

Decision Notice 084/2021

Sectarian motivated false allegations of child sexual abuse raised against Catholic priests

Applicant: The Applicant

Public authority: Police Investigations and Review Commissioner

Case Ref: 202001497



Scottish Information
Commissioner

Summary

The PIRC was asked about sectarian motivated false allegations of child sexual abuse raised against Catholic priests. The PIRC 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 PIRC 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 18 September 2020, the Applicant made a request for information to the Police Investigations and Review Commissioner (the PIRC). The information requested was:
 - A) A full disclosure of any and all cases of sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any persons 0 -15 years of age mentioned within any complaint by a priest against the police investigated by the PIRC between 10/3/2015 -14/09/2020.
 - B) A full disclosure of any and all malicious and sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any police officer or Police Scotland staff member mentioned in any complaint by any priest against the police between 10/3/2015 - 14/09/2020 investigated by the PIRC.
 - C) A full disclosure of any and all cases of sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any adult on behalf of a child 0 - 15 mentioned in any complaint against the police between the dates of 10/3/2015 - 14/09/2020 investigated by the PIRC.
2. The Applicant also asked the PIRC to include any complaints by any Catholic priest against the PIRC of false allegations of child sex abuse made against them by the PIRC between the same dates.
3. The Applicant stated that they did not wish the names of the children or priests
4. The PIRC 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.
5. On 29 October 2020, the Applicant wrote to the PIRC, requesting a review of its decision.
6. The PIRC notified the Applicant of the outcome of its review on 24 November 2020. It confirmed that it did not hold the information.
7. On 12 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 PIRC's review.

Investigation

8. 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.
9. On 15 January 2021, the PIRC was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 8 April 2021, the PIRC 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.
11. The PIRC responded on 15 April 2021. It maintained that it did not hold any information falling within the scope of the request.

Commissioner's analysis and findings

12. 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 PIRC. He is satisfied that no matter of relevance has been overlooked
13. 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.
14. 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.
15. The Commissioner notes the submissions provided by the Applicant, in which they comment on the independence and impartiality of the PIRC and state that it is not clear whether the PIRC holds any information falling within the scope of the request.
16. In its submissions to the Commissioner, the PIRC confirmed it did not hold the information requested by the Applicant.
17. The PIRC advised that it has two main functions, i.e. investigating serious incidents involving the police (such as the use of firearms and serious injury or death following police contact, as directed by the police or the Crown Office) and reviewing how the police handled a complaint made against them.
18. The PIRC described its strict file management policy and where and how information would be stored. It detailed the searches undertaken to determine if information was held. It explained the systems used for information storage, including database and drive systems, complaints and investigation files, what information is stored in these sources and the details of its retention schedule which destroys information on paper one year after the outcome of a complaint review has been finalised, and three years for electronic information. As the Applicant asked for details of complaints as early as 2015, that information would have been destroyed in line with the retention schedule.

19. The PIRC also explained that further searches were conducted at review stage of its Investigation files and the Complaint reviews. The PIRC client management system does not have capacity or scope to allow recording within each complaint file the details of the complaint as outlined by the complainer. Instead, apart from contact details, the Centurion database essentially lists all communication (emails, letters, reports both incoming and outgoing), linking each to the location where the file is saved on the S drive. Individual members of staff, including Review Officers and support staff, do not have a separate location where they are able to save information relating to complaints made to PIRC. Therefore, there are no other places where this information can be held. The conclusion of the searches was that no information was held falling within the scope of the requests made by the Applicant.
20. 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).
21. In this case, the Applicant is seeking information that is recorded by virtue of the sectarian motivation and falseness of the allegation. The Commissioner accepts that the request can only be interpreted as a request for recorded information regarding sexual abuse allegations that were not only recorded as being sectarian in motivation, but also as being false.
22. Having considered all relevant submissions, the Commissioner is satisfied that there would be no reasonable expectation of the PIRC holding information on the sectarian motivation, or falseness, of any allegations. In this regard, he has considered the outcomes of the enquiries undertaken by the PIRC in response to the request.
23. Having considered the submissions from both parties, and the terms of the request, the Commissioner accepts that the PIRC 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 PIRC does not hold the information requested by the Applicant.

Decision

The Commissioner finds that the Police Investigations and Review Commissioner 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 PIRC 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

27 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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