

Decision Notice 028/2021

Sectarian motivated false allegations of child sexual abuse against Catholic priests – failure to respond

Applicant: The Applicant

Public authority: Office of the Scottish Charity Regulator

Case Ref: 202001485



Scottish Information
Commissioner

Summary

The Applicant asked the Office of the Scottish Charity Regulator (OSCR) for information about:

- (i) 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 OSCR on behalf of such a person, between 10 March 2015 and 14 September 2020;
- (ii) Sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any child, or by any adult at the following charities on behalf of such a person (or by the charities themselves), between 10 March 2015 and 14 September 2020:
 - Equality Network and Scottish Transgender Alliance;
 - Central Borders Citizens Advice Bureau;
 - LGBT Health & Well-being;
 - Borders Independent Advocacy Service;
 - Borders Aspergers and Autism Group Support;
 - LGBT Youth Scotland;
 - Scottish Council of Jewish Communities;
 - Victim Support Scotland.
- (iii) Sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any child, or by any adult at any other Scottish charity on behalf of such a person, between 10 March 2015 and 14 September 2020.

This decision finds that OSCR received the Applicant's requirement for review and failed to respond to it within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered OSCR to comply with the requirement for review.

Background

1. The Applicant made an information request to OSCR on 17 September 2020.
2. OSCR responded to the information request on 14 October 2020.
3. On 29 October 2020, the Applicant sent an email to OSCR requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review.
5. On 10 December 2020, the Applicant wrote to the Commissioner, stating that she was dissatisfied with OSCR's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 13 January 2021, OSCR was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. On 26 January 2020, the Commissioner received submissions from OSCR. These submissions are considered below.

Commissioner's analysis and findings

8. OSCR provided evidence of its incoming email searches and other records covering the period 1 October 2020 to 25 January 2021, advising that it had not found it possible to locate the Applicant's requirement for review. It explained the searches carried out and the criteria applied.
9. OSCR further explained that it was unable to check if the applicant's request for review had been quarantined as "spam", as quarantined emails are held for a short time only, usually 14 days, before being completely removed.
10. OSCR did not believe that the requirement for review was received into its system, as it corresponded regularly with the Applicant and considered it unlikely, in the circumstances, that the email would have triggered the "spam" filter.
11. Having looked at the Applicant's requirement for review email of 29 October 2020, the Commissioner accepts, on the balance of probabilities, that it was sent to OSCR's correct email address: info@oscr.org.uk, at the time recorded thereon. In the circumstances, having considered OSCR's submissions, he can identify no reason why it would not have been received there.
12. 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. This is subject to qualifications which are not relevant in this case.
13. It is a matter of fact that OSCR did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that OSCR failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.

Decision

The Commissioner finds, on the balance of probabilities, that the Office of the Scottish Charity Regulator (OSCR) received the Applicant's requirement for review email of 29 October 2020. The Commissioner also finds that OSCR failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the Applicant's information request, by failing to respond to that requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires OSCR to carry out a review and issue a review outcome, by 22 April 2021.

Appeal

Should either the Applicant or OSCR 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.

Enforcement

If OSCR fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that OSCR has failed to comply. The Court has the right to inquire into the matter and may deal with OSCR as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

08 March 2021

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info