

Decision Notice 142/2021

False allegations of child sex offences made against Catholic priests reported to/charged by Police Scotland/referred to COPFS

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202001430



Scottish Information
Commissioner

Summary

Police Scotland were asked about false allegations of child sex offences made against any Catholic priest in Scotland, including any complaints of such false allegations to the Police complaints department.

Police Scotland told the Applicant that the cost of responding meant they were not required to comply.

Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General Entitlement); 12(1) (Excessive cost of compliance)

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and (5) (Excessive cost – prescribed amount)

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 15 September 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was:
 - A) *A full count and disclosure of all false allegations of child sex offences made against any Catholic priest in Scotland reported by a child aged 0 - 15 to the police between the dates of 10/3/2015 - 14/9/2020.*
 - B) *A full count and disclosure of all false allegations of child sex offences charged by the police against any Catholic priest in Scotland in regards a child aged 0 - 15 between the dates of 10/3/2015 - 14/9/2020. Please include false reports made to the fiscal also.*
 - C) *A full count and disclosure of all false allegations of child sex offences made against any Catholic priest in Scotland reported by any adult to the police regarding any child aged 0 - 15 between the dates of 10/3/2015 - 14/9/2020.*

I do not wish the names of false accusing children or falsely accused priests disclosed, please include complaints of such false allegations or reports raised by a Catholic priest or any person on a Catholic priest's behalf to the Police complaints department.
2. Police Scotland responded on 28 September 2020. It refused the request, stating that to comply would incur excessive cost (section 12(1) of FOISA).
3. On 29 September 2020, the Applicant wrote to Police Scotland, requesting a review of their decision as the Applicant knew of three cases, two of which would certainly be on police records, and that Police Scotland had disclosed information that required greater searches in the past. The Applicant believed disclosure within the cost limit was possible.
4. Police Scotland notified the Applicant of the outcome of their review on 23 October 2020 upholding their original view.

5. On 30 November 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of Police Scotland's review because she did not agree with Police Scotland's application of the cost limit.

Investigation

6. 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.
7. On 7 January 2021, Police Scotland were notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
8. 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 provide submissions explaining how they had concluded that it would cost in excess of £600 to provide the information to the Applicant.
9. Police Scotland provided submissions on 6 July 2021, explaining their reasons for engaging section 12(1) in respect to some of the information falling within the scope of the request. They also sought to apply section 17(1), declaring that no information falling within the scope of the request was held within the Professional Standards Department (referred to in the request as the Police complaints department).

Commissioner's analysis and findings

10. 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 Police Scotland. He is satisfied that no matter of relevance has been overlooked.
11. 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. Among these qualifications are the provisions of section 12.

Section 12(1) – Excessive cost of compliance

12. Under section 12(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). Consequently, the Commissioner has no power to order a public authority to disclose information should he find that the cost of responding to a request for that information exceeds this sum.
13. The projected costs to the public authority can take into account in relation to a request for information, according to regulation 3 of the Fees Regulations, are the total costs, whether direct or indirect, the authority reasonably estimates it is likely to incur in:
 - locating,
 - retrieving, and

- providing the information requested in accordance with Part 1 of FOISA.
14. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
 15. An authority can take into account the time taken to redact information in order that a response can be provided when calculating the costs involved, but cannot take into account the cost of determining whether it:
 - actually holds the information requested, or
 - should provide the information.

Police Scotland's submissions

16. Police Scotland explained that they currently used eight crime recording systems, each independent of the others.
17. Police Scotland submitted that, because of the way information was recorded in these systems, the only way to ascertain whether the alleged victim of a crime was a child at the time of the alleged offence, the age at the time of the alleged offence of the individual who reported the crime, or the occupation of the alleged offender, would be by case-by-case research.
18. With regard to false reports made to the Crown Office and Procurator Fiscal Service (COPFS), Police Scotland explained that whether to proceed with a case is the Procurator Fiscal's decision and, although the reporting officer may be made aware of any further action, this is unlikely to be recorded on the crime report. The case status could be reflected on a second system. Police Scotland submitted that each case would have to be manually checked and cross-referenced to locate and retrieve any relevant information.
19. Police Scotland explained that the number of potentially relevant crime reports which would require individual assessment would run into tens of thousands for the period covered by the request, and they estimated that it would take at least five minutes per crime report to locate and retrieve any relevant information. Based on this estimate, a maximum of 12 cases per hour could be assessed. Police Scotland determined that this process would significantly exceed the cost limit set under section 12(1) of FOISA.

Commissioner's conclusions

20. Taking account of the way information is recorded by Police Scotland and the wording of the request, the Commissioner is satisfied that a manual review of the relevant crime records over the time period covered by the request would be required. In the circumstances, Police Scotland was correct to refuse the request under section 12(1), as complying would exceed the cost limit.

Section 17 – information not held

21. In its submissions, Police Scotland explained that their Professional Standards Department (the department responsible for handling complaints) did not hold any of the information requested by the Applicant.
22. The Commissioner has considered the terms of the request carefully. He cannot regard the Applicant's reference to "the Police complaints department" as setting up a separate request, which could be considered in isolation from the request considered above under section 12(1) of FOISA. It is an integral part of that same request. Therefore, having found section 12(1) applicable to the request as a whole, the Commissioner cannot go on to consider

separately any submissions relating to information that may or may not have been held by the Professional Standards Department.

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

27 September 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.
...
- (6) This section is subject to sections 2, 9, 12 and 14.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
...

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

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