

Decision Notice 059/2021

False allegations of child sexual abuse raised against Catholic priests

Applicant: The Applicant

Public authority: State Hospitals Board for Scotland

Case Ref: 202001559



Scottish Information
Commissioner

Summary

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

Following an investigation, the Commissioner was satisfied that the State Hospital 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 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 the State Hospitals Board for Scotland (the State Hospital). The information requested was:
 - (a) *A full count and disclosure of all cases detailing any Catholic priest detained in the hospital awaiting trial at the mental welfare tribunal or another court for an alleged child sex offence by reason of insanity but has not yet been found guilty and/or insane by such a place of judgment between 10/3/2015 - 14/9/2020.*
 - (b) *A full count and disclosure of all false allegations of child sexual offences made against any Catholic priest detained in the hospital for a separate offence committed by reason of insanity by any other patient or a hospital staff member between 10/3/2015 - 14/9/2020.*
 - (c) *A full count and disclosure of all cases in which a Catholic priest was released from hospital on declaration of committing a child sex offence by reason of insanity made against them after any appeal court or tribunal provided an [acquittal] on a discovery of innocence between 10/3/2015 - 14/9/2020.*

Please include any false allegations made by any person against any Catholic priests serving the hospital as well within the same dates.
2. The Applicant stated they did not want to know the name of any child or priest.
3. The State Hospital responded on 29 September 2020. It notified the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information they had requested.
4. On 11 November 2020, the Applicant wrote to the State Hospital, requesting a review of its decision.
5. The State Hospital notified the Applicant of the outcome of its review on 9 December 2020. It confirmed that it did not hold the information.
6. On 22 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 the State Hospital's review.

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, the State Hospital 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, the State Hospital was invited to comment on the application 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.
10. The State Hospital responded on 23 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 the State Hospital. 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 Commissioner notes the submissions provided by the Applicant, in which they comment that the State Hospital carried out inadequate searches for information.
15. In its submissions to the Commissioner, the State Hospital confirmed that it did not hold the information requested by the Applicant.
16. In relation to the Applicant's suggestion that it had conducted inadequate searches, the State Hospital provided a detailed breakdown of all of the searches it had conducted and the departments and records that had been checked. This included consultation with the various State Hospital departments it considered relevant and relevant staff within those departments. The conclusion of the enquiries was that no information was held falling within the scope of the request made by the Applicant.
17. In addition to explaining the detailed searches carried out, the State Hospital commented that, considering the small size of the investigation; the high media interest in its patients; the length of service of those consulted and the diversity of roles held by those consulted, it was highly improbable that a person falling within the descriptions used by the Applicant would remain unknown to those consulted.

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. Having considered the submissions from both parties, and the terms of the request, the Commissioner accepts that the State Hospital interpreted the Applicant's request reasonably and took adequate, proportionate steps in the circumstances to establish whether it held information covered by the request. Given the explanations and other submissions provided, he is satisfied that the State Hospital does not hold the information requested by the Applicant.

Decision

The Commissioner finds that State Hospitals Board for 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 State Hospital 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

29 April 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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