

# Decision Notice

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## **Decision 265/2016: The Applicant and the Office of the Scottish Charity Regulator**

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### **Complaints about Central Borders Citizens Advice Bureau workers**

Reference No: 201601430

Decision Date: 12 December 2016



Scottish Information  
Commissioner

## Summary

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The Office of the Scottish Charity Regulator (OSCR) was asked for information relating to specific complaints about workers at Central Borders Citizens Advice Bureau.

OSCR stated that it held no information falling within the scope of the request. The Commissioner upheld OSCR's response.

## 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 each 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 7 July 2016, the applicant made a request for information to OSCR. The information requested was a statistical count of all complaints detailing that a member of paid staff or a volunteer at Central Borders Citizens Advice Bureau had declared that they were "at war" with the Church of Rome/Roman Catholic Church between 1 January 2002 and 7 July 2016, to any other organisation or person. The applicant confirmed that only a statistical count was sought, and not names or any other identifiers.
2. OSCR responded on 13 July 2016. It informed the applicant, in terms of section 17(1) of FOISA, that it held no information falling within the scope of the request, nor had it received any complaints about Central Borders Citizens Advice Bureau.
3. On 13 July 2016, the applicant wrote to OSCR requesting a review of its decision, in order to verify that OSCR's response was correct. In the request for review, the applicant stated that "the legal defence of the requesting party holds information to demonstrate an incidence of such a communication at the charity".
4. OSCR notified the applicant of the outcome of its review on 9 August 2016, upholding its original decision without modification.
5. On 11 August 2016, the applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The applicant wished to verify that OSCR's response was factually correct and that it had carried out full checks, again referring to evidence held.

## Investigation

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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 her for a decision.
7. On 15 September 2016, OSCR was 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 Scottish public authorities an opportunity to provide comments on an application. OSCR was invited to comment on this application and answer specific questions. These focused on the searches carried out to identify and locate any information held by OSCR that fell within the scope of the applicant's request.
9. The applicant was also asked to provide any evidence held concerning the communication referred to in the requirement for review to OSCR and the application to the Commissioner.

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

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10. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both the applicant and OSCR. She is satisfied that no matter of relevance has been overlooked.

### **Whether OSCR held any information**

11. Under 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.
12. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect. In this case, OSCR notified the applicant, both in its initial response and in the review outcome, that it did not hold the information requested.
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 lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. She 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 information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) actually held by the public authority.
14. In its submissions to the Commissioner, OSCR maintained it did not hold any information falling within the scope of the applicant's request.
15. OSCR explained, and provided evidence of, the searches and enquiries carried out in reaching its conclusion that it did not hold the information requested. It confirmed that these were repeated during the investigation.
16. OSCR informed the Commissioner that all records were stored or accounted for on its electronic records and document management system, known as Objective 8.1. This included all incoming documents and correspondence, including emails relating to charities, complaints and other queries. Metadata, including any relevant charity numbers, was also stored and was searchable, as was the text within the document or file. Searches could be limited to specific areas, or could cover the entire database.
17. OSCR confirmed that, for this case, the following searches were carried out across the entire database:

- (i) As the request concerned one specific charity, searches using the corresponding charity number were carried out.
- (ii) Further searches were carried out using the keywords and phrases “church of rome”, “war on church of rome”, “were ‘at war’ with the Church of Rome/Roman Catholic Church”, “war against the church of Rome” and “Central Borders CAB”.

OSCR confirmed that none of the documents identified as a result of these searches constituted complaints about the charity, and therefore none of them fell within the scope of the request.

- 18. In conclusion, OSCR submitted that it was satisfied all relevant searches had been exhausted and no information falling within the scope of the applicant’s request was held.
- 19. Noting the reference in the applicant’s requirement for review and application to the Commissioner concerning evidence held, the applicant was asked by the investigating officer to provide any such evidence held.
- 20. The applicant did not provide a response to the investigating officer’s request.
- 21. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that OSCR took adequate, proportionate steps to establish whether it held information which fell within the scope of the applicant’s request. She accepts that any information relevant to the request would have been identified using the searches and enquiries described by OSCR. She is therefore satisfied, on the balance of probabilities, that OSCR does not (and did not, on receiving the request) hold the information requested. By giving notice under section 17 at both response and review stages, therefore, OSCR complied with Part 1 of FOISA.

## Decision

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The Commissioner finds that the Office of the Scottish Charity Regulator complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the applicant.

## Appeal

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Should either the applicant or the Office of the Scottish Charity Regulator 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 December 2016**

## 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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