

Decision Notice

Decision 159/2018: The Applicant and the Chief Constable of the Police Service of Scotland

Complaints alleging anti-Catholicism

Reference No: 201800645

Decision Date: 10 October 2018



Scottish Information
Commissioner

Summary

Police Scotland were asked for information regarding complaints alleging anti-Catholicism. They withheld the information, on the grounds that to disclose it could be detrimental to an ongoing investigation and could prejudice future enquiries, thus causing substantial prejudice to the administration of justice.

The Commissioner accepted that the information, to the extent that it fell within the scope of the request, was correctly withheld. He also found that other information had been identified incorrectly as falling within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 35(1)(c) (Law enforcement)

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 31 October 2017, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The request sought details of three complaints made to Police Scotland which they viewed as alleging anti-Catholicism.
2. The Applicant referred to two of the complaints as being from members of the public and one from a member of Police Scotland staff. As well as requesting details of the complaints (with the names of the accused and the victims redacted), the Applicant also asked for details of the investigations carried out (again with names redacted) and of the outcome of each complaint, including any measures taken.
3. Police Scotland responded on 14 November 2017 and provided some basic summary information on each of the three complaints.
4. On 30 November 2017, the Applicant wrote to Police Scotland requesting a review of their decision, submitting that the information disclosed did not include the specifics of the complaints, such as copies of notes and statements taken, evidence submitted and related findings.
5. Police Scotland notified the Applicant of the outcome of their review on 15 January 2018. They withheld any further information held under sections 34(1)(b), 35(1)(a) and (b), and 38(1)(b) of FOISA.
6. On 11 April 2018, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of Police Scotland's review and did not agree that the information should be withheld under the exemptions cited.

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 their response to that request before applying to him for a decision.
8. On 16 May 2018, Police Scotland were notified in writing that the Applicant had made a valid application. Police Scotland were asked to send the Commissioner the information withheld from the Applicant. Police Scotland provided the information 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. Police Scotland were invited to comment on this application and asked specific questions, focusing on the exemptions claimed in the review outcome.
10. The Applicant was also asked to provide submissions on why they believed disclosing the information to be in the public interest, but no response was received to this request.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Information falling within the scope of the request

12. When asked to provide the Commissioner with a copy of the withheld information, Police Scotland provided copies of three complaints. When the content of these complaints was scrutinised by the investigating officer, it became apparent that only one of the three could (on any reasonable interpretation) be deemed a complaint alleging anti-Catholicism.
13. In the light of this, the investigating officer spoke to Police Scotland and they looked again at the complaints. They agreed that only one of the three fell within the scope of the Applicant's request.
14. The Commissioner is disappointed that the time taken to address this matter resulted in a delay in progressing the investigation. In any case, Police Scotland was required to make a reasonable interpretation of what fell within the scope of the request and, in failing to do so, failed to deal with the request wholly in accordance with section 1(1) of FOISA. It is generally appropriate to interpret requests broadly, but not carelessly so, including information which has only the most tangential connection with the subject matter of the request. The initial error in scoping may have occurred in response to an earlier request, but Police Scotland were still obliged, on receipt of this particular request, to make a considered judgement as to what information the request actually captured.
15. As these two complaints do not fall within the scope of the Applicant's request, the Commissioner will go on to consider the remaining complaint. Police Scotland applied the exemptions in sections 35(1)(a), (b) and (c), and 38(1)(b) of FOISA to this complaint.
16. The Commissioner will firstly consider section 35(1)(c) of FOISA.

Section 35 (1)(c) – Law Enforcement

17. Under section 35(1)(c), information is exempt if its disclosure would, or would be likely to, prejudice substantially the administration of justice. The term "administration of justice" is not defined in FOISA, but the Commissioner considers it refers widely to matters relating to the working of the courts and of tribunals. Examples might include principles such as the right to a fair trial and ensuring that individuals have access to justice.
18. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
19. Police Scotland submitted that at the time of the Applicant's information request (and also as at 23 July 2018 when these submissions were made), the complaint remained part of a live investigation which could result in criminal charges being brought. Police Scotland believed disclosure of this information would impact detrimentally on the investigation process (both the current investigation and future ones). Police Scotland considered it essential that where a case had not yet come to a conclusion, the release of specific details could prejudice any future enquiries into the case and, as a result, affect the administration of justice.
20. Police Scotland provided the Commissioner with information about the case in question.
21. The Commissioner has considered the submissions received from both the Applicant and Police Scotland. He must look at the situation as it stood at the time of the review outcome, when the case in question was still the subject of a live investigation. The content of the complaint was part of the information under consideration in that investigation.
22. In the circumstances the Commissioner accepts that disclosing the information in question would have prejudiced, or would be likely to prejudice, substantially the administration of justice.
23. He will now go on to consider the public interest test in section 2(1)(b) of FOISA.

Public interest test

24. Section 2(1)(b) of FOISA requires the Commissioner to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If the two are evenly balanced, the presumption should always be in favour of disclosure.
25. Police Scotland accepted that it was in the public interest that an understanding should exist as to the processes involved in police investigations and in their relative success. Therefore, accountability and transparency relating to the actions of the service and its officers would favour disclosure of the information.
26. However, Police Scotland argued that it was also essential that information pertaining to live investigations was disclosed, where appropriate, at the correct time, to ensure that neither the investigation, nor the potential for proceedings to be brought against any individual, were put at risk.
27. The Applicant made no public interest submissions directly to the Commissioner, but the requirement for appears to suggest that it should be in the public interest to understand how a public body deals with the subject of anti-Catholicism when complaints on this topic are received.
28. The Commissioner accepts that there is a public interest in knowing how public bodies handle complaints and that they do so in a fair and non-discriminatory way. It is of particular importance for the public to be assured that public authorities are discharging their equalities

responsibilities appropriately. Understanding the processes and outcomes should be helpful in these respects.

29. However, the Commissioner must also acknowledge that due weight must be given to the public interest in the proper administration of justice. It is essential, where there is potential for criminal prosecution in the public interest, that this is not prejudiced and that the individual(s) concerned are given a fair hearing: there is generally no public interest in disclosing information which could prejudice either the effectiveness of the prosecution system or the rights of the accused.
30. The Commissioner therefore accepts that Police Scotland were correct to withhold information the information found to be within scope under section 35(1)(c) of FOISA.

Decision

The Commissioner finds that Police Scotland partly complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. He finds that Police Scotland correctly withheld information under section 35(1)(c) of FOISA. However, he also finds that Police Scotland wrongly identified other information as falling within the scope of the request, and thus failed to deal with the request wholly in accordance with section 1(1) of FOISA.

Appeal

Should either the Applicant or Police Scotland 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 October 2018

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

...

- (c) the administration of justice;

...

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