

Decision Notice 071/2021

Judicial Institute for Scotland: Sectarian false allegation of child sexual abuse against Catholic priests

Applicant: The Applicant

Public authority: Scottish Courts and Tribunals Service

Case Ref: 202100012



Scottish Information
Commissioner

Summary

The SCTS was asked for information held by the Judicial Institute of Scotland about false allegations of child sexual abuse made against Catholic priests. The SCTS told the Applicant it did not hold any information falling within scope of their request.

Following an investigation, the Commissioner was satisfied that the SCTS 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 each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. The Judicial Institute of Scotland (the Judicial Institute) is administered by the Scottish Courts and Tribunals Service (the SCTS). The Institute is not, in its own right, a Scottish public authority for the purposes of FOISA.
2. On 10 October 2020, the Applicant made a request for information to SCTS. The information requested was:
 - (A) *A full count and disclosure of any sectarian motivated false accusations of sexual abuse of a child aged 0-15 made by The Judicial Institute of Scotland or its personnel against any Catholic priest in Scotland between the dates of 10/03/2015 -14/9/2020.*
 - (B) *A full count and disclosure of any sectarian motivated false accusations of child sexual abuse made by a child known to The Judicial Institute of Scotland of the ages 0-15 against any Catholic priest in Scotland between the dates of 10/03/2015 – 14/9/2020.*
 - (C) *A full count and disclosure of any sectarian motivated false accusations of child sexual abuse by any other adult known to The Judicial Institute of Scotland on behalf of a child aged 0-15 against any Catholic priest in Scotland between the dates of 10/03/2015 – 14/9/2020.*
3. The Applicant stated that they did not wish to know the names of the children who had made the allegations or of the priests who had been accused.
4. The SCTS responded on 5 November 2020, explaining that the function of the Judicial Institute is to provide training to the judiciary on behalf of the Lord President. Whilst it does try where possible to provide information, the SCTS gave the Applicant notice, in line with section 17 of FOISA, that it did not hold information covered by their request.
5. On 6 November 2020, the Applicant wrote to the SCTS requesting a review of its decision. They asked for confirmation as to whether the Judicial Institute is completely separate from, and has no contact with, the SCTS. The Applicant also asked that the review be carried out to ascertain whether it is the case that no information is held falling within scope of their request, and if information is held, that it be provided to them.

6. The SCTS notified the Applicant of the outcome of its review on 1 December 2020. It confirmed that the Judicial Institute is a separate business unit within the Judicial Office for Scotland, which is itself a discrete part of the SCTS. The SCTS re-iterated the primary function of the Judicial Institute and explained its structure. The SCTS upheld its original response in relation to the information request, confirming that it was relying on section 17(1) of FOISA.
7. On 31 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 SCTS's review and wanted the Commissioner to verify the responses from the SCTS.

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 26 January 2021, the SCTS was notified in writing that the Applicant had made a valid application. The case was 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. On 13 April 2021, the SCTS was invited to comment on this application and to answer specific questions, focussing on the steps it had taken to identify and locate any information falling within scope of the request.
11. The SCTS responded on 21 April 2021. It maintained that it did not hold any recorded information covered by the request.

Commissioner's analysis and findings

12. 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 SCTS. He is satisfied that no matter of relevance has been overlooked.
13. 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.
14. 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.
15. The Applicant was concerned by the response from the SCTS which stated that it was not the responsibility of the Judicial Institute to record information of the kind requested.
16. In its submissions, the SCTS explained that it interpreted the Applicant's request as relating to Catholic priests and any searches carried out were based on that criteria. The SCTS commented that further consideration and interpretation of the terms of the Applicant's request would require that it had identified that it held information relating to allegations

against Catholic priests. The SCTS noted that, as nothing was held relating to Catholic priests, there was no need for it to consider, or make a judgement on, whether both parts of the request - that the allegations be motivated by sectarianism and be false – were, or needed to be, satisfied.

17. In providing its submissions, the SCTS further explained the role of the Judicial Institute, together with where it sits within the structure of the SCTS.
18. The SCTS commented that the Judicial Institute does not have a public facing role: it provides education for Scottish judges and develops and publishes online resources for practising judges.
19. In seeking to demonstrate the thoroughness of the searches carried out, the SCTS explained the nature of the searches carried out of the Judicial Institute's files, the timescale covered and the keywords used. The SCTS also commented that relevant members of staff were asked to undertake searches of information held by them to determine if it fell within scope of the Applicant's request. In all cases, the SCTS confirmed that none of the requested information was identified.
20. Searches were, the SCTS submitted, restricted to files held by the Judicial Institute and its staff as they are the only ones who would deal with matters affecting the Judicial Institute. As such, there was no need for it to ask other SCTS staff to undertake searches as they do not deal with these matters.
21. 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).
22. In this case, 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.
23. The Commissioner accepts that the SCTS's decision to restrict searches to any information referring to Catholic priests in the first instance was reasonable. The Commissioner is also satisfied that, had these searches returned any results, the SCTS's approach of then determining whether these allegations were motivated by sectarianism and false would have been likely to capture any relevant recorded information if it were held. (The Commissioner notes there would have to be recorded information showing that the complaint was both false and sectarian motivated – the SCTS would not be required to come to a judgement from circumstantial evidence or from unrecorded information whether the complaint was motivated by sectarianism and false.)
24. The Commissioner is satisfied that the searches were reasonable and proportionate in the circumstances and that the members of staff involved in undertaking these searches were those most likely to hold or have knowledge of any recorded information held by the SCTS which would fall within scope of the request.

25. Given the explanations and submissions provided (including on the role of the Judicial Institute), the Commissioner is satisfied that the SCTS does not (and did not at the time of receiving the request) hold the information requested by the Applicant.

Decision

The Commissioner finds that the Scottish Courts and Tribunals Service 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 SCTS 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

11 May 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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info