



Decision Notice 081/2023

Incidents involving specific named religious groups

Authority: Police Investigations and Review Commissioner
Case Ref: 202200531

Summary

The Applicant asked the Authority for information about incidents related to the imprisonment, attack, or deprivation of human rights of people belonging to specific named religious groups. The Authority told the Applicant that it did not hold any information falling within the scope of the request. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

The full text of each 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 March 2022, the Applicant made a request for information to the Authority. They asked for a full statistical count and disclosure of all incidences of the following:
 - (i) the imprisonment, attacks, or deprivation of the human rights of Christian anti-communism politicians or activists
 - (ii) the imprisonment, attacks, or deprivation of the human rights of Catholic families or their advocates

- (iii) the imprisonment, attacks, or deprivation of the human rights of Christian pro-life politicians or activists

between 25 March 2019 and 25 March 2022.

2. The Authority responded on 19 April 2022. It notified the Applicant, under section 17 of FOISA, that it did not hold the requested information, but also explained its role and the type of information held by it.
3. Later the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because they believed the information requested was held by the Authority.
4. The Authority notified the Applicant of the outcome of its review on 6 May 2022. It upheld its original decision without modification and further explained its roles and the type of information it held.
5. On 7 May 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review because they believed the Authority held the information requested.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 10 June 2022, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. The investigating officer asked for background information on the functions of the Authority and for a detailed explanation of the steps it took to establish whether it held the information that the Applicant requested.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 17(1) – Notice that information is not held

10. 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.
11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. 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.

12. The Applicant believed that information falling within the scope of their request was held by the Authority.
13. 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 of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the authority.
14. The Commissioner notes the submission provided by the Applicant, in which they asked the Commissioner to verify the Authority's response. The Applicant explained why they believed information that fell within the scope of the request was held by the Authority.
15. In its submission, the Authority explained its functions and the type of investigations it carries out. The Authority also described its records management system and provided details of the searchable fields.
16. The Authority explained that the types of incident described in the request were not matters that it considered to be within its remit. It considered the types of incident described in the Applicant's request were crimes and that its role did not include review of criminal complaints. It explained that that role falls to another public authority.
17. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the Applicant's request. The Commissioner notes that the Applicant believes that the Authority holds the information requested. However, the Authority has explained to the Applicant (and to the Commissioner) why it does not hold that information. The Commissioner accepts that the Authority interpreted the Applicant's request in a reasonable manner.
18. Given the nature of the information requested, and the explanations provided by the Authority, the Commissioner is satisfied that the arguments provided by the Authority sufficiently explain why it would not expect to hold the information requested.
19. In the circumstances, the Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request. He finds that the Authority was therefore correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority 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

2 August 2023

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –

- (i) the request for information to which the requirement for review relates;
- (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
- (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).