



# Decision Notice 108/2023

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## Incidents involving specific named religious groups

**Authority: Police Service of Scotland**

**Case Ref: 202200600**

### Summary

The Applicant asked the Authority for information about incidents related to the imprisonment, attack or deprivation of human rights of people belonging to specific named religious groups. The Authority told the Applicant that it did not hold any information falling within the scope of the request. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner)

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 25 March 2022, the Applicant made a request for information to the Authority. The Applicant asked for a full statistical count and disclosure of all incidents of the following:
  - (i) the imprisonment, attacks, or deprivation of the human rights of Christian anti-communism politicians or activists
  - (ii) the imprisonment, attacks, or deprivation of the human rights of Catholic families or their advocates

- (iii) the imprisonment, attacks, or deprivation of the human rights of Christian pro-life politicians or activists

between 25 March 2019 and 25 March 2022.

2. The Authority responded on 21 April 2022. The Authority notified the Applicant, under section 17 of FOISA, that it did not hold the requested information about “imprisonment” or “deprivation of the human rights”. The Authority also explained that to search for information regarding attacks, which it had interpreted as being a “physical assault”, would, under section 12 of FOISA, exceed the cost of compliance as it would have to individually assess for relevance all crimes of violence recorded during the three-year period specified in the request. The Authority advised the Applicant that information about “imprisonment” was likely to be held by the Scottish Prison Service.
3. Later the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because they believed the information requested was held by the Authority and could be provided without exceeding the cost limit under FOISA.
4. The Authority notified the Applicant of the outcome of its review on 23 May 2022. The Authority upheld its original decision without modification and further explained its role and the type of information it held.
5. On 23 May 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority’s review because they believed the Authority held the information requested and it had failed to respond to their request for review within the prescribed timescale.
6. The Applicant did not raise dissatisfaction with the Authority’s response that it would exceed the cost of compliance under FOISA to comply with their request. Consequently, this matter has not been investigated.

## **Investigation**

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 21 June 2022, the Authority 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. The Authority was invited to comment on this application and to answer specific questions in support of its position that the requested information was not held. It was also asked for comments on the time taken to respond to the request for review.

## **Commissioner’s analysis and findings**

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

## **Section 17(1) – Notice that information is not held**

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. The qualifications contained in section 1(6) are not applicable in this case.
12. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. 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.
13. 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 of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
14. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the authority.

### *The Authority's submissions*

15. The Authority explained that it would not class individuals in police custody as "imprisoned" as that is usually a short-term situation leading either to release or transfer to a prison if the individual is remanded in custody following court (at which point "imprisoned" would be more appropriate terminology).
16. The Authority submitted that it could be argued that any act of criminality against a person could be a breach of their human rights, but it did not record incidents or crimes in those terms.
17. The Authority explained that the system it uses to record data about incidents reported to the police is primarily a resource deployment system, which captures the nature of the incident and enough detail to inform the police response only (e.g., the personal details of the caller, the location of the incident and free text boxes for further descriptions).
18. The Authority confirmed that the system it uses has no further specific fields for the personal details of the parties involved (e.g., their religion or their occupation).
19. The Authority explained that it therefore had no means by which to search incidents based on any of the categories mentioned by the Applicant in their request.
20. The Authority noted that, as it advised the Applicant in its original response, the only scenario where it is likely that such detail would be captured is in a recorded hate crime. While the Authority could search for crimes recorded as motivated by religion where the linked parties were Catholic, links to their advocacy, politics or occupation are not searchable. Additionally, while "attacks" could be reasonably interpreted as crimes of violence, "deprivation of human rights" has no obvious corresponding crime type.
21. Consequently, the Authority was satisfied that it did not hold the requested information.

### *The Applicant's submissions*

22. The Applicant submitted that they believed the Authority did hold information falling within the scope of their request.

### *The Commissioner's view*

23. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the Applicant's request.
24. Given the explanations and submissions provided, the Commissioner is satisfied, particularly given the nature of the information requested, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request.
25. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case.
26. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

### **Handling of the request – failure to comply with timescales**

27. The Applicant was dissatisfied with the time taken by the Authority to respond to their requirement for review.
28. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to qualifications which are not relevant in this case.
29. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days.
30. The Commissioner must therefore find that the Authority failed to comply with section 21(1) of FOISA in this case.

## **Decision**

The Commissioner finds that, in the respects specified in the application, the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

The Commissioner finds that the Authority complied with Part 1 of FOISA by informing the Applicant, in line with section 17(1), that the requested information was not held.

However, the Authority failed to comply Part 1 of FOISA by failing to comply with the timescale, as set out in section 21(1), for responding to the Applicant's requirement for review.

The Commissioner does not require the Authority to take any action with respect to this failure.

## **Appeal**

Should either the Applicant or the Authority 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.

**Euan McCulloch**  
**Head of Enforcement**

**9 November 2023**

## **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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...

#### **21 Review by Scottish public authority**

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- ...

#### **47 Application for decision by Commissioner**

- (1) A person who is dissatisfied with -
  - (a) a notice under section 21(5) or (9); or

- (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

(2) An application under subsection (1) must -

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
  - (i) the request for information to which the requirement for review relates;
  - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
  - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).