don’t want to!” or “Stop it!” loud and clear brings the situation out into the open.

Examples of direct resistance:

- “No, I don’t want to!”
- “Stop it!”
- “Don’t touch me!”
- “Quit!”

It is a good idea to make it clear to the perpetrator in the presence of witnesses or in writing that you do not want any contact. This should be your first and last personal reaction.

In any case, you should document the incident in writing directly afterwards:

- Date, time, place
- Name of the perpetrator
- Information on the sequence of events
- Names of potential witnesses
- Secure evidence (such as letters or e-mails)

II. Speak with a Person You Trust

It is helpful to speak about the situation with a person you trust. This can be your partner, a friend or colleague, or a relative. Speaking to someone can help you to understand your own situation better, strengthen your self-confidence, and reflect on the next steps you should take. It is also a good idea to speak with a counselor at your department or workplace, since it is not seldom the case that the perpetrator is also harassing or stalking other people or has done so in the past. Being aware of other similar cases will help make you aware of the seriousness of the situation and reassure you of your own innocence in the matter.

III. Seek Advice from a Counselor

It is recommended to seek confidential advice from a professional counselor. At the University of Freiburg, counseling services are provided by the Faculty Equal Opportunity Representative as well as by the Staff Equal Opportunity Representative for administrative and technical employees. After giving an account of the incident, you can discuss your options for taking further action.

Potential goals of an initial counseling session:

- A meeting with the perpetrator
- Contacting your supervisor
- A meeting between the victim and the perpetrator in the presence of the counselor
- A letter to the perpetrator
- In every case, the victim is allowed to decide!

Employees may lodge a complaint with their supervisor or with the Staff Council. As soon as the supervisor learns of a case of sexual harassment or stalking, he or she is required to conduct a formal meeting with the victim and the perpetrator in order to investigate the complaint. Potential legal consequences of this meeting for the perpetrator are described on page 14.



IV. Further Possibilities after the Initial Counseling Session

It is a good idea to invite the perpetrator to a meeting with the counselor or to confront him or her with a letter. The meeting or the letter should allow the perpetrator to give his or her view of the situation, to apologize, and to discontinue the harassment.

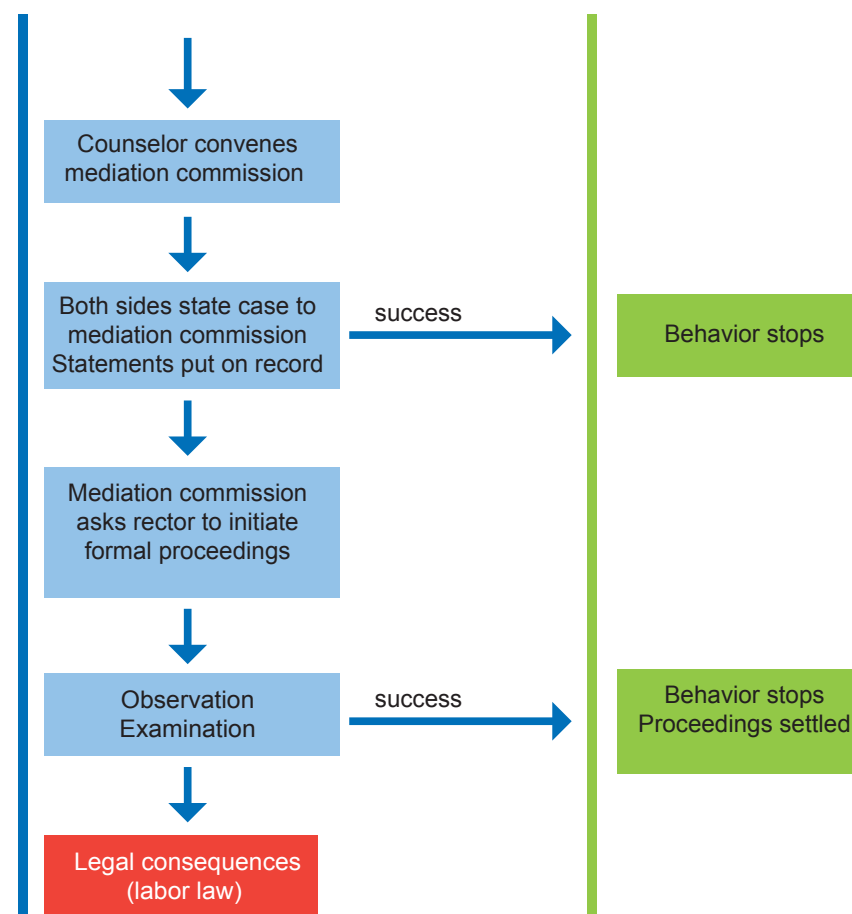
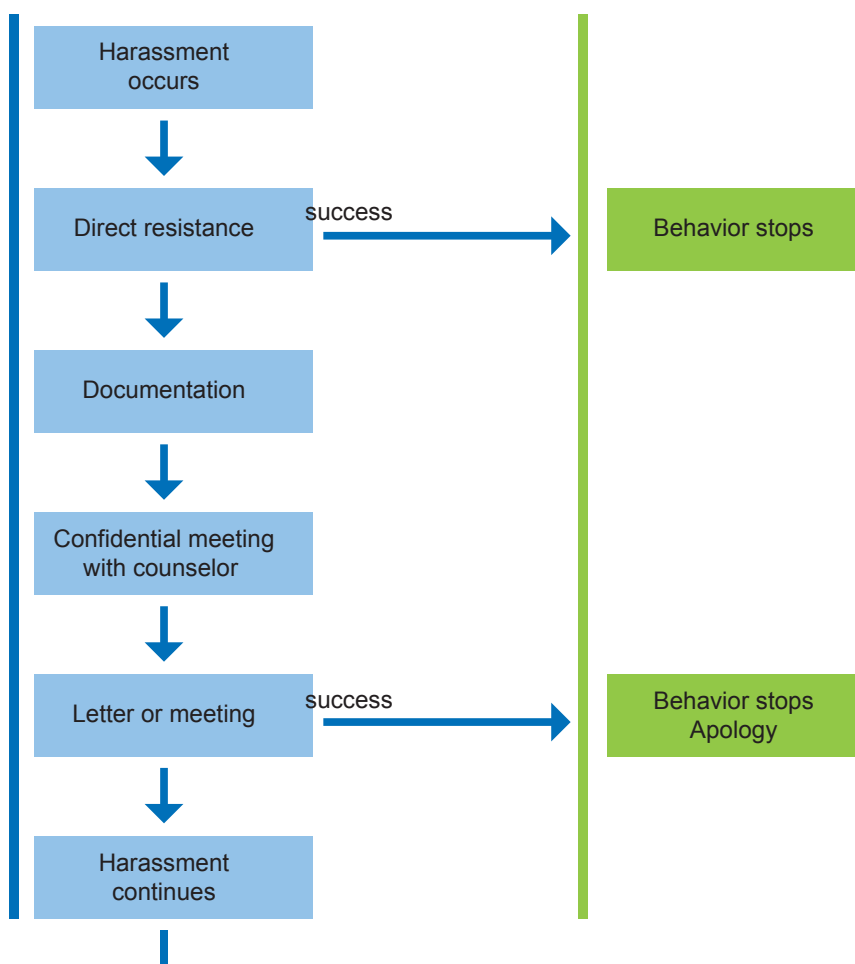
If the harassment continues or the meeting or letter are not successful, the counselor seeks the consent of the aggrieved party to convene a mediation commission. The mediation commission is made up of members of the Rectorate, including the Vice Rector, the Head of Administration, the Legal Advisor, and the Faculty or Staff Equal Opportunity Representative. The commission can also call in additional members to serve as experts, such as counselors from the Psychological Counseling Service.

The commission begins its work immediately upon receiving notification of the incident. The two parties are called in separately to state their case; they are entitled to bring a legal representative with them. After the hearings, the commission determines what further steps should be taken and fixes a schedule for their completion. If the behavior stops as a result of the meetings with the commission, no further action is necessary. If the behavior does not stop, on the other hand, the commission informs the Rector of the incidents, who then initiates formal proceedings; from now on, the mediation commission acts only in an advisory capacity. If this measure leads to an end of the behavior, the proceedings are settled. If the behavior does not stop, the university takes legal action against the person guilty of harassment or stalking.

Action Plan

Ideal Course of Action in Cases of Sexual Harassment and Stalking

In especially serious cases, inform your superior immediately.



Measures and Consequences

Superiors are required by labor law to take appropriate measures to protect their employees and students from sexual harassment and stalking. Besides conducting preventive measures, such as distributing informational material and training management personnel, the most important thing is to take immediate action.

The Perpetrator is a Civil Servant

Sexual harassment and stalking are considered disciplinary offenses. If the offense is deemed to be sufficiently severe, the civil servant will be subjected to a disciplinary procedure.

Examples of other measures provided by civil servant law include:

- Reprimand
- Fine
- Pay cut
- Reallocation to a new position
- Transfer to a position in the same profession with a lower basic salary (lowering in rank)
- Relocation
- Removal from service
- Public-service pension cut
- Withholding of public-service pension

The Perpetrator is a Regular Salaried Employee

Examples for measures provided under labor law (AGG, Sect. 12, Subsect. 3):

- Written warning
- Reallocation to a new position
- Transfer
- Dismissal

The Perpetrator is a Student

Students may be exmatriculated by administrative decree if they are found to have violated the dignity of another person through sexually motivated behavior on university premises. As per Section 62 (3), Nos. 3 and 4 of the State Higher Education Act (LHG) in the currently valid version, a student exmatriculated in this manner may not matriculate at another higher education institution for a period of two years.

Measures in individual cases:

- Exclusion from a course
- Exclusion from using university facilities
- Removal of authorization for IT services
- Banishment from university premises
- Exmatriculation

Exercising Property Rights

According to the house rules of the University of Freiburg, while on university premises every person is required to behave in a manner so as to not threaten security and order. The Rector is responsible for maintaining order at the university and for exercising property rights. She or he has the right to ban disruptive persons from university premises to maintain order. A ban on entering university premises of more than one day can only be pronounced by the Rector.

Bringing Charges

In severe cases, the university may bring charges against a person guilty of sexual harassment or stalking.

Extreme Cases

An extreme case arises when the supervisor of a victim of sexual harassment or stalking fails to take action. In such a case, the victim has the right to stop going to work or classes until further notice without financial consequences. The pre-conditions for this are evidence that the harassment has taken place without a doubt, that a superior has been informed of the incident and has taken no or only insufficient measures to protect the victim, and/or that the victim may not be expected to continue working or studying at the same location due to the severity of the offense or the danger of its happening again.

Laws

Basic Law for the Federal Republic of Germany (GG), Articles 1 and 2

Article 1

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

Article 2

(1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.

(2) Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.

General Act on Equal Treatment (AGG), Sections 1, 3, 12–14, 22

Section 1, Purpose

The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation.

Section 2, Scope

(1) For the purposes of this Act, any discrimination within the meaning of Section 1 shall be inadmissible in relation to:

1. conditions for access to dependent employment and self-employment, including selection criteria and recruitment conditions, whatever branch of activity and at all levels of professional hierarchy, including promotion [...].

Section 3, Definitions

(3) Harassment is discrimination when an unwanted conduct in connection with any of the grounds referred to under Section 1 takes place with the purpose or effect of violating the dignity of the person concerned and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

(4) Sexual harassment is discrimination in relation to Section 2 (1), No. 1 to 4, when an unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, com-

ments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading or offensive environment.

Section 12, Employer Action and Duties

((1) The employer has the duty to take measures necessary to ensure protection against discrimination on any of the grounds referred to under Section 1. This protection also covers preventive measures.

(2) The employer shall draw attention to the inadmissibility of such discrimination in a suitable manner, in particular within the context of training and further training, and use his or her influence to ensure that such discrimination does not occur. Where an employer has trained his or her employees in an appropriate manner for the purpose of preventing discrimination, he or she has fulfilled his or her duties under Subsection (1).

(3) Where employees violate the prohibition of discrimination under Section 7 (1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to protect the employee in question.

(4) Where employees are discriminated against in the pursuance of their profession by third persons within the meaning of Section 7 (1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to protect the employee in question.

Section 13, Right of Appeal

(1) Employees have the right to lodge a complaint with the competent department in the firm, company or authority when they feel discriminated against in connection with their employment relationship by their employer, superior, another employee or third party on any of the grounds referred to under Section 1. The complaint must be examined and the complainant informed of the result of the examination.

Section 14, Right to Refuse Performance

Where the employer takes no or obviously unsuitable measures to stop the harassment or sexual harassment in the workplace, the affected employees have the right to refuse performance without loss of pay insofar as this is necessary for their protection. Section 273 of the German Civil Code (Bürgerliches Gesetzbuch) remains unaffected.

Section 22, Burden of Proof

Where, in case of conflict, one of the parties is able to establish facts from which it may be presumed that there has been discrimination on one of the grounds

referred to in Section 1, the other party is under an obligation to prove that there has been no breach of the provisions prohibiting discrimination.

German Criminal Code (StGB), Sections 185, 238

Section 185, Insult (here: sexual insult)

An insult is punishable with imprisonment not exceeding one year or a fine and, if the insult is committed by means of an assault, with imprisonment not exceeding two years or a fine.

Section 238, Stalking

(1) Whosoever unlawfully stalks a person by

1. seeking his proximity,
2. trying to establish contact with him by means of telecommunications or other means of communication or through third persons,
3. abusing his personal data for the purpose of ordering goods or services for him or causing third persons to make contact with him,
4. threatening him or a person close to him with loss of life or limb, damage to health or deprivation of freedom, or
5. committing similar acts

and thereby seriously infringes his lifestyle is liable to imprisonment not exceeding three years or a fine.

(2) The penalty is three months to five years if the offender places the victim, a relative of or another person close to the victim in danger of death or serious injury.

(3) If the offender causes the death of the victim, a relative of or another person close to the victim the penalty is one to ten years imprisonment.

(4) Cases under subsection (1) above may only be prosecuted upon request unless the prosecuting authority considers *propio motu* that the prosecution is required due to special public interest.

Protection from Violence Act (GewSchG), Section 1

(Act on Civil Law Protection from Acts of Violence and Stalking)

Section 1, Judicial Measures for Protection from Violence and Stalking

(1) Where a person has unlawfully violated the body, the health, or the freedom of another person, the violated person may request for the court to take the measures necessary to prevent any further violations. These measures are subject to a time limit; the time limit may be extended. In particular, the court may order the offender to refrain from

- 1 entering the violated person's place of residence,
- 2 visiting places within a certain radius of the violated person's place of residence,

- 3 visiting certain other places frequented by the violated person,
4. establishing contact with the violated person, also by means of telecommunication,
5. arranging a meeting with the violated person, insofar as it is not necessary for safeguarding legitimate interests.

State Higher Education Act of Baden-Württemberg (LHG)

Section 4, Equal Opportunities between Women and Men; Equal Opportunity Representatives

(4) The Faculty Equal Opportunity Representative has the task of advising women engaged in research and instruction and female students in cases of sexual harassment. She/he works, without prejudice to the responsibility of organs and committees of the university, to protect women engaged in research and instruction and female students from sexual harassment. Information on the personal or material circumstances of victims may not be passed on to third parties or exploited in any other way without their consent. The Faculty Equal Opportunity Representative shall be called in to mediate insofar as the affected women do not object. Should a male Faculty Equal Opportunity Representative be appointed, this function shall be fulfilled by a female deputy.

Section 62, Exmatriculation

(3) Students may be exmatriculated by administrative decree if

3. they willfully violate the dignity of another person through sexual harassment on university premises. The exmatriculated student may not matriculate at a higher education institution for a period of two years.

(4) As a rule, the exmatriculation takes effect at the end of the semester in which it is pronounced. Should special reasons be present, the exmatriculation may take effect immediately.

House Rules of the University of Freiburg

Section 2, Conduct on University Premises

(2) Every person shall behave in a manner so as not to threaten security and order while on university premises, refraining in particular from interfering with teaching, learning, and research activities as well as approved events.

Section 3, Property Rights

(1) The Rector is responsible for maintaining order at the university and exercising property rights. He/she may delegate his/her authority over property rights to members of the university by means of a written statement. The delegation is revocable.

(6) Persons to whom property rights have been delegated are entitled and bound to take all necessary measures to remove disturbances to peace and ensure uninterrupted teaching activity in their area of responsibility, in particular to ban troublemakers from the premises in question.

(7) The right to ban a person from university premises for more than one day or to lodge a criminal complaint or bring charges for trespassing is reserved for the Rector.

Acknowledgements

The University of Freiburg would like to thank the members of the Human Resources Development Work Group for their contributions to this guide.

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Contacts at the University

Faculty Equal Opportunity Representative

(for students and academic employees)

Werthmannstraße 8 (rear building, ground floor)

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or gleichstellungsbuero@uni-freiburg.de

Internet: www.gleichstellungsbuero.uni-freiburg.de

Staff Equal Opportunity Representative

(for administrative and technical employees)

Werthmannstraße 8 (rear building, ground floor)

79098 Freiburg

Telephone: 0761/203-4411

E-Mail: chancengleichheit@verwaltung.uni-freiburg.de

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79104 Freiburg

Telephone: 0761/203-6900

Calling hours: Mon.–Thurs. 8 a.m.–5 p.m., Fri. 8 a.m.–1 p.m.

E-Mail: info@personalrat.uni-freiburg.de

Internet: www.personalrat.uni-freiburg.de

External Counseling Services

Basler 8 Counseling Service for Girls and Women

Basler Str. 8, 79100 Freiburg

Internet: www.basler8.de

Frauenhorizonte – Association against Sexual Violence

Basler Str. 8, 79100 Freiburg

24 hour hotline: 0761/285 85 85

E-Mail: info@frauenhorizonte.de

Internet: www.frauenhorizonte.de

Freiburg Criminal Investigation Department

Heinrich-von-Stephan-Str. 4, 79098 Freiburg

Telephone: 0761/8820

Women and Children's Shelter

Wölflinstraße 4, 79104 Freiburg

Telephone: 0761/31072

Telephone counseling: 0800/111 0 111

E-Mail: info@frauenhaus-freiburg.de

Women's Representative of the City of Freiburg

Fahnenbergplatz 4, 79098 Freiburg

Telephone: 0761/201-1700

E-Mail: frauenbeauftragte@stadt-freiburg.de

pro phila Freiburg

Basler Str. 61, 79100 Freiburg

Telephone: 0761/2962586

Internet: www.prophila-freiburg.de

Men's Office

Jacob-Burckhardt-Straße 13, 79098 Freiburg

Telephone: 0761/38 68 970

Weißer Ring – Association for Victims of Crime

Kußmaulstr. 58, 79114 Freiburg

Telephone: 0761/131066

Internet: www.weisser-ring.de