

FOI/EIR	FOI	Section/Regulation	s.8	Issue	Pseudonyms
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Line to take:

Section 8 states that a request for information should state **the** name of the applicant. This means the applicant's real name. Therefore 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. Similarly the Commissioner is not obliged to deal with a complaint made using a pseudonym as technically he has no legal authority to consider such complaints.

However, it is the Commissioner's position that it would be contrary to the spirit of the Regulations to routinely or randomly check a complainant's identity. Therefore the Commissioner will only decline to issue decision notices where the name used by the applicant is an obvious pseudonym or it comes to light during the course of an investigation that the request was made using a pseudonym. Where the applicant has used what seems to be an obvious pseudonym, the onus is on the applicant to prove that they are in fact known by that name and thus that they have made a valid request.

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 expect 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. Further, where the Commissioner receives complaints in such cases, he would wish to use the least intrusive method of checking the identity of the requestor.

Finally, the Commissioner acknowledges that what constitutes an individual's real name is not always clear cut, i.e. it is not limited to the name that appears on someone's birth certificate or marriage certificate and it can include a name by which an individual is widely known. Both public authorities and the Commissioner should use a reasonably informal standard for confirming a requestor's identity where this is in issue.

Note

There is no equivalent to s8 under the Environmental Information Regulations. The Regulations do not allow applicants to use pseudonyms to make requests under the Regulations.

Further Information:

Section 8 of the FOIA states as follows:-

"8.-(1) 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 (emphasis added), and
-”

The Commissioner’s Legal Advice.

The Commissioner has sought legal advice and was advised that as s.8 refers to “the name of the applicant rather than “a” name, the applicant’s real name is required. This is further supported by the need to know the applicant’s identity so that certain provisions within the Act can be exercised, for example, whether two requests can be aggregated, whether a request is vexatious or repeated under s.14 or where the request involves disclosure of personal data.

The Commissioner’s Approach

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 request even on a 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 check the identity of the majority and in any event this would not be in the spirit of the Act or the Commissioner’s role in promoting access to official information.

This approach is reflected in the external guidance which also suggests that as a matter of good practice a public authority should still consider a request made using a pseudonym where it is content to disclose the information requested and where identity is not relevant.

How the issue will arise

The issue of a pseudonym may arise in a number of ways, for example,

- It is quite possible that a request made in the name of a pseudonym is dealt with by a public authority but results in a complaint being made to this Office on another issue, for example the application of exemptions. If on receipt of such a request the applicant’s name seems to be an obvious pseudonym then we should clarify the identity of the applicant and if we are satisfied the request is pseudonymous a decision notice cannot be issued.

However we should consider whether there is a value in trying to informally resolve issues raised by the complainant in order to prevent them being raised later should the applicant subsequently make a valid request in their own name. In such cases both parties should be made aware that this is an informal process and that a decision notice cannot be issued.

- Or it may emerge during the course of an investigation of a complaint that a pseudonym has been used. For example, an applicant makes a request in the name of

Daniels but it is later revealed in some way that her real name is Clare Jackson. Again, knowing this, we cannot progress to a decision notice but there may be an opportunity to seek an informal resolution.

- Or a public authority may believe it has detected the use of a pseudonym, obviously, and refused a request on that basis. In such cases the subject of the complaint will be whether the public authority has grounds for rejecting the request on this basis.

Obvious Pseudonyms

Some pseudonyms will be easy to identify, for example, where an applicant has used the name of a film or cartoon character (e.g. Mickey Mouse, The Godfather), an inanimate object (e.g. Mirrorball, Safety Pin) or a description (e.g. 'a concerned Greater Manchester resident').

Recent and real examples to this office include a request from a Miss Sue D Nym. An example was an applicant who made a number of requests using the name Socrates. These cases were closed without issuing a decision notice i.e. they were not accepted as valid complaints under s50 (although a couple of the public authorities did respond to Socrates requests as a matter of good practice).

However it is conceivable that an applicant's actual name appears at first glance to be a pseudonym. For example, the Skye bridge campaigner who has officially changed his name to Robbie the Pict and has been served with legal papers in that name. In such cases, the onus is on the applicant to show that the name used is their real name and that they have made a valid request/complaint. However, the Commissioner expects it would be relatively straightforward for such individuals to confirm their name, for example, the applicant could produce their birth certificate or Change of Name Deed, although the least intrusive method of checking a person's identity should be used.

Non-Obvious Pseudonyms

Where an applicant has used a name which is not obviously a pseudonym, then public authorities and the Commissioner should assume that the applicant has used their real name and as such there should be no routine or random checking of a requestor's identity. In taking this approach, the Commissioner is willing to accept that this will mean that pseudonymous requests will go undetected, for example where an applicant uses an ordinary but nonetheless assumed name. However the Commissioner believes that it would be otherwise against the spirit of the Act by introducing an over-legalistic approach to an Act under which disclosures are considered to the world at large.

However, there may be circumstances where the public authority is suspicious that the name used is an assumed name even where the applicant has used a name which is not obviously a pseudonym. If a public authority has refused to deal with a request(s) on this basis, they should provide reasons and/or evidence to support their suspicions.

It is worth at this stage considering what is likely to constitute someone's real name. Clearly Robert Jones could make a request as Rob Jones, Bob Jones, Mr Jones or M Jones. However requests made by applicants using only one name or their initials or R.J. are not valid as the Commissioner does not consider it to be asking for unnecessary detail in asking for a full name to be provided and further this prevents two applicants called 'Rob' receiving responses in relation to the other's request.

However there may be a whole range of other situations where an applicant may call a name, other than that on their birth or marriage certificate, to be their real name, for example a child may assume the name of a step-parent. Assumed names such as this will still be considered the applicant's real name if they are able to demonstrate that they are widely known by that name. It is even conceivable that where an individual is widely known by a unique nickname we would accept that nickname as their real name. The examples are not exhaustive however and it is recognised that in some situations it is difficult for an applicant to demonstrate that they are indeed widely known by such a name.

Non-Natural Persons making FOI Requests

Journalists often make requests 'on behalf of' the newspaper for which they write. The Commissioner accepts that these requests are valid whether they are made by for example (i) Dominic Kennedy, (ii) Dominic Kennedy on behalf of The Times or (iii) The Times newspaper. However if Dominic Kennedy left the employ of the newspaper request (i) and (iii) would be unaffected and in relation to request (ii), the request could be continued in the name of The Times or else picked up by another Times journalist.

Solicitors may also make requests on behalf of their clients without naming the client. The Commissioner's view is that if the client does not wish to be identified, then the request should be made in the name of the solicitors.

The definition of 'person' under the Interpretation Act 1978 "*... includes a body of persons whether corporate or unincorporate*". Thus where requests are made by companies, the Commissioner can check Companies House website or the Charity Commission Reg to confirm the existence of the organisation. However it would seem that a relatively informal association of people could be classed as an unincorporated body. For example it would seem that four friends who meet once a month to discuss films and call themselves the 'Wilmslow Film Fanatics' may meet the informal criteria to be classed as an unincorporated body. The Commissioner would therefore adopt a pragmatic and low threshold for ascertaining whether such organisations exist.

Environmental Information Regulations

There is no equivalent to s.8 FOIA in the Regulations and nor does there appear to be any reference to what constitutes a valid request for information.

DEFRA guidance indicates that an applicant making a telephone request does not have to give a name or address. However as any refusals should still be made in writing, the

applicant may need to give some contact address (e.g. e-mail) to either receive the information or the refusal.

The Aarhus Convention is silent on the format of a valid request and the implementing guidance simply states that, "....A request can be any communication by a member of the public to a public authority asking for environmental information. The Convention does not specify the form of the request, thus implying that any request meeting the requirements of Article 4 whether oral or written will be considered to be such under the Convention."

Therefore, under the EIR requests can be made via an obvious pseudonym. Therefore, an early assessment of potential hybrid EIR/FOI cases will be important, particularly where a public authority has not considered the EIR angle. Thus applicants would be entitled to a decision notice dealing with the EIR aspects of the case only.

TABLE OF WORKED EXAMPLES

Example	Is this a valid request?	What would the ICO's approach likely to be?
<p>NOTE: This is not an exhaustive list.</p> <p>NOTE: The information below is intended as a guide only and it should not be considered as the definitive answer to the suggested scenarios. Each case should always be considered on its own circumstances.</p>		
NATURAL PERSONS		
Abbreviations are used e.g. Robert Jones makes the request as Rob Jones.	Yes	This is merely a different way of expressing an applicant's real name and it seems highly likely that this type of request would simply be dealt with as a routine FOI request.
Alternative, abbreviated names are used e.g. William Gibson makes the request in the name of Bill Gibson.	Yes	This is merely a different way of expressing an applicant's real name and it seems highly likely that this type of request would simply be dealt with as a routine FOI request.
Using the middle name e.g. Sarah Anne Elizabeth Spencer makes a request in	Yes	This is merely a different way of expressing an applicant's real name and it seems highly likely that this type of request would simply be dealt with as a routine FOI request.

the name of Liz Spencer

Names which can be reversed and are frequently used e.g. Mohammed Ali can also be known as Ali Mohammed and with various spellings e.g. Mohammed, Mohammad, Muhammad.

Yes

This is merely a different way of expressing an applicant's real name and it seems highly likely that this type of name would simply be dealt with as a routine FOI request.

Example

Is this a valid request?

What would the ICO's approach likely to be?

NOTE: This is not an exhaustive list.

request?

NOTE: The information below is intended as a guide only and it should not be considered as the definitive answer to the suggested scenarios. Each case should always be considered on its own circumstances.

Shortened names may remove identification of gender e.g. Alex Smith may refer to Alexander Smith or Alexandra Smith.

Yes

This is merely a different way of expressing an applicant's real name and it seems highly likely that this type of name would simply be dealt with as a routine FOI request although some proof of identity may be required if there are any protection issues in issue e.g. Alex Smith makes a subject access request and a public authority wishes to check whether this refers to Alex Smith (mother) or Alex Smith (son). However the least intrusive means of checking I.D. should be employed.

A married woman may use her maiden name for professional reasons but uses her married name outside work.

Yes

In the unlikely event that a public authority objects to a request of this sort, it should prove relatively straightforward for the applicant to prove that she is known by both her maiden and married names in different contexts. However the public authority would have to explain how this issue was picked up to ensure that they were not routinely or rarely asking applicants for proof of identity.

A child

Yes

In the unlikely event that a public authority objects to

assumed the surname of a step-parent without taking any formal steps to change his/her name and has continued to be known by the assumed name for years

request of this sort, it should prove relatively straightforward for the applicant to prove that s/he is known by the assumed name. However the public authority would have to explain how this issue was picked up to ensure that they were routinely or randomly asking applicants for proof of identity

An applicant may be an author who publishes work under a pen name and make the request using the pen name.

Yes

In the unlikely event that a public authority objects to a request of this sort, it should prove relatively straightforward for the applicant to prove that s/he is also known by a name. However the public authority would have to explain how this issue was picked up to ensure that they were routinely or randomly asking applicants for proof of identity

Example

Is this a valid request?

What would the ICO's approach likely to be?

NOTE: This is not an exhaustive list.

NOTE: The information below is intended as a guide only and it should not be considered as the definitive answer to the suggested scenarios. Each case should always be considered on its own circumstances.

An adult may only have been known via a nickname both professionally and by friends e.g. an applicant called Martin Grey has always been a huge fan of Ozzy Osbourne and is known as Ozzy and his business is called Ozzy

Yes / No

Although it is more likely that a public authority would object to a request in this type of scenario, it would be a decision made on the facts of the case, whether the applicant can be said to be widely known by the name used. The Commissioner will use a relatively informal standard which comes to this type of case.

Electrics.

The applicant, Mark Jones, makes the request using an assumed but ordinary name e.g. Anthony Phillips and uses this name throughout all correspondence with the pa/ICO.

No

Albeit that this request is not valid, it seems likely that would go undetected that an assumed name had been

It becomes apparent during the ICO's investigation that the applicant, Mark Jones, has used an assumed name.

No

At the point it becomes apparent that an assumed name has been used, then the request will be invalid and the investigation will stop.

The applicant only uses one name e.g. Adrian or initials e.g. S.P.H.

No

Albeit that the Act only states that "the" name of the applicant is required rather than 'the full' name of the applicant, the Commissioner would not consider it unreasonable to ask for a full name to be provided. This is also appropriate given that it could lead to unnecessary confusion/delay/possible data protection breaches if applicants cannot be distinguished from one another.

Example

Is this a valid request?

What would the ICO's approach likely to be?

NOTE: This is not an exhaustive list.

request?

NOTE: The information below is intended as a guide only and it should not be considered as the definitive answer to the suggested scenarios. Each case should always be considered on its own circumstances.

NON-NATURAL PERSONS

The request is made by a charity (e.g. a

Yes

The majority of charities should be registered with the Commission so a free search of their Register would confirm that the charity reasonably exists thus making this a valid

request is made by the Capesthorpe Women's Institute without any individual contact).		request. The Commissioner can also look at Companies House website where the request is made
A request is made by a group of friends who meet once a month to discuss films called the "Wilmslow Film Fanatics".	Yes	<p>As the definition of a person under the Interpretation Act 1978 includes an unincorporated body although there does not appear to be any definition of what constitutes an unincorporated body and instead characteristics have emerged from case law. To provide some guidance, HM Revenue & Customs' website (http://www.hmrc.gov.uk/manuals/ctmanual/ctm4130) suggest an unincorporated body can be characterised as follows: "<i>is not a legal entity,</i></p> <ul style="list-style-type: none"> <i>• is an organisation of persons or bodies (more than one) with an identifiable membership (possibly changing over time)</i> <i>• has a membership who are bound together for a common purpose by an identifiable constitution or agreement (which may be written or oral),</i> <i>• is an organisation where the form of association is one which is recognised in law as being something other than a partnership (for example, an incorporated body or a partnership)</i> <i>• must have an existence distinct from those persons who would be regarded as its members,</i> <i>• the tie between the persons need not be a legally enforceable contract.</i> <p><i>Whether an organisation is an unincorporated association is a question of fact and will depend upon a consideration of all the relevant circumstances. It cannot be determined by simply looking at what the organisation calls itself or the contents of its rules".</i></p> <p>Therefore a request from the Wilmslow Film Fanatics is a valid request provided the informal organisation can prove its existence and the Commissioner would use an informal standard in deciding whether the evidence provided is sufficient.</p>
A solicitor makes a request on behalf of a client	Yes	Where a solicitor makes a request on behalf of a client who does not wish to be identified, then a valid request will be made in the name of the solicitor.

behalf of a client but refuses to name the client.

A solicitor makes a request on behalf of a client and names the client for which s/he has made the request.

Yes

This is a valid request made in the client's name.

A journalist makes a request on behalf of a newspaper but then leaves the employ of the newspaper.

Yes

Valid requests can be made by journalists in their own in their names on behalf of the newspaper (and request the name of the newspapers only). If however a journalist makes a request on behalf of the newspaper and then leaves the employ of the paper, then the request will remain valid provided it is taken on by another journalist at the newspaper or by the newspaper itself.

PREVIOUS

Source

Legal Advice

Details

N/A

Related Lines to Take

N/A

Related Documents

GPE Guidance on Pseudonyms

Contact

HD

Date

10/02/2009

Policy Reference

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Appeal Summaries

- FOI 2009
- FOI 2008
- FOI 2007
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