

# Decision Notice 075/2021

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

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**The Applicant**

**Public authority: Scottish Public Services Ombudsman**

**Case Ref: 202100008**



Scottish Information  
Commissioner

## Summary

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The SPSO was asked for information held about sectarian motivated, false allegations of child sexual abuse against Catholic priests. The SPSO 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 SPSO 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 21 September 2020, the Applicant made an information request to the Scottish Public Services Ombudsman (the SPSO). The information requested was:
  - A) *[A] full disclosure of any and all sectarian motivated false allegations of child sexual abuse raised against any Catholic priest in Scotland by any child aged 0 -15 at the SPSO between 10/3/2015 -14/9/2020.*
  - B) *A full disclosure of any and all Ombudsman investigations into any Scottish public service for such a service or services personnel raising a false allegation of child sexual abuse against any Catholic priest in Scotland between 10/3/2015 - 14/9/2020*
  - C) *A full disclosure of any and all sectarian motivated false allegations of child sexual abuse raised against any Catholic priest by any adult on behalf of a child aged 0 -15 at the SPSO between 10/3/2015 -14/9/2020.*
2. 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.
3. The SPSO responded on 16 October 2020. It notified the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information they had requested. It advised the Applicant that it was unlikely that complaints regarding these particular issues would fall within the SPSO's remit. The SPSO suggested the Applicant may wish to contact the Bishops' Conference of Scotland or the Scottish Catholic Safeguarding Service instead.
4. On 28 November 2020, the Applicant wrote to the SPSO, requesting a review of its decision, stating that they wanted to ensure the rigour of the initial response.
5. The SPSO notified the Applicant of the outcome of its review on 14 December 2020. It confirmed that it did not hold the information, stating that a second check of its records had been made, but that the information was not held.
6. 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 SPSO's review and, in particular, with the searches carried out by the SPSO.

## 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 16 February 2021, the SPSO 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 19 April 2021, the SPSO 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 SPSO responded on 5 May 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 SPSO. 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 SPSO stated that its interpretation of the Applicant's request was, that for a relevant allegation to be covered by the request (for A) and C)), there must be information which records that the allegation was both sectarian motivated and false. As such, no information of this type was held or would be expected to be held.
15. Searches had been carried out for information (for all of the requests) relating to the search words of "*Priest*", "*Sectarian*", "*Sectarianism*", "*Catholic*" and "*Sexual abuse*". As no information had been located, it was not necessary to consider (or make a judgement) on whether the allegation had been false, etc.
16. The Commissioner considers that an important point for consideration is that the SPSO would have to hold recorded information showing that the allegation was false, etc. in order for it to be covered by the Applicant's request. It is not the role of the SPSO, in responding to this request, to attempt to determine whether an allegation was false etc. from unrecorded information.
17. The SPSO explained that all complaints made to its office are recorded on the Workpro electronic database. The above searches were carried out on Workpro to check if any related records were held. None were found to be held. The SPSO emphasised that allegations of criminality of this type are not matters that fall within its remit.

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, for requests A) and C), 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 all parts of the request, the Commissioner accepts that the SPSO 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 submissions provided, (including on the remit of the SPSO) and the likelihood of recorded information falling within the scope of the request being held (that any allegation was false, etc.), he is satisfied, on balance, that the SPSO does not hold the information requested by the Applicant.

## **Decision**

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The Commissioner finds that the Scottish Public Services Ombudsman 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 SPSO 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**

**12 May 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.

...

#### 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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