

Decision Notice 030/2021

Complaints of Anti-Catholicism

Applicant: The Applicant

Public authority: Mental Welfare Commission for Scotland

Case Ref: 202001230



Scottish Information
Commissioner

Summary

The MWC was asked for a full count of all complaints of anti-Catholicism, anti-Catholic discrimination and prejudice or anti-Catholic hate crime of any kind raised against the MWC and its staff over a specified time period.

The Commissioner investigated and accepted that the MWC was entitled to notify the Applicant that it held no recorded information falling within scope of their request.

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 19 April 2020, the Applicant made a request for information to the Mental Welfare Commission for Scotland (the MWC). The information requested was: a full count of all complaints of anti-Catholicism, anti-Catholic discrimination and prejudice or anti-Catholic hate crime of any kind raised against the MWC and its staff between 1 January 2005 and 1 January 2020.
2. The MWC responded on 21 April 2020. The MWC explained that in the time period 1 April 2009 to 1 January 2020 it had not received any complaints of the kind referred to by the Applicant. The MWC informed the Applicant that, due to the fact that its retention period for complaints is 10 years, it did not hold any recorded information about complaints received before 1 April 2009.
3. The Applicant wrote to the MWC on 5 July 2020, explaining that they had not received a response to their request and asking for a review.
4. On 6 July 2020, the Applicant submitted a further requirement for review to the MWC. The Applicant asked the MWC to carry out a review of its decision as they wished to verify whether the response given was correct. The Applicant asked that any new complaints found by the service be disclosed, subject to redaction of the victim's name but not the details of the perpetrator. The Applicant stated that the MWC only needed to review results from 1 January 2010 to 1 January 2020.
5. The MWC notified the Applicant of the outcome of its review on 5 October 2020. The MWC apologised for the delay in providing a response, noting that this was due to an oversight as it was unaware of the Applicant's requirement for review until it had been alerted by the Commissioner's office on 1 October 2020. Having carried out a review, the MWC upheld its original response, notifying the Applicant in line with section 17(1) of FOISA that it did not hold any information in relation to complaints for anti-Catholicism, anti-Catholic discrimination and prejudice or anti-Catholic hate crime of any kind raised against the MWC or its staff between 1 January 2010 and 1 January 2020.
6. The MWC issued an amended response to the request for review on 12 October 2020, having identified a clerical error in the earlier version.

7. On 22 October 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 MWC's review because they were not satisfied that the MWC held no relevant information.

Investigation

8. 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.
9. On 5 November 2020, the MWC was notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The MWC was invited to comment on this application and to answer specific questions, with particular reference to the steps it had taken to identify and locate the information requested.

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

Information held by the MWC

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 that the Applicant is of the view that the MWC may hold the requested information, but categorised or classified without using the terms "anti-Catholic" or "anti-Catholicism". The Applicant gave examples of the kinds of behaviours they believed would fall within the scope of their request.
15. In its submissions, the MWC explained that it had reviewed its Complaints Performance Reports covering the last 10 years. It stated that these reports are used to provide the Commission with information on complaints it has received and responded to, and their outcomes. They include summaries of each complaint received, which were all read to establish whether they fell within the scope of the request. Each document was also read in full, to establish whether it contained any relevant information.
16. 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 considers the scope, 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, 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).

17. Whilst the Applicant's request asked the MWC for any relevant recorded information held for the time period 1 January 2005 to 1 January 2020, the Applicant was clear in their requirement for review that they only wanted the MWC to determine whether any relevant information was held for the period 1 January 2010 to 1 January 2020. As a consequence, the Commissioner is not required to determine whether the MWC held any recorded information for any earlier period covered by the Applicant's request.
18. Having considered all of the relevant submissions and the terms of the request, the Commissioner accepts that the MWC carried out adequate and proportionate searches to determine if it held any recorded information falling within scope of the Applicant's request. The Commissioner is also satisfied that the searches carried out would have been capable of identifying and locating any relevant information held.
19. Given that the Commissioner is satisfied with the explanations and submissions provided by the MWC, he finds that the MWC was correct to notify the Applicant, in line with section 17(1) of FOISA, that it held no information falling within scope of their request for the time period 1 January 2010 to 1 January 2020.

Decision

The Commissioner finds that the Mental Welfare Commission for Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the MWC 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 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.

...

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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