

Decision Notice 040/2021

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

Applicant: The Applicant

Public authority: City of Edinburgh Council

Case Ref: 202001444 and 202001505



Scottish Information
Commissioner

Summary

The Council received two requests, which asked for information about sectarian motivated false allegations. The Council informed the applicant that it did not hold the information.

Following investigation, the Commissioner found that, in relation to one of the requests, the Council had failed to comply with the timescales set out in FOISA. The Commissioner was, however, satisfied that the Council did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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 17 September 2020, the Applicant made a request for information to City of Edinburgh Council (the Council). The information requested was:
A full disclosure of any and all sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any persons 0-15 years of age or by any adult at the council on their behalf between 10/3/2015 - 14/9/2020.
2. On 24 September 2020, the Applicant wrote to a nursery school operated by the Council and requested:
 - a) *A full disclosure of any and all sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any persons 0 - 15 years of age within the nursery between 10/3/2015 - 14/9/2020.*
 - b) *A full disclosure of any and all sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any staff member at the nursery between 10/3/2015 - 14/9/2020.*
 - c) *A full disclosure of any and all sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any adult other than a staff member on behalf of a child 0 - 15 at the nursery between the dates of 10/3/2015 - 14/9/2020*
3. In effect, both of the above requests for information were submitted to the Council, which is the Scottish public authority for the purposes of FOISA.
4. The Council responded [to] the request of 17 September 2020 on 15 October 2020. It provided a notice in terms of section 17(1) of FOISA, stating that it did not hold the information requested. It explained it did not record the status of any alleged perpetrator in a way that it could be extrapolated. It further advised that it did not report on the motivation of any allegation.
5. On 22 October 2020, the Applicant wrote to the Council, requesting a review of its decision, relative to the request of 17 September 2020, on the basis that they had not asked for "alleged perpetrators of child sex crimes", but a disclosure of any outright false allegations of

child sexual crimes made by any child between 0 - 15 years of age or any adult on their behalf against any Catholic priest. They believed the Council may hold the information.

6. On 28 October 2020, the Applicant wrote to the Council, requesting a review in respect of their request of 24 September 2020, on the basis that it had failed to respond to the request.
7. The Council notified the Applicant of the outcome of its review in relation to the request of 17 September 2020, on 12 November 2020. It explained that relevant staff had been consulted in confirming that it did not hold the information requested. It explained that the Council could not report on the motivation of any allegation, as it would not know this, or record such information in a central and comprehensive way. It upheld the original response.
8. On 4 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 Council's review outcome of 12 November 2020, submitting in particular that the Council should have conducted further searches to ascertain what information it held.
9. On 14 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 that the Council had failed to respond to their request of 24 September 2020 and wished the Commissioner to instruct the Council to disclose the information it held falling within the scope of the request.

Investigation

10. The applications were accepted as valid. The Commissioner confirmed that the Applicant made requests for information to a Scottish public authority and asked the authority to review its response, or failure to respond, to those requests before applying to him for a decision.
11. On 22 December 2020, the Council was notified in writing that the Applicant had made a valid application regarding their request of 17 September 2020. On 2 February 2021, the Council was further notified in writing that the Applicant had made a valid application regarding their request of 24 September 2020. The cases were allocated to an investigating officer.
12. As both requests were submitted to the Council and [requested] the same information, albeit worded slightly differently, the Commissioner decided to consider them jointly, on the basis that, if the Council held information falling within the scope of one request, that information would also fall within the scope of the other request.
13. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on the applications 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. It was also asked to comment on the relevance of the Applicant's suggestions as to what searches it should have carried out.
14. The Council responded and accepted it had failed to respond to the request of 24 September 2020. However, it provided full submissions to the effect that it had fully considered both requests of 17 and 24 September 2020, and that it did not hold information falling within the scope of either request.

Commissioner's analysis and findings

15. 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 Council. He is satisfied that no matter of relevance has been overlooked

Failure to comply with timescales

16. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
17. 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.
18. In its submissions to the Commissioner, the Council accepted that it had not responded to the Applicant's request of 24 September 2020, or to their requirement for review of 28 October 2020. It explained that this was due to both the Applicant's request and requirement for review being quarantined in a "Spam" folder. It advised the Commissioner that it had taken action to ensure that this did not happen in the future.
19. It is a matter of fact that the Council failed to respond to the Applicant's request for information of 24 September 2020 and their requirement for review of 28 October 2020, in the time allowed. The Commissioner therefore finds that the Council failed to comply with section 10(1) and 21(1) of FOISA.
20. While the Commissioner has identified these failures, given that the Applicant's main thrust of their application has been to ascertain whether the Council held information falling within the scope of the requests, the Commissioner does not require the Council to take any further action.

Information held by the Council

21. As mentioned above, the Commissioner's investigation is primarily to ascertain whether the Council held information falling within the scope of either request.
22. 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.
23. 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.
24. The Commissioner notes the submissions provided by the Applicant, in which they comment that the Council should have conducted further searches.
25. In its submissions to the Commissioner, the Council confirmed that it held no record of the information requested by the Applicant. In this regard, the Council stated that it had

understood that the Applicant was looking for information directly related to allegations against Catholic priests, which were of a sectarian motivation and which were confirmed as false.

26. The Council referred to the response it provided to the applicant on 15 October 2020, in which it had advised that it did not record the status of any alleged perpetrator in a way that it could be extrapolated. It further advised that it did not report on the motivation of any allegation. This had been confirmed in the internal enquiries referred to below.
27. In relation to the Applicant's suggestion that further searches should have been conducted, the Council advised that, as outlined in its response, it did not record the status of an alleged perpetrator and that it was not possible to report on the motivation behind any allegation, as this would not be known to the Council.
28. The Council detailed the enquiries it undertook to ascertain whether it held any information falling within the scope of the Applicant's requests. These included consultation with the various Council departments it considered relevant and relevant staff within those departments and with the nursery school to which the Applicant had sent the request of 24 September 2020. The Council provided supporting evidence regarding the enquiries and their outcomes. The conclusion of the enquiries was that no information was held falling within the scope of the requests made by the Applicant.
29. 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 also considers, 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).
30. In the case of the requests under consideration, the Commissioner accepts the Council's interpretation that 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.
31. Having considered all relevant submissions, the Commissioner is satisfied that there would be no reasonable expectation of the Council 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 Council in response to the requests.
32. Having considered all relevant submissions, and the terms of the requests under consideration, the Commissioner accepts that the Council interpreted the Applicant's requests reasonably and took adequate, proportionate steps in the circumstances to establish what information it held. Given the explanations and other submissions provided, he is satisfied that the Council does not hold the information requested by the Applicant.

Decision

The Commissioner finds that City of Edinburgh Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the Applicant's requests.

The Commissioner finds that, in relation to the Applicant's request of 24 September 2020, the Council failed to respond to the request and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner is satisfied that the Council does not hold the information requested by the Applicant. Consequently, he does not require the Council to take any action in relation to these failures.

Appeal

Should either the Applicant or the Council 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

22 March 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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement...

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