

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2016

Public Authority: Yavneh College
Address: Hillside Avenue
Borehamwood
Hertfordshire
WD6 1HL

Decision (including any steps ordered)

1. The complainant has requested information from Yavneh College (the School) concerning admission details to specific children and information relating to the School's admissions rules.
2. The Commissioner's decision is that the School has correctly applied the exemption for personal data at section 40(2) to the request. Therefore the Commissioner does not require the School to take any steps.

Request and response

3. On 29 January 2016, the complainant wrote to the School and requested information in the following terms:

"1. We are unable to tie the data in the table in with our limited knowledge of the 2014/2015 admissions into Yavneh. We would be grateful if you could confirm where the following children appear in your data. As far as we know they all had non sibling places, but we would be grateful for your clarification.

a. [named individual] (2015 Watford, HJPS feeder place)

b. [named individual] (2015 Shenley, distance place)

c. [named individual] (2015 Park St, CS feeder place)

d. [named individual] (2015 Radlett, distance place)

e. [named individual] (2015 London Colney CS feeder place)

f. [named individual] (2014 Bushey, distance place)

g. [named individual] (2014 Bushey, distance place)

h. [named individual] (2014 Bushey, distance place)

i. [named individual] (2014 Bushey, distance place)

2. Please confirm whether there are any other children, either unaccounted for in the data or wrongly categorised.

3. Please clarify the 2015 Elstree figures. Your numbers show that under the current rules there were 13 Elstree places (9 feeder and 4 distance). However, you say that with the new proposals, they would receive only 12 places. Elstree will always be nearer on a straight line basis than Shenley or Bushey, so how could a child from Bushey or Shenley get a place before an Elstree child?

4. Do you accept that the places for Bushey would not have increased if the rules were in place in 2015?

5. Based on the table that you provided, do you accept that the claim "the number of places would have either stayed the same or increased for all Hertfordshire communities." is factually incorrect? If not, please confirm how you read the table to show that the number of places for St Albans and Park Street will increase or stay the same.

6. Please advise the reason for Watford not being included on the table.

7. Have you made any impact analysis on what the true number of places lost to any of the communities will be in future years once you take into account dwindling sibling places for non Borehamwood / Elstree families? If so, please could you supply that data and accept this letter as an official Freedom of Information request.

8. The consultation document states that all children will have an 'equal opportunity' regardless of primary school attended. Do you accept that with the reverse sibling rule proposed, many pupils at Yavneh Primary school with an older sibling will have an increased opportunity?

9. We read in the consultation documents that these proposals have been brought about as a result of the intended opening of the primary

school. If for any reason the primary school did not open, would you accept that the proposed rule changes become unnecessary?

10. As your decision to enter into this consultation was based upon the data in the table provided, if it later becomes clear that the data was inaccurate, would you be prepared to reconsider your proposals to change the admissions rules?"

4. On 5 February 2016 the School responded. It withheld information as it considered it personal data about individual children and to release it would be a breach of the first principle of the Data Protection Act 1998 (the "DPA").
5. On the same day the complainant wrote to the School and challenged its use of section 40. She stated that she did not require the personal details of the individuals. She clarified that her request was for an updated and accurate *"impact analysis"* table.
6. On 12 February 2016 the School responded. It maintained its position to withhold the information and explained that it could not anonymise the data. The School considered the information to be exempt under section 40 of the FOIA.
7. On 17 February 2016 the complainant wrote to the School and asked for the supply of the raw data that the analysis was based on. The complainant suggested that the School redacted the column which contained the name and said that she required the first 3 characters of the postcode from the address.
8. On 25 February 2016 the School provided the complainant with its Impact Tables.
9. On 28 February 2016 the complainant wrote to the School and again argued against its decision to withhold the information. The complainant made an additional FOI request:

"...for the minutes and draft minutes of any governors meetings held in 2016, including the meeting where this matter was voted upon. I also ask for any correspondence or memos relating to the consultation, admissions in general or the primary school."

10. On 3 March 2016 the School responded. It explained that it could not provide the information (the minutes of the Governing Body 2016) at that time as they were being prepared and were not available. In

reference to the second part of the request, the School applied section 12 of the FOIA as it considered that to provide the information would exceed the relevant time and cost limit.

11. On 4 March 2016 the complainant wrote to the School and repeated her questions concerning the request. She said that she required sight of the "raw data" and that she did not require a copy of the report.

Scope of the case

12. The complainant contacted the Commissioner on 6 March 2016 to complain about the way her request for information had been handled.
13. During the investigation, the complainant was informed that our role is to consider whether recorded information has been supplied and is not to assess the quality of the information. The complainant was asked to confirm her request for the raw data is only for part 1 of the information request (of 29 January 2016) or if it also applied to any of the other parts of the request. The complainant confirmed that there is nothing else outstanding from the request and her response was received in the following terms:

"All that I need is the admissions data, basically each child (anonymised, denoted by a number presumably). The rough area where they come from and whether they got a place by feeder, distance or sibling. These tables exist, and all that is required is to redact the child's name and second part of postcode."

14. The Commissioner considers the scope of the case is to determine whether the School was correct to apply section 40 of the FOIA to part 1 of the requested information.

Reasons for decision

Section 40 – personal data

15. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the DPA.
16. The School's position is that the information in question relates to individual children and that this information cannot be effectively anonymised. This is due to the small number of individuals and the limited geographical areas set out within the request. The School argued

that the disclosure of this information would be unfair and therefore in breach of the first data protection principle.

17. The complainant disputed the School's decision to refuse the request. She argued that she had not asked for any personal details but had asked for redacted and anonymised data.
18. In considering these arguments and whether the disclosure of this information is in breach of the DPA, the Commissioner is mindful of the fact that disclosure under the FOIA is to be considered as disclosure to the world at large.
19. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:

“personal data’ means data which relate to a living individual who can be identified –

 - (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”
20. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes that in this case, the School considered disclosure would breach the first data protection principle.
21. Having accepted this she must now go onto consider if disclosure would contravene any of the data protection principles. The first principle requires, amongst other things, that the processing of personal data is fair and lawful.

Whether the requested information is personal data

22. In this case the Commissioner notes that the withheld information relates to pupils and their parents. She has viewed the withheld information and is satisfied that it is personal data.

First data protection principle

23. The first data protection principle requires, amongst other things, that the processing of personal data is fair. In considering fairness the Commissioner will take into account the reasonable expectations of the data subjects, what would be the consequences of disclosure, and the legitimate interests in the disclosure of the information in question.

Reasonable expectations of the individuals

24. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
25. The School considers that it would be unfair to release the information because it was not within the reasonable expectations of the parents when making their application, that this information would be disclosed. The reasonable expectation of the parents would be that the information would be kept securely and confidentially. The School also considers that parents would not expect information about their home address, contact details and children's names and dates of birth to be made available to the public.
26. The School is of the view that this is reasonable, given the risks to those individuals of identity fraud if this information were to be published. The School explained that given security issues relevant to the Jewish community, providing details of where Jewish families live would in itself provide a threat.
27. The School argued that the complainant and other individuals form part of a group of objectors to the School's change of admissions criteria for September 2017. It explained that its reliance on section 40 of the FOIA was applied to information contained in the "*raw data*" schedules on which Impact Tables were based.
28. The Commissioner notes that the information relates to children attending a faith school. This information had been provided to the

School by the parents of the children in relation to their admittance/attendance at the School. She considers that the disclosure of this information would not be within their reasonable expectations.

Consequences of disclosure

29. The School considers that there is a risk that the individuals will be contacted by the objector group against the changes in the admissions criteria. The School said that given the nature of previous correspondence which it received regarding this matter, it believes that there is a risk of individuals being contacted if their details are made public. The School explained that this, in its view, would be in order to gather increased support for the pressure being placed on the School.
30. In regards to the right of privacy, the School considers that this would be an unwarranted interference with the individuals' rights and it believes that this is a risk which is justified in the circumstances.
31. Given the nature of the information and the fact that it relates to individual children, the Commissioner considers that the disclosure of this would result in an unwarranted invasion of privacy.

Legitimate interest

32. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision making processes.
33. The Commissioner considers that the public's legitimate interests must be weighed against any prejudice to the rights of freedoms and legitimate interests of the individuals concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interest of the complainant) accessing the withheld information.
34. The School argued that there is no legitimate public interest in knowing anything further than the information that has been released within the Impact Tables. It considers the purpose of the request for information was to understand on what basis the School had made a decision to change its admissions arrangements. It said that this Impact Table of information forms only part of that decision.
35. The School further argued that there is no reason why the contact details of individuals should be released, as this does not explain or improve understanding of the rationale for the admissions decision. The

School therefore maintains that there is no legitimate public interest in having any additional information relating to the Impact Tables, where that information is considered to be personal data.

36. It is clear that the complainant is seeking to challenge changes that have been made to the School's admissions criteria. She believes that the disclosure of this information is necessary for her to be able to challenge these changes. The complainant has stated that there are over 400 parents opposed to the School's admissions criteria. Therefore, taking these into consideration, the Commissioner accepts that there is a legitimate interest in the disclosure of the information requested.
37. However, the Commissioner notes that this information directly relates to individual children attending a faith school and the particular geographical areas in which they live. In view of this, the Commissioner considers the disclosure of this information under the FOIA and consequently to the world at large, would amount to an unwarranted invasion of the privacy of these individuals and their families.
38. The Commissioner does not consider there to be a legitimate interest in knowing additional information relating to the Impact Tables. She accepts that this information forms only part of the decision to change the School's admissions arrangements and that the public would not gain anything from this information.
39. The Commissioner does not believe that the legitimate interest into the release of the information outweighs the rights and freedoms of the data subjects. Therefore, the Commissioner considers disclosure would be unfair and in breach of the first principle of the DPA.

Anonymising the information

40. The Commissioner has considered whether the requested information could be sufficiently anonymised so that the remaining information can be disclosed without this leading to the identification of the individuals.
41. The School acknowledged the complainant's clarification of the request which is to see the full data with the names and first line of address removed. However, the School argued that the redaction of this part of the request would not sufficiently anonymise the information.
42. The School is of the view that the children named in the request were specifically selected by the complainant because she knows something about their address, which primary school they attended and other

details. Therefore, the School considers the complainant to have sufficient knowledge or could obtain enough knowledge about the information to be able to identify the named children from it.

43. The School explained that if the information which it considers to be personal data is removed, the remaining part of the information would not assist the complainant in understanding the Impact Tables. Therefore, the School considers that it is not possible to sufficiently anonymise the raw data schedules so as to release information in a useful form.
44. The School clarified why it considers the requested information to be personal data. It said that information contained in the raw data schedules is slightly different in layout for the two years but that it still shows similar information. The School explained that the information about whether an applicant is a sibling and whether it attended a feeder school is categorised on both schedules. However, when placed together on the schedule and the information requested by the complainant is removed, the School said that the individuals remain identifiable.
45. It added that the names and/or indications of names are present in all the email addresses listed and that the telephone numbers can be reverse-searched to find anyone who is not ex-directory. The combination of information would also show which pupils had special educational needs and which pupils had a sibling at the School. This would give pupil's dates of birth in some cases, which the School considers could be easily allocated to a particular child once the other information is known.
46. The School explained that to fully anonymise the information, it would have to remove the telephone numbers, email addresses, all details of the pupils and the postcodes and distance from the School. Although, the postcode alone and distance from the School data would not identify a particular address, when put together it considers it is possible to identify a very small area where individual houses might be identified. The School added that by combining the two features, it can be identified exactly where on a particular road potential homes sit and then by using Google Street view and general observations to find the exact address.
47. The School argued that once all of the data is removed, all that remains is a series of meaningless reference numbers and figures which do not in any way add to the understanding of the Impact Tables. The School

clarified the Impact Tables are essentially the information derived from the School's raw data, that has been anonymised and any irrelevant material such as reference numbers, removed.

48. The School reported that the data contained in the Impact Tables, which have been made public, contains the anonymised and relevant data from the Impact Tables. It said that any further descriptors would either not be relevant or have no public interest and would identify the individuals as previously explained.
49. The complainant argued that the information requested can be anonymised. However, the Commissioner finds that the information cannot be redacted to render it anonymous. She accepts that if the School redacted the information which it considers to be personal data, the remaining information would not assist the complainant in understanding the tables. It is therefore considered not possible to anonymise *'the raw data schedules'* adequately in order for the information to be disclosed in a useful format.
50. Therefore, the Commissioner is satisfied disclosure of the requested information would be unfair and would contravene the first data protection principle. Consequently, the Commissioner finds that section 40(2) of the FOIA is engaged.

Right of appeal

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

52. 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.
53. 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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