

Decision Notice 023/2021

False allegations of sexual abuse – failure to respond

Applicant: The Applicant

Public authority: Scottish Prison Service

Case Ref: 202001557



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Prison Service (SPS) for information about false allegations of child sexual abuse made against Catholic priests. This decision finds that the SPS failed to respond to the Applicant's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the SPS on 15 September 2020.
2. The SPS responded to the information request on 21 October 2020.
3. On 10 November 2020, the Applicant wrote to the SPS requiring it to undertake a review of the reasons it had given for not providing the information.
4. The Applicant did not receive a response to their requirement for review.
5. The Applicant wrote to the Commissioner, stating that they were dissatisfied with the SPS's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 5 February 2021, the SPS was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

8. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
9. It is a matter of fact that the SPS did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
10. The SPS responded to the Applicant's requirement for review on 8 February 2021, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
11. In its submissions, the SPS explained that it had sent the Applicant notification of its review outcome on 4 December 2020. The SPS provided the Commissioner with a copy of the review outcome it had emailed to the Applicant.
12. The Commissioner noted that the review outcome issued by the SPS on 4 December 2020, was sent to a different email address than that used by the Applicant in their request and requirement for review. It became clear that the SPS had issued a review outcome to the Applicant on 4 December 2020, but they had issued it to an email address that the Applicant no longer used. As a result, the Applicant did not receive the review outcome until the SPS forwarded it to their current email address on 8 February 2021.
13. As noted above, the SPS wrote to the Applicant on 8 February 2020, and provided them with a copy of the review outcome it had issued on 4 December 2020. The SPS also apologised

for the administrative error which had led them to issue the review outcome to the wrong address.

14. The Commissioner would urge the SPS to make sure that when it responds to an information request or request for review, it responds to the email address that has been used by the requester in that request, and not an email address that has been used in the past (but which might no longer be current).

Decision

The Commissioner finds that the SPS failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, the SPS failed to respond to the Applicant's requirement for review within the timescales laid down by sections 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of this failure in response to the Applicant's application, given that a review outcome was provided to the Applicant on 8 February 2021.

Appeal

Should either the Applicant or the SPS 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.

Claire Stephen
Deputy Head of Enforcement

26 February 2021

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info