

Decision Notice 035/2021

Sectarian false accusations of child sex crime made against any Catholic priest in Scotland by Police

Applicant: The Applicant

Public authority: The Chief Constable of the Police Service of Scotland

Case Ref: 202000969



Scottish Information
Commissioner

Summary

Police Scotland were asked for a full count and disclosure of all recorded cases of sectarian false accusations of child sex crime made against any Catholic priest in Scotland by Police on three specific dates in 2015.

Police Scotland notified the Applicant, in line with section 17(1) of FOISA, that it did not hold any information falling within scope of their request. Following an investigation, the Commissioner accepted this.

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 30 May 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). In their request they asked for a full count and disclosure of all recorded cases of sectarian false accusations of child sex crime made against any Catholic priest in Scotland by Police on the following three dates: 10 March 2015, 3 April 2015 and 30 May 2015.
2. Police Scotland responded on 30 June 2020. Police Scotland stated that they were unable to provide a complete response to the Applicant's request, but provided the number of sexual offences reported to them on the three dates specified. Police Scotland were unable to advise whether these were made against a Catholic priest, noting that an accused's occupation is not a mandatory field on its crime recording systems. For that reason, Police Scotland informed the Applicant, in line with section 17(1) of FOISA, that they did not hold the information requested.
3. On 9 July 2020, the Applicant wrote to Police Scotland requesting a review of their decision on the basis that they had responded to the request in the wrong way. The Applicant noted that the response detailed the number of real sex offences reported to the Police on the three dates given, but advised that the original request did not seek a count of reports of real sexual offences committed on those dates. Rather, it sought a count of false accusations of child sex offences made against any Catholic priest in Scotland by the Police themselves, motivated by anti-Catholic sectarian hatred. The Applicant stated that, to be precise, they were seeking a count of any report by any person whatsoever stating that they have witnessed a Catholic priest being subjected to a false claim of child sex abuse by Police in Scotland, or a report by a Catholic priest themselves stating that they were the victim of a false child sex abuse accusation by any Police officer. The Applicant considered that this would also include any findings or reports by Police, the Police Investigations & Review Commissioner or the Crown Office and Procurator Fiscal Service (particularly its Criminal Allegations Against the Police Division), and especially a priest's own defence solicitor, that a Catholic priest was the victim of a false child sex abuse allegation by any Police officer.

4. In their requirement for review, the Applicant asked the Police to supply a full count of all and any recorded reports of such false allegations of child sex abuse being made against any Catholic priest in Scotland by the Police on the dates specified, with the priest's details fully redacted.
5. Police Scotland notified the Applicant of the outcome of their review on 5 August 2020. Police Scotland acknowledged that they had provided the Applicant with recorded crime numbers for the three dates specified, as opposed to "no crimed" reports. However, they explained that the rationale in relation to the accused's occupation remained the same, in that this is not a mandatory field on their crime recording system (and so in many cases the report does not contain information on the person's occupation). As a consequence, Police Scotland upheld their original response that they held no information.
6. On 22 August 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 Police Scotland's review because, while there were a number of sexual offences reported on the dates in question, it was not clear whether the victims were children, whether the reports were false or whether they had been made against a Catholic priest.

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 14 September 2020, Police Scotland were 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. Police Scotland were invited to comment on this application and to answer specific questions. These related to the actions taken by Police Scotland to determine what recorded information they held falling within scope of the Applicant's request.
10. Further, more detailed, submissions were sought from Police Scotland during the course of the investigation, to obtain clarity regarding the recording of occupations and false allegations.

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.
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 a notice in writing to that effect.

The Applicant's submissions

14. The Applicant disputed Police Scotland's statement that it did not routinely record the occupation of the accused and commented that, under the Criminal Procedure (Scotland) Act or other forms of detention, Police officers often do ask and record the "occupation" of the accused.
15. The Applicant also suggested that records detailing false allegations of child sex crime made against any Catholic priest in Scotland could be obtained from Police Scotland's own records from false allegations made by members of the public, from Police employees or from decisions from a jury of the Criminal Court of Scotland declaring such accusations as false or unproven.

Police Scotland's submissions

16. Police Scotland explained that it is not possible to carry out searches of its crime recording systems based on occupation, because this field within the crime report is not mandatory. Police Scotland added that an occupation, if held, could be recorded within the systems (including a number of separate legacy systems) in a multitude of different ways.
17. Because it was known that completion of the occupation field was not mandatory, Police Scotland explained that no further searches were carried out to determine whether any relevant information was held.
18. Police Scotland submitted that there is no legal duty for it to hold a suspect/accused's occupation and although, in the course of taking a suspect's details, occupation would be requested, a suspect cannot be compelled to provide this information to the Police. If the occupation is known, Police Scotland noted that it can be recorded, but this is not always the case. Police Scotland also commented that if a suspect's occupation becomes known during the course of an investigation it can be recorded by it at a later date. Police Scotland also gave examples of other places where a record of the suspect's occupation may be made.
19. Further submissions received from Police Scotland re-iterated that, as it does not hold a central data store for information about an accused/suspect's occupation, a request for this type of data would have to be dealt with by each Division locally or with support from ICT.
20. In terms of being able to provide information about false allegations, Police Scotland explained that, as there are still separate crime databases in use throughout the country and the "no crimed" variable can mean different things, it was not possible to provide the number of "no crimed" reports as the request would have had to be sent to each area to see if relevant information could be identified.
21. In further submissions, Police Scotland explained the circumstances under which a crime would be recorded as "no crime" and whether this would include matters which are found to have been false allegations. These submissions also provided comment on whether it is possible to identify the date on which allegations are found to be false.

Commissioner's conclusions

22. 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 whether relevant information is actually held by the public authority (or was, at the time it received the request).

23. Having fully considered all of the submissions made by both the Applicant and Police Scotland, the Commissioner is satisfied that Police Scotland was entitled to inform the Applicant, in line with section 17(1) of FOISA, that no recorded information was held falling within scope of their request.
24. The Commissioner notes that no searches were carried out by Police Scotland to determine what information it held which would fulfil the Applicant's request. In most circumstances, he would expect adequate, proportionate searches to be carried out to identify and locate any relevant information. He must also, however, consider the terms of the request and any other submissions provided by the public authority. He has tried to form an understanding of what the Applicant is really looking for, from their submissions to both Police Scotland and the Commissioner. He acknowledges that this could be seen as information that might have to be gleaned from a number of different sources, if held – but that, of itself, does not mean the information will not be held.
25. In all the circumstances of this case, on the balance of probabilities, the Commissioner accepts that Police Scotland do not – and did not, on receiving the request – hold the information requested by the Applicant. Having considered all relevant submissions, he cannot be satisfied that there is a reasonable likelihood of the occupation of the priest, the motivation of the accuser (which, in line with the request, must be sectarian) and the fact that the accusation was false being recorded by Police Scotland for all cases of potential relevance to the request. Without that information, he does not consider the request capable of being fulfilled.

Decision

The Commissioner finds that the Chief Constable of the Police Service of 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 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

15 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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