

Decision Notice 080/2021

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

Applicant: The Applicant

Public authority: Borders Health Board

Case Ref: 202001483



Scottish Information
Commissioner

Summary

NHS Borders was asked about sectarian motivated false allegations of child sexual abuse raised against Catholic priests. NHS Borders told the Applicant it did not hold any information falling within the scope of the request.

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

Background

1. On 18 September 2020, the Applicant made a request for information to Borders Health Board (NHS Borders). The information requested was:
 - A) *A full count and disclosure of any sectarian motivated false accusations of child sexual abuse made by NHS Borders 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 NHS Borders of the ages 0-15 against any Catholic priest in Scotland between the dates of 10/3/2015 - 14/9/2020.*
 - C) *A full count and disclosure of any sectarian motivated false accusations of child sexual abuse made by any other adult within NHS Borders on behalf of a child aged 0 - 15 against any Catholic priest in Scotland between the dates of 10/3/2015 - 14/9/2020.*
2. The Applicant made it clear that they did not want to receive the names of any false accusing children or falsely accused priests, but asked that the searches and response should include the Galashiels Sexual Health Clinic and other specified services.
3. NHS Borders responded on 29 September 2020. It notified the Applicant that it did not hold the information requested for parts A, B and C of the request.
4. On 25 October 2020, the Applicant wrote to NHS Borders, requesting a review of its decision. The Applicant wished to ascertain whether the responses provided were accurate and, if any information was found within the scope of the request, asked NHS Borders to supply such information.
5. NHS Borders notified the Applicant of the outcome of its review on 9 November 2020. It confirmed that it did not hold the information. NHS Borders explained the searches carried out which led to this conclusion. These included a full search of all Datix adverse event data held by its Clinical Governance Department, and a search of Child Health records (as, if there had been a direct disclosure made by a child, this would have resulted in a child protection investigation). No relevant information was identified.

6. On 10 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 NHS Borders' review because it was not clear whether the searches of child health records, for any direct disclosure by a child against a Catholic priest, had been restricted to those that would have been found to have been false or unproven. The Applicant also commented that it was unclear whether the searches carried out for parts A, B and C had captured the named health clinic, health centres and services specified in the request.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the Applicant had made a request for information to a Scottish public authority and had asked the authority to review its response to that request before applying to him for a decision.
8. On 26 January 2021, NHS Borders was notified in writing that the Applicant had made a valid application. The case was subsequently 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 22 April 2021, NHS Borders 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. NHS Borders responded on 4 May 2021. It maintained that it did not hold any information falling within the scope of the request.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and NHS Borders. 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, which comment on the lack of clarity of the searches carried out by NHS Borders, effectively whether the searches focussed on false allegations against Catholic priests (i.e. as opposed to allegations found to be "true"), and whether they covered the health clinic, health centres and services specified in the request.
15. In its submissions to the Commissioner, NHS Borders confirmed that it had interpreted the request as seeking information on allegations against Catholic priests which were recorded as both sectarian motivated and false.

16. NHS Borders detailed the enquiries and searches undertaken, and explained why these were most likely to identify any recorded information falling within the scope of the request.
17. NHS Borders described the enquiries carried out to ascertain whether it held any relevant information. These included consultation with the various NHS Borders departments (and staff within those departments) which it considered relevant, plus consultation with other relevant partner authorities in the health board area. The conclusion of these enquiries identified no information falling within the scope of the Applicant's request.
18. NHS Borders also detailed the searches of electronic data systems conducted and the search parameters used (including timescale and keywords). It confirmed that these searches returned no results for any recorded information falling within scope of the request. NHS Borders explained that the initial focus of these searches was to identify accusations of sectarian motivated child sexual abuse allegations. As these searches identified no such records, there was no requirement to investigate further the "false accusations" element of the request.
19. In relation to the health clinic, health centres and services specified in the request, NHS Borders confirmed that, as these were all NHS Borders' premises, these areas would have fallen under any searches conducted in relation to this request. It further explained that, as the GP practices based within the three health centres specified in the request were independent contractors, separate information requests would have to be made to those practices directly for any relevant information that they might hold.
20. NHS Borders submitted that the searches carried out were reasonable and proportionate, and would have been capable of identifying any recorded information held that met the terms of the Applicant's request. In conclusion, it was satisfied that it did not hold the information requested by the Applicant.
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 held, 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. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that NHS Borders interpreted the Applicant's request reasonably. In this regard, he has considered the outcomes of the enquiries and searches undertaken by NHS Borders in response to the request.
24. The Commissioner accepts that NHS Borders took adequate, proportionate steps in the circumstances to establish whether it held any information covered by the request. He is satisfied that the enquiries and searches carried out by NHS Borders were reasonable and proportionate in the circumstances, and the members of staff involved in these enquiries and searches were those most likely to hold or have knowledge of any recorded information held

by NHS Borders which would fall within scope of the request. The Commissioner also accepts that there would be no reasonable expectation of NHS Borders holding information on the sectarian motivation or falseness of any allegations.

25. In conclusion, the Commissioner is satisfied that NHS Borders does not (and did not at the time of receiving the request) hold the information requested by the Applicant.

Decision

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

Appeal

Should either the Applicant or NHS Borders 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

17 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