

# Decision Notice 089/2021

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## **Sectarian motivated false allegations of child sexual abuse raised against Catholic priests**

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**Applicant: The Applicant**

**Public authority: Scottish Borders Council**

**Case Ref: 202001518**



Scottish Information  
Commissioner

## Summary

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The Council was asked about sectarian motivated false allegations of child sexual abuse raised against Catholic priests. The Council 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 Council did not hold the information.

## Relevant statutory provisions

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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

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1. On 17 September 2020, the Applicant made a request for information to Scottish Borders Council (the Council). The information requested was:  
*A full disclosure of any and all 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 the council on their behalf between 10/3/2015 – 14/9/2020.*
2. The Applicant stated they did not wish the names of the children or of the priests.
3. The Council responded on 23 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 30 October 2020, the Applicant wrote to the Council, requesting a review of its decision.
5. The Council notified the Applicant of the outcome of its review on 27 November 2020. It confirmed, having carried out further searches, that it did not hold the information.
6. On 15 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 Council's review.

## Investigation

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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 20 January 2021, the Council 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 Council 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 request.

10. The Council responded on 20 April 2021. It maintained that it did not hold any information falling within the scope of the request.

## **Commissioner's analysis and findings**

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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 Council. 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, questioning the Council's response and commenting that the Council should have conducted wider searches, e.g. beyond information held by the Council's Social Work Department.
15. In its submissions to the Commissioner, the Council confirmed it did not hold the information requested by the Applicant.
16. The Council detailed the enquiries it undertook to ascertain whether it held any information falling within the scope of the Applicant's request. These included consultation with the Council departments it considered relevant and relevant staff within those departments. The Council provided supporting evidence regarding the enquiries and their outcomes. The conclusion of the enquiries was that no information was held falling within the scope of the requests made by the Applicant.
17. The Council explained that all reported allegations of child abuse are referred to its Public Protection Unit. The Council also commented that, given the very specific and unusual subject matter, the length of service and roles of those consulted, it was confident in its view that no information was held falling within the scope of the request.
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. 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.

20. Having considered the submissions from both parties, and the terms of the request, the Commissioner accepts that the Council 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 Council does not hold the information requested by the Applicant.

## **Decision**

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The Commissioner finds that Scottish Borders Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the Applicant's request.

## **Appeal**

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Should either the Applicant or the Council 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**

**1 June 2021**

## Appendix 1: Relevant statutory provisions

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### 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.

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- (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.

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#### 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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**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**