

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2015

Public Authority: Yesodey Hatorah Senior Girls School

Address: Egerton
London
N16 6UA

Decision (including any steps ordered)

1. The complainant requested the precise number and copies (with personal information redacted if necessary) of letters or emails requesting the appointment of a particular individual for the Headteacher position at Yesodey Hatorah Senior Girls School (the School).
2. The School disclosed the precise number of letters but withheld copies of them under section 40(2) of the FOIA as they contained the personal data of the Headteacher and the School Principal.
3. The Commissioner's decision is that section 40(2) of the FOIA is engaged and therefore the School is not obliged to disclose the actual letters.

Request and response

4. On 19 October 2014, the complainant wrote to the School and requested information in the following terms:

"In the course of the recent appointment of (name redacted) as the school's new Headteacher, the chairman of the school's governing body reported that he had received 'letters from well over 60 parents' requesting (name redacted)¹ appointment.

¹ The Principal's daughter who was subsequently appointed as Headteacher

Please can you provide me with the following information:

- 1. The precise number of letters or emails received requesting (name redacted) appointment.*
 - 2. Copies of the emails and letters requesting her appointment (you may redact personal information of the sender if necessary).*
5. The School responded on 19 November 2014. It disclosed that it had received 65 communications from parents in support of the Headteacher's appointment. However, it withheld the contents of the communications under section 40(2) of the FOIA on the basis that they were private and contained the personal data of the parents the disclosure of which would be unfair under the Data Protection Act 1998 (the DPA).
 6. On 3 December 2014 the complainant requested an internal review. He suggested that if the School redacted the personal data from the communications so the individual authors could not be identified, section 40(2) of the FOIA would not apply.
 7. The School responded on 19 March 2015 stating that it was not under any legal obligation to undertake an internal review and added it was unlikely that any review carried out would change its original decision anyway.

Scope of the case

8. The complainant contacted the Commissioner on 30 March 2015 to complain about the School's refusal to disclose the contents of the correspondence in support of the Headteacher's appointment.

Chronology

9. The Commissioner contacted the School on 22 April 2015 to request copies of the withheld correspondence together with any further arguments it wished to raise in support of its position.
10. The School provided the Commissioner with copies of the withheld correspondence on 28 April 2015 and said it was maintaining its position under section 40(2) of the FOIA. It said it had asked for the views of some of the authors/signatories of the correspondence and also those of the Headteacher. All stated that they considered the correspondence private and did not want it being made public under the FOIA.

11. The Commissioner responded on 28 April 2015 and invited the School to consider whether it would be possible to anonymise the correspondence by redaction so as to protect the identity of the authors/signatories and thereby render section 40(2) of the FOIA as superfluous.
12. On 1 May 2015 the School's solicitors contacted the Commissioner by telephone. They conceded that it might be possible to suitably redact the correspondence so as to protect the authors/signatories identity. However, it added that this would still leave references to the personal data of the School's Principal and the Headteacher. The School's solicitors argued that disclosure of the correspondence with the authors/signatories identity being redacted would be unfair to the Principal and the Headteacher as they would have a reasonable expectation that such personal communications would be kept private. The School's solicitors added that if the personal data of the Principal and the Headteacher was redacted, the remaining information would be of little value.
13. On 18 May 2015 the Commissioner contacted the complainant to inform her of the School's revised position and invited any further comments she may wish to raise.
14. The complainant responded in detail on 9 June 2015 explaining why she disagreed with the School's position.

Reasons for decision

Section 40(2) of the FOIA

15. The School has cited the exemption provided by section 40(2) of the FOIA in relation to the correspondence from the parents in support of the appointment of the Headteacher. It has argued that it contains not only the personal data of the authors/signatories of the correspondence but also that of the School's Principal and Headteacher.
16. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption involves two stages; first, whether the information in question constitutes personal data and, secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

The personal data of the School's Principal and Headteacher

17. The Commissioner will firstly consider the personal data of the School's Principal and Headteacher and then (if necessary) the personal data of the authors/signatories of the correspondence.

Does the information contain personal data?

18. As to whether the requested information constitutes the personal data of the individuals identified above, the Commissioner has considered the definition of this given in section 1(1) of the Data Protection Act 1998 (DPA) which states:

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data or other information which is in the possession of, or is likely to come into the possession of, the data controller".

19. The information which the complainant has requested is the correspondence sent to the School by 65 parents in support of the appointment of the Headteacher.
20. The Commissioner has seen the requested information and is satisfied that it contains the personal data of the School's Principal and Headteacher as they are clearly identified in the correspondence by either name and/or relationship to each other.

Does the information contain sensitive personal data?

21. Section 2 of the DPA defines "sensitive personal data" as personal data consisting of information as to various matters including—

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,.....

22. The Commissioner is also satisfied that some of the personal data in the correspondence is sensitive personal data as it makes reference to the religious beliefs of the School's Principal and Headteacher.

23. As the Commissioner is satisfied that the requested information contains personal data as defined by section 1(1)(a) of the DPA, some of which is

sensitive personal data as defined by section 2, the next step for him to consider is whether disclosure of that personal and sensitive data would be in breach of any of the data protection principles.

Would disclosure of the information be fair?

24. In this case the Commissioner has focussed here on the first data protection principle, which requires personal data to be processed fairly and lawfully. In particular, he has focused on whether the disclosure would be, in general terms, fair to the data subjects.

Sensitive personal data

25. A particular requirement in relation to processing sensitive personal data (which includes its disclosure) is that at least one of the conditions in Schedule 3 of the DPA is met. Generally when considering this exemption the Commissioner will focus primarily on the general fairness requirement.
26. In relation to the disclosure of sensitive personal data, the Commissioner's view is that the cases where this would be fair to the data subjects are likely to be extremely rare. Sensitive personal data has, by its very nature, been deemed by the DPA to be the most private information about identifiable individuals. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner will generally take the view that it would be unfair and in breach of the first data protection principle to disclose it.
27. In this case the complainant has suggested that this sensitive personal data is already in the public domain and so disclosure in response to her request would not be unfair. Specifically she has referred to the School's Admission Criteria² which sets out the religious beliefs that it requires from applicants. The Commissioner has considered the School's Admission Criteria³ and notes that it only makes reference to pupil applicants and not staff. Accordingly, he is not persuaded that disclosure of the sensitive personal data would be fair.
28. Even if the Commissioner found that disclosure would be generally fair, this would not impact on the outcome of the complaint if he found that no Schedule 3 condition could be satisfied. Accordingly, he has gone on to consider the applicability of the Schedule 3 DPA conditions.

² <http://najos.org/schools/yhs/assets/admissions-policy.pdf>

³ <http://najos.org/schools/yhs/assets/admissions-policy.pdf>

29. The Commissioner's general view is that the two conditions in Schedule 3 that might apply in relation to disclosures made under the FOIA are the first condition, which is that the data subject has consented to disclosure, and the fifth condition, which is that the data subject has already deliberately made the personal data public.
30. In this case the School has stated that both its Principal and Headteacher have expressed the view that they would not want the correspondence (which they consider to be private) made public in response to a request under the FOIA. Furthermore, it is clear that the School's Principal and Headteacher have not deliberately made the personal data public.
31. The Commissioner has concluded that no condition in Schedule 3 has been satisfied and therefore disclosure of the sensitive personal data in the correspondence would be unfair.

Personal data

32. In forming a conclusion as to the fairness of disclosing the rest of the personal data which is not sensitive, the Commissioner has taken into account the reasonable expectations of the data subjects, what consequences disclosure may have on them and whether there is any legitimate public interest in the disclosure of this information.

The reasonable expectations of the data subjects

33. The Commissioner has initially considered the reasonable expectations of the School's Principal and Headteacher.
34. The School has argued that both its Principal and Headteacher would have a reasonable expectation that precise details of personal and private correspondence from parents sent to the Board of Governors which makes reference to them would not be disclosed to the world at large under the FOIA.
35. The School has pointed out that the parents who wrote/signed the correspondence did so in the expectation that it would be kept private and the content and style of their communications reflects this. The School has also pointed out that it contacted some of the parents who wrote the correspondence and they have all said they consider it to be private and not for publication to the world at large under the FOIA.
36. The School accepts that its Principal and Headteacher would have a reasonable expectation the number of letters of support sent by parents to the Board of Governors would be disclosed. This has now been done.

37. The complainant has argued that as the School's most senior employees, the Principal and Headteacher should have a reasonable expectation that not only the existence but also the detailed contents of the correspondence would be made public. The complainant believes it is unlikely that any such disclosure would cause any damage or distress to them. He has pointed out that there is already information in the public domain (published in the Hamodia and the Jewish Tribune) regarding the appointment of the Headteacher in July 2014. See also Ofsted's inspection report dated 10 September 2014⁴.

Consequences disclosure

38. On the issue of the consequences of disclosure, the School has suggested that this would cause its Principal and Headteacher distress in view of the private and personal nature of the correspondence sent to the Board of Governors.
39. The complainant on the other hand does not accept that disclosure would cause any distress or damage in view of information already in the public domain.

Legitimate public interest in the disclosure

40. As to whether there is any legitimate public interest in the disclosure of the information in question, whilst section 40(2) is not a qualified exemption according to section 2 of the FOIA, it is necessary for there to be a public interest element for disclosure to comply with the first data protection principle. The issue here is whether any legitimate public interest that does exist outweighs the factors against disclosure covered above.
41. As a publicly funded body, the School accepts there is a public interest in it being open and transparent in relation to the selection and appointment of a new Headteacher. The School believes that this public interest has been satisfied by the fact that it worked jointly with the local authority (Hackney Council's Learning Trust) in relation to the selection and appointment of the new Headteacher. See also Ofsted's inspection report dated 10 September 2014⁵ in which it is noted that

⁴ <http://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/133599>

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'the governors have worked jointly with the local authority on the appointment of key staff, including the Headteacher, and in relation to the sanctioning personal developmental programmes for staff''.

42. The School advertised the Headteacher vacancy on the number of occasions in various publications with international circulations such as the Hamodia and Jewish Tribune and the selection and appointment process was undertaken by the School's Governing Body and overseen by Hackney Council's Learning Trust. This is recorded in the Minutes of the Meetings of the Governing Body of the School on 18 March and 17 June 2014.
43. The School has disclosed that its Governing Body received 65 letters of support for the new Headteacher but not revealed the contents of these. It does not believe that the public interest in openness and transparency can be further advanced by disclosing the contents of the correspondence which it has already stated was entirely supportive of the new Headteacher.
44. The complainant, on the other hand, believes there is a strong public interest in the correspondence being disclosed which goes substantially beyond that which would normally exist for the appointment of a senior figure of a public body. He has given a number of reasons for this belief.
45. The complainant believes that the Headteacher was relatively young for the position and had no prior teaching or Headteacher qualifications. In view of this, he believes that there is a strong public interest to see how and why the appointment was made.
46. The complainant has pointed out the Minutes for the Meeting of the School's Governing Body on 13 May 2014 state that the Chairman had received letters from well over 60 parents expressing a wish that (name redacted)⁶ should be appointed Headteacher. The Chairman said he understood that (name redacted)⁷ would not apply but would be interested if asked. The minutes also state that other candidates were discussed and that the Principal would be involved in briefing prospective applicants. The complainant believes the fact the Principal was involved in briefing the prospective candidates further strengthens

⁶ The Principal's daughter who was subsequently appointed as Headteacher

⁷ The Principal's daughter who was subsequently appointed as Headteacher

the case that information relating to the appointment process should be disclosed.

47. The complainant believes it is reasonable to assume from the Minutes for the Meeting of the School's Governing Body on 13 May 2014 that as (name redacted)⁸ was eventually appointed to the Headteacher position she was invited to apply by the School. He also believes that as there is nothing else in the minutes to suggest why she was suitable, the importance of the letters in the appointment process makes the case for their disclosure compelling.
48. A further public interest argument put forward by the complainant relates to his belief that there are serious questions regarding the provenance of the correspondence and the circumstances in which it was written and sent to the School. He believes that this makes the contents of the correspondence extremely important for the transparency of the appointment process.
49. The complainant has argued that the case for questioning the bona fides of the correspondence is that there is no obvious reason why it should have been sent in favour of one potential applicant only (living abroad at the time, with limited teaching or headteacher qualifications and relatively little experience) without any previous publicity campaign. The complainant has pointed out that the School is very small with only about 320 pupils so 65 parents is a substantial proportion of the parent body supporting a single candidate.
50. Questions as to why the correspondence was apparently sent in favour of one candidate only and what influence this had on the selection process have been answered by the School in the following terms. Although the School cannot categorically say why the correspondence was sent at a particular time and why it was exclusively in support of one individual, it believes it might have been because many of the correspondents were influenced by the public speech given by the individual who has since been appointed Headteacher.. The School has suggested that this correspondence did not have any influence on the selection and appointment process which was conducted by the School's Governing Body and supported by Hackney Learning Trust.
51. Although it is true that the Principal would have been involved in the briefing of prospective candidates for the Headteacher position, the School has stated that this would have been in his role as Rabbi and religious figurehead. The School has confirmed that the Principal would not have been directly involved in the selection process.

⁸ The Principal's daughter who was subsequently appointed as Headteacher

52. The Commissioner has given careful consideration to the public interest arguments put forward by the School and the complainant in relation to the disclosure of the contents of the correspondence and takes the view that the position is finely balanced.
53. The Commissioner has seen the correspondence but does not believe its disclosure will add anything to assist the public interest in transparency and fairness of the selection and appointment process. The correspondence is clearly supportive of one particular candidate (who has since been appointed Headteacher) but this fact has already been disclosed by the School. The Commissioner does not believe that disclosing the content of the correspondence, which elaborates on the reasons for support, will assist the public interest further. In any event, the School has said that this correspondence did not influence the final appointment decision.
54. The Commissioner is satisfied that the withheld correspondence contains the personal data (including sensitive personal data) of the School's Principal and Headteacher, the disclosure of which would be unfair under the DPA. His overall conclusion is therefore, that the exemption provided by section 40(2) of the FOIA is engaged in relation to the Principal and Headteacher and the School was not obliged to disclose the correspondence.
55. As the Commissioner is satisfied that it would be unfair to the School's Principal and Headteacher to disclose the correspondence he has not gone on to consider the position authors/signatories.

Right of appeal

56. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

57. 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.
58. 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
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