

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2014

Public Authority: Yesodey Hatorah Senior Girls School (the "School")

Address: Egerton Road
London
N16 6UA

Decision (including any steps ordered)

1. The complainant made a request to the School regarding information on the hire of the school premises. The School refused to disclose the requested information as it believed that the complainant was using a pseudonym and that the request was vexatious.
2. The Commissioner finds no evidence that a pseudonym has been used and he considers that this request to be valid under the FOIA. He also finds that the request is not vexatious.
3. The Commissioner requires the School to take the following steps to ensure compliance with the legislation.
 - It should issue a fresh response under the FOIA without relying on section 14(1)
4. The School must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 6 February 2013, the complainant wrote to the School and requested information in the following terms:

"Please can you provide me with information relating to any agreement entered into by or on behalf of the school for the rental, licence or any other form of occupation of any part of the school premises with:

- a. Simchas Nisuin;*
- b. Be'er Miriam;*
- c. Any other organisation; and/or*
- d. Any individual*

The information I am requesting in relation to the above agreement/s is:

- 1. the date of the agreement*
- 2. the commencement date of the agreement*
- 3. the length of the term of the agreement*
- 4. the amount payable under the agreement, if any*
- 5. any other consideration and/or reciprocal or other arrangement*
- 6. the area/s of the school subject to the agreement*
- 7. the frequency of occupation, duration, time of day and similar terms relating to the occupancy.*

If the hire is being managed by an agent please also provide the above information in relation to any agency or management agreement.

Where any agreement is in writing please let me have a copy of the agreement itself and/or any other document relating to it.

Where there is no written agreement please let me have any document recording its terms and/or relating to the agreement.

I note that you recently refused a similar request because you suspected it to have been made under a pseudonym. Please be assured that this is my real name."

- 6. On 5 March 2013 the School responded stating that it could not provide a response to the request as it suspected that the complainant was using a pseudonym.
- 7. On 6 March 2013 the complainant requested an internal review and made the following points:

- Her request is valid under the FOIA as she has provided her real name.
 - The complainant asked the School to confirm:
 - (a) The basis for its "suspicion" that she was using a pseudonym and the legal basis for refusing to provide the information based on that suspicion.
 - (b) What the School requires to satisfy itself of her identity.
8. On 20 March 2013 the School explained to the complainant that the request forms part of a series of requests which it has been recently receiving and which appear to be connected. The requests appear to the School to be very similar and always come from the same website. The School stated that it does not have to reply to a request if it is made under a pseudonym or if it is vexatious.
9. On 4 April 2013 the complainant expressed her dissatisfaction and requested an internal review, she also made the following points:
- The School has failed to provide her with any basis for its suspicion that she is using a pseudonym. It did not provide the complainant with a means to establish her identity or any legal grounds for its decision.
 - The School now claims that this request is vexatious because there are similar requests coming from the same site.
 - The School should reconsider its decision.
10. On 9 April 2013 the complainant complained to the Information Commissioner's Office (the "ICO") about the School's decision not to release the requested information.

Scope of the case

11. The arguments that the issues in this case are concerned with are essentially two-fold:
- Is the requester writing under a pseudonym?
 - Can the request be considered vexatious?
12. The Commissioner has considered these arguments and appreciates that the School believes that the complainant was using a pseudonym.

13. Therefore the scope of this case has been to consider whether the School was correct to refuse to deal with the request on the grounds that the complainant was using a pseudonym, and on the School's use of section 14(1) of the FOIA.

Reasons for decision

Section 8(1)

14. Section 8 of the FOIA states as follows:-

In this Act any reference to a 'request for information' is a reference to such a request which-

- is in writing,
 - states the name of the applicant and an address for correspondence, and
 - describes the information requested.
15. In order for a request under the FOIA to be a valid one, the applicant must use his or her real name, rather than a pseudonym. A request made by an applicant using a pseudonym is not valid and the public authority would not be obliged to deal with the request.
 16. As there will be no valid request or complaint where the applicant has used a pseudonym, the Commissioner is not legally entitled to issue a decision notice in such cases. However, the Commissioner would consider it overly legalistic to seek proof of identity on a routine or even spot-check basis. Further as the Commissioner believes that only a minority of applicants use a pseudonym, then it would be an inefficient use of his resources to start to check the identity of the majority and in any event this would not be in the spirit of the FOIA or the Commissioner's role in promoting access to official information.
 17. Therefore, the Commissioner's approach on such cases is to only decline to issue a decision notice where the name used by the applicant is an obvious pseudonym or when it comes to light during his investigation that the request was made using a pseudonym. Where the requestor has used a name other than an obvious pseudonym, the Commissioner will assume that the applicant has provided his/her real name and expects public authorities to do likewise. If however a public authority suspects the name given is false and refuses to deal with the request on that basis, it will then be up to the public authority to provide evidence to show that they have good reason to believe that the name used is a pseudonym and thus is an invalid request.

The School's view

18. The School explained its evidence for a link between the complainant and another individual. The School stated that it is likely that the complainant's name is a pseudonym used by the individual in question. However, the School acknowledges the possibility that the complainant could be a person acting in concert with this individual.
19. The School made it clear that it believes all the requests from the other individuals and the complainant to be connected with each other and with the named individual. The School stated that the situation is therefore not as simple as making a link between the complainant and the named individual but that there are similarities between the request from the complainant and other FOI requests.

The Commissioner's view

20. Although it would appear that there may be a group of individuals working together, the Commissioner does not consider that the evidence is sufficient to conclude that the complainant is writing under a pseudonym.
21. The evidence is circumstantial and in such circumstances, the Commissioner would consider that the School should assume the requestor has identified herself. Therefore, the Commissioner does not accept that a pseudonym has been used in this case. He considers this request to be a valid request under the FOIA.

Section 14(1) – Vexatious requests

22. In determining whether a request is vexatious, the ICO believes that the key question which public authorities need to consider is whether complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where it is relevant, public authorities will need to take into account wider factors such as the background and history of the request.
23. In particular the Commissioner will consider the following indicators:
 - Burden on the authority
 - Personal grudges
 - Intransigence
 - Frequent or overlapping requests

- Disproportionate effort
24. The threshold for when a request is considered to be vexatious need not be set too high and it is not a requirement for all categories to be relevant to a request. However, where the request falls under only one or two categories or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to a public authority's claim that section 14 of the FOIA is engaged.
 25. The School's arguments as to why it believes the request is vexatious and the Commissioner's observations are outlined below, under the relevant headings.

Detrimental impact of complying with the FOI request

26. After further investigations the School provided evidence to support its arguments for the Commissioner to consider.
27. The School has argued that the complainant's request in this case is part of a series of requests which it believes are part of a harassment campaign that have had a significant impact on it. It is clear that, taken together, dealing with the requests referred to by the School have impacted upon its day to day activities. The School states that a considerable amount of time has been spent dealing with the requests that had been made.
28. The School explained that the campaign group it believes the complainant to be a part of showed a significant degree of personal enmity towards the Principal of the School, his family and towards the School by association. It added that there had been a pattern of FOI requests which concentrated on the School and certain themes which included School premises lettings.
29. It addressed details of the detrimental impact of complying with the requests by explaining how for about ten years a number of individuals had conducted "*a harassment campaign*" against the School and the Principal's family. The topic of the School and the Principal's family appeared in a blog and twitter account. The School stated that some of the comments on these accounts were felt to be defamatory and distressing.

Disproportionate effort

30. The School explained how the campaign group complained about everything they possibly could complain about and the School had recently had meetings about these complaints as a result of which none of their complaints were upheld. The School stated that the campaign group wastes considerable staff and governor time by doing this.

31. The School concluded that answering the FOI request in question would encourage the complainant to submit more requests to cause annoyance and trouble for the School and waste staff time.
32. The School considered that the pattern of FOI requests from the campaign group concentrated on the School and the same theme as the request received from the complainant which it believes supports its argument that this request is vexatious. It has argued that complying with the request would cause further distress to staff and would encourage the requester to think that FOI requests were a good way to harass the individuals and therefore make more requests.
33. However, from the information provided there has not been a sufficiently clear link established between the current complaint which is the subject of this enquiry, the complainant and the campaign that the School believes it is subject to. The complainant has only submitted this single request to the School and the school has no evidence that the complainant is part of the campaign group to which the School refers.
34. Even if the Commissioner were to accept that the complainant was part of the campaign group having considered the pattern of the FOI requests from the campaign group to the School since 2012, the Commissioner is not satisfied that the volume of correspondence and requests constitutes a significant burden in terms of the FOIA. The requests themselves would not have a detrimental impact in terms of workload and in addition, the summary of the correspondence over the year does not demonstrate a huge volume. The list only includes five FOI requests including the complainant's request of 6 February 2012.
35. The School's list of the FOIA requests:
 - 11/09/12 – School Hall Hire
 - 21/10/12 – School Hall Hire
 - 17/12/12 – School premises use
 - 29/12/12 – Evolution
 - 06/02/13 – Same as the request of 17/12/12
36. For this reason, the Commissioner does not consider that compliance with the complainant's request would have a detrimental impact upon the School in terms of workload.

Conclusion

37. The Commissioner is of the view that the School wrongly assessed the complainant's requests as vexatious and that it was incorrect to apply section 14(1) of the FOIA to the request. Whilst the School has provided evidence that it has received a number of requests over a specific time period, that it believes are linked, the Commissioner is of the view that, on balance, there is not enough evidence available to establish that the request is part of a wider campaign against the School.
38. The Commissioner therefore requires the School to issue a fresh response.

Right of appeal

39. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF