

# Decision Notice 065/2021

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## **Mental Health Tribunal for Scotland: false allegations of child sexual abuse against Catholic priests**

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**The Applicant**

**Public authority: Scottish Courts and Tribunals Service**

**Case Ref: 202001474**



Scottish Information  
Commissioner

## Summary

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The SCTS was asked for information held by the Mental Health Tribunal for Scotland about false allegations of child sexual abuse against Catholic priests. The SCTS told the Applicant it did not hold any information falling within the scope of their request.

Following an investigation, the Commissioner was satisfied that the SCTS did not hold the information.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. The Mental Health Tribunal for Scotland (the Tribunal) is administered by the Scottish Courts and Tribunals Service (the SCTS). The Tribunal is not, in its own right, a Scottish public authority for the purposes of FOISA.
2. On 17 September 2020, the Applicant made a request to the SCTS for information held by the Tribunal. The information requested was:
  - A) *A full count plus disclosure of any and all cases in which the tried was a Catholic priest tried for a sexual offence committed against a child between 0 - 15 years of age by reason of insanity but whom subsequently had the accusation against them quashed, overturned or otherwise declared false by the tribunal between the dates of 10/3/2015 - 14/9/2020*
  - B) *A full count plus disclosure of any cases of false allegation of child sexual abuse by reason of insanity made by any child 0 - 15 at the tribunal or any adult at the tribunal on their behalf, against any Catholic priest in Scotland between 10/3/2015 - 14/9/2020.*
  - C) *A full count plus disclosure of any and all cases brought to the tribunal in which the [sic] to be tried for insanity was a Catholic priest convicted of a sexual offence against a child between 0 - 15 years of age in a criminal court but whom subsequently had their conviction quashed, overturned or otherwise declared false by a criminal court of appeal or any other court upon appeal between the dates of 10/3/2015 - 14/9/2020.*
3. The Applicant stated that they did not wish to know the names of the children who had made the allegations or of the priests who had been accused.
4. The SCTS responded on 1 October 2020. It notified the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information they had requested. The SCTS explained that the proceedings described within the request are not proceedings which are dealt with by the Tribunal.
5. On 24 October 2020, the Applicant wrote to the SCTS, requesting a review of its decision.
6. The SCTS notified the Applicant of the outcome of its review on 23 November 2020. It confirmed that it did not hold the information. It explained in more detail the role of the Tribunal.

7. On 8 December 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated they were dissatisfied with the outcome of the SCTS's review and, in particular, with the searches carried out by the SCTS.
8. The Commissioner notes that the heading to the application was: "False & sectarian allegations of child sex abuse against Catholic priests." The application also described the information request as concerning "false sectarian anti-Catholic child sexual abuse". However, the information request, which is set out in full in paragraph 2, did not refer to "sectarian" allegations, nor did the heading to the information request mention sectarian allegations, so this aspect cannot be considered by the Commissioner. (In any event, given that this is a subset of the information which was requested, the outcome would have been the same.)
9. The Applicant also asked the Commissioner to order the SCTS to disclose particular information relating to compulsory treatment orders. However, this is wider than the Applicant's original request, so the Commissioner would have no power to do this, even if the information did exist.

## **Investigation**

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10. Subject to the points raised in paragraphs 8 and 9, the application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
11. On 13 January 2021, the SCTS was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
12. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 16 April 2021, the SCTS was invited to comment on the application and to answer specific questions, focussing on the steps it had taken to identify and locate any information falling within the scope of the request.
13. The SCTS responded on 22 April 2021. It maintained that it did not hold any information falling within the scope of the request. The SCTS explained that the Tribunal's primary role is to consider and determine applications for compulsory treatment orders under the Mental Health (Care and Treatment) (Scotland) Act 2003 and operate in an appellate role to consider appeals against compulsory measures made under that Act. The SCTS emphasised that the Tribunal does not have any role in considering, overturning, quashing or declaring false any accusations – that would be the role of criminal courts. As such, no information of this type would be expected to be held.

## **Commissioner's analysis and findings**

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14. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the SCTS. He is satisfied that no matter of relevance has been overlooked
15. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to

withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.

16. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
17. In its submissions to the Commissioner, the SCTS confirmed it did not hold the information requested by the Applicant. Searches had been carried out for information relating to “Catholic priests”. As no information had been located, the SCTS did not consider it necessary to consider (or make a judgement) on whether the allegation had been false, etc.
18. The SCTS advised that the status of a person appearing before the Tribunal was not recorded. It also commented that it was not possible to report on the motivation behind any allegation, as this would not be known to the SCTS. The Commissioner considers that this is an important point – the SCTS would have to hold recorded information showing that the allegation was false, etc. in order for it to be covered by the Applicant’s request. It is not the role of the SCTS, in responding to this request, to attempt to determine whether an allegation was false from unrecorded information.
19. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority. He must also consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
20. Having considered the submissions from both parties, and the terms of the request, the Commissioner accepts that the SCTS interpreted the Applicant’s request reasonably and took adequate, proportionate steps in the circumstances to establish whether it held information covered by the request. Given the explanations and other submissions provided, (including on the role of the Tribunal) and the likelihood of recorded information falling within the scope of the request being held (that any allegation was false, etc.), he is satisfied, on balance, that the SCTS does not hold the information requested by the Applicant.

### **Other provisions**

21. The SCTS advised the Commissioner that, even if information had been held by the Tribunal, the information would have been exempt from disclosure. Given that the Commissioner is satisfied that no information is held, he is not required to go on to consider the exemptions.

## **Decision**

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The Commissioner finds that the Scottish Courts and Tribunals Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the Applicant's request.

## **Appeal**

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Should either the Applicant or the SCTS wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**

**3 May 2021**

## Appendix 1: Relevant statutory provisions

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### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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#### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
  - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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