

Decision Notice 066/2021

False allegations of child sex offences made against Catholic priests

Applicant: The Applicant

Public authority: Children and Young People's Commissioner Scotland

Case Ref: 202001528



Scottish Information
Commissioner

Summary

The CYPCS was asked about false allegations of child sexual abuse made against Catholic priests. The CYPCS 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 CYPCS did not hold the information.

Relevant statutory provisions

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

1. On 25 September 2020, the Applicant made a request for information to the Children and Young People's Commissioner Scotland (the CYPCS). The information requested was:
 - A. *A full count and disclosure of all incidences of false allegations of child sex offences made against any Catholic priest in Scotland by any child aged 0-15 received by the CYPCS between the dates of 10/3/2015 – 14/9/2020.*
 - B. *A full count and disclosure of all false allegations of child sex offences made by the CYPCS's own initiative or on behalf of a child aged 0-15 against any Catholic priest in Scotland between the dates 10/3/2015 – 14/9/2020.*
 - C. *A full count and disclosure of all false allegations of child sex offences made against any Catholic priest in Scotland reported by an adult to the CYPCS on their own initiative or on any child's behalf aged 0-15 between the dates 10/3/2015-14/9/2020.*
2. The Applicant stated they did not wish the names of false accusing children or falsely accused priests.
3. The CYPCS responded on 13 October 2020. It notified the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information they had requested.
4. On 5 November 2020, the Applicant wrote to the CYPCS, requesting a review of its decision.
5. The CYPCS notified the Applicant of the outcome of its review on 30 November 2020. It confirmed that it did not hold the information.
6. On 17 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 CYPCS's review. They were not satisfied that the CYPCS held no relevant information. They also questioned the way the review had been carried out.

Investigation

7. 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.
8. On 24 February 2021, the CYPCS was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 12 April 2021, the CYPCS 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 requests.
10. The CYPCS responded on 23 April 2021. It maintained that it did not hold any information falling within the scope of the request.

Commissioner's analysis and findings

11. 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 CYPCS. He is satisfied that no matter of relevance has been overlooked.
12. 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.
13. 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.
14. The Commissioner notes the submissions provided by the Applicant, in which they comment that the CYPCS have not conducted adequate searches. They were also concerned that the CYPCS had searched for cases involving young people up to the age of 21 years, when they are only concerned with those involving young people up to the age of 15 years.
15. In relation to the Applicant's suggestion that further searches should have been conducted, the CYPCS advised that it operates as a human rights advice function and that it is not within its statutory functions to collect, process, receive or investigate reports of child sex offences. Nor is it in a position to determine, should it receive such an allegation, whether it is true or false. It stated that, should the CYPCS receive any information from any source that a child is at risk of significant harm, in accordance with national child protection guidance, those concerns would be immediately reported to the relevant local authority social work department or to Police Scotland so that matters could be fully and properly investigated.
16. The CYPCS set out the detailed enquiries it undertook to ascertain whether it held any information falling within the scope of the Applicant's request.
17. These included consultation with relevant staff. It explained where any such records, including child protection referrals, would be held. The CYPCS provided supporting evidence

regarding the enquiries and their outcomes. The conclusion of the enquiries was that no information was held falling within the scope of the request made by the Applicant.

18. The CYPCS outlined the functions of the Commissioner and why they apply to children under the age of 18 years and young people if they have been “looked after” by a local authority under the age of 21 years. It confirmed that its approach to the legal definition of a child did not affect the way it responded to the Applicant’s request and that the parameters specified by the Applicant were adhered to.
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 CYPCS 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, he is satisfied that the CYPCS does not hold the information requested by the Applicant.

The review

21. The Applicant was concerned that the same person responded to both their request and request for review.
22. The Scottish Ministers’ Code of Practice on the Discharge of Functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations states, at paragraph 10.3.4:

It is good practice for the reviewer to be a person who did not respond to or advise on the original request (where possible or practicable).
23. The CYPCS explained that only a limited number of staff have access to the information searched in order to respond to this request. These staff were all involved in responding to the Applicant’s initial request and it was not practicable for others to carry out the review.
24. In the circumstances, given the sensitivity of the information, the size of the organisation and the limited number of staff who have access to the information, the Commissioner is satisfied that it was not possible or practicable for another member of staff to carry out the review.

Decision

The Commissioner finds that Children and Young People’s Commissioner Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the Applicant’s request.

Appeal

Should either the Applicant or the CYPCS 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

4 May 2021

Appendix 1: Relevant statutory provisions

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.

...

- (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.

...

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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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info