

Decision Notice 088/2021

False allegations of child sexual abuse raised against Catholic priests

Applicant: The Applicant

Public authority: Children's Hearings Scotland

Case Ref: 202001532



Scottish Information
Commissioner

Summary

CHS was asked about false allegations of child sexual abuse raised against Catholic priests. CHS told the Applicant it did not hold any information falling within the scope of their request.

Following an investigation, the Commissioner was satisfied that CHS 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 25 September 2020, the Applicant made a request for information to Children's Hearings Scotland (CHS). The information requested was:
 - A) A full count and disclosure of all cases of false allegations of child sex offences made against any Catholic priest in Scotland by any child aged 0 - 15 heard by the panel 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 panel's own initiative or on behalf of a child aged 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 all false allegations of child sex offences made against any Catholic priest in Scotland reported by any adult to the panel on their own initiative or on any child's behalf aged 0 - 15 between the dates of 10/3/2015 - 14/9/2020.
2. The Applicant stated that they did not wish the names of the children or priests.
3. CHS responded on 25 September 2020 and advised the Applicant that it did not hold the information. It explained that it is responsible for the recruitment, training, and support of Panel Members who sit on the Children's Panel in Scotland. It told the Applicant that it does not hold any records of individual hearings or records of individual discussions which take place within a hearing. It also gave the Applicant advice and assistance on which body was most likely to hold the information.
4. On 6 November 2020, the Applicant wrote to CHS requesting a review of its decision.
5. CHS notified the Applicant of the outcome of its review on 17 November 2020. CHS confirmed its original response, repeated the purpose and remit of CHS, and provided further advice on an authority likely to 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 CHS's review in relation to request C), but did not express any dissatisfaction with the response to requests A) and B).

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 17 February 2021, CHS was notified in writing that the Applicant had made a valid application and 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. CHS was invited to comment on this application and to answer specific questions. These related to the searches that had been undertaken to identify information falling within the scope of the request.
10. CHS responded on 20 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 CHS. 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 was dissatisfied with CHS's response to request C) on the basis that this request was not for allegations made in a hearing. The Applicant also questioned whether CHS had considered, in relation to request C), allegations made by its employees or other adults at CHS.
15. In its submissions to the Commissioner, CHS confirmed it did not hold the information requested by the Applicant.
16. In relation to the Applicant's dissatisfaction, CHS advised that, as outlined in its response, it has no role or involvement in the gathering of case data. This is principally done by the Scottish Children's Reporter Administration. CHS is responsible for the recruitment, training and management of volunteer Panel Members, and has no role in the establishment of cases.
17. CHS detailed the enquiries it undertook to ascertain whether it held any information falling within the scope of the Applicant's request. It confirmed that the request had been read in the broadest possible terms, to ensure that it considered any possible data source in CHS. CHS considered whether any accusations against Catholic priests would have been recorded. However, as CHS are not involved in the information gathering/creation/storage for individual cases, it does not record this information at all. The conclusion of the enquiries

was that no information was held falling within the scope of the request made by the Applicant.

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 falseness of the allegation. Having considered all relevant submissions, the Commissioner is satisfied that there would be no reasonable expectation of CHS holding information on the falseness of any allegations. In this regard, he has considered the outcomes of the enquiries undertaken by CHS in response to the request and the role carried out by CHS.
20. The Commissioner also notes that the Applicant was concerned that the searches carried out by CHS did not include allegations made by its own staff or adults at CHS. The Commissioner notes that request C) is about false allegations reported *to the panel*. This means that, even if such an allegation had been made by a member of CHS staff or by an adult at CHS, it is highly unlikely to have been recorded by the CHS.
21. Having considered the submissions from both parties, and the terms of the request, the Commissioner accepts that CHS interpreted request C) reasonably and took adequate, proportionate steps in the circumstances to establish whether it held information covered by that request. Given the explanations and other submissions provided, he is satisfied that CHS does not hold the information requested by the Applicant.

Decision

The Commissioner finds that Children's Hearings 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 CHS 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

1 June 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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