

Decision Notice 070/2021

Sectarian, false allegation of child sex offences made against Catholic priests

Applicant: The Applicant

Public authority: Lothian Health Board

Case Ref: 202100007



Scottish Information
Commissioner

Summary

NHS Lothian was asked about sectarian motivated false allegations of child sexual abuse made against Catholic priests. NHS Lothian informed the Applicant that it did not hold any information falling within scope of their request.

Following an investigation, the Commissioner was satisfied that NHS Lothian 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 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 18 September 2020, the Applicant made a request for information to Lothian Health Board (NHS Lothian). The information requested was:
 - (A) *A full count and disclosure of any sectarian motivated false accusations of child sexual abuse made by NHS Lothian or its personnel against any Catholic priest in Scotland between the dates of 10/03/2015 – 14/9/2020.*
 - (B) *A full count and disclosure of any sectarian motivated false accusations of child sexual abuse made by a child known to NHS Lothian of the ages 0-15 against any Catholic priest in Scotland between the dates of 10/3/2015-14/9/2020.*
 - (C) *A full count and disclosure of any sectarian motivated false accusations of child sexual abuse made by any other adult within NHS Lothian on behalf of a child aged 0-15 against any Catholic priest in Scotland between the dates of 10/03/2015 – 14/9/2020.*
2. The Applicant made it clear that they did not want to receive the names of any false accusing children or falsely accused priests, but asked that the searches and response should include the Chalmers Sexual Health Clinic and other specified services.
3. NHS Lothian responded on 15 October 2020. It advised the Applicant that it was not aware of any accusations made against a Catholic priest in Scotland by NHS Lothian staff, patients or members of the public on behalf of patients. NHS Lothian confirmed that this response includes all NHS Services, including the services specifically mentioned in the request.
4. On 23 November 2020, the Applicant wrote to NHS Lothian requesting a review of its decision on the basis that it had not explained whether or not there had been any false accusations of child sexual abuse made against Catholic priests as requested at parts (A), (B) and (C) in relation to particular services.
5. NHS Lothian notified the Applicant of the outcome of its review on 23 December 2020. It confirmed, after consultation with relevant department leads, that it was not aware of any accusations made against a Catholic priest in Scotland by any NHS Lothian staff, patients or members of the public on behalf of patients, from any service, including the services specified in the request for review.

6. On 31 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 NHS Lothian's review because it was not clear whether NHS Lothian does or does not hold the requested information: it was unclear what searches had been carried out and whether any searches had been restricted to "true accusations" rather than "false accusations". The Applicant also commented that they had not asked for accusations against Catholic priests generally, but for information relating to only false and sectarian allegations of child sex abuse against Catholic priests.

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 18 February 2021, NHS Lothian 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, NHS Lothian was invited to comment on this application and to answer specific questions, focussing on the steps it had taken to identify and locate any information falling within scope of the request.
10. NHS Lothian responded on 22 April 2021. It maintained that it did not hold any recorded information covered by 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 NHS Lothian. 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 Applicant is concerned that the searches carried out by NHS Lothian may have been inadequate and focussed on true accusations against Catholic priests as opposed to any false accusations. The Applicant is particularly concerned that NHS Lothian may not have undertaken any manual, electronic or computerised research to establish if it held relevant information and relied solely on the responses to consultations carried out with colleagues.
15. In its submissions, NHS Lothian explained that the scope of its searches focussed on complaints of child abuse, and any cases returned were reviewed to determine whether the complaints could be said to have been motivated by sectarianism, and false.

16. NHS Lothian detailed the systems which were searched, the timescale covered by the search and the key words used, together with why these were the most likely areas to hold recorded information falling within scope of the request, and why these searches were most likely to identify relevant recorded information. NHS Lothian confirmed that in each case searches of these systems returned no results for recorded information falling within scope of the request.
17. In submissions, NHS Lothian also explained that certain teams working within its service were asked whether they were aware of any relevant information being held which would fall within scope of the request. In the case of both of these teams no relevant recorded information was identified as being likely to fulfil any part of the request.
18. 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).
19. 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.
20. Having considered all relevant submissions, the Commissioner is satisfied that there would be no reasonable expectation of NHS Lothian holding information on the sectarian motivation, or falseness, of any allegations.
21. He is also satisfied that the searches carried out by NHS Lothian were reasonable and proportionate in the circumstances, and the members of staff involved in undertaking these searches were those most likely to hold or have knowledge of any recorded information held by NHS Lothian which would fall within scope of the request. Given the explanations and submissions provided, the Commissioner is satisfied that NHS Lothian does not (and did not at the time of receiving the request) hold the information requested by the Applicant.

Decision

The Commissioner finds that Lothian Health Board 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 NHS Lothian 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

10 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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