How Moses invented freedom of information

Student Rabbi Gabriel Webber

Freedom of expression vs FOI

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to **receive** *and impart information and ideas without interference.*

European Convention on Human Rights

What is FOI?

The right to access information held by public authorities is a fundamental human right which should be based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.

Joint declaration of the UN, OSCE and OAS

The roots of FOI

- Anders Chydenius (1729-1803)
- Finnish clergyman
- Swedish MP
- Once appeared on a banknote

The roots of FOI

Free access should be allowed to all archives for the purpose of copying documents in loco or obtaining certified copies of them. Such documents include all the decisions of whatever kind and nature they may be that have been issued in the past or will be issued in future from government offices, together with the correspondence between them and private bodies.

Sweden's Right-of-access to Public Records Act 1766

Modern FOI

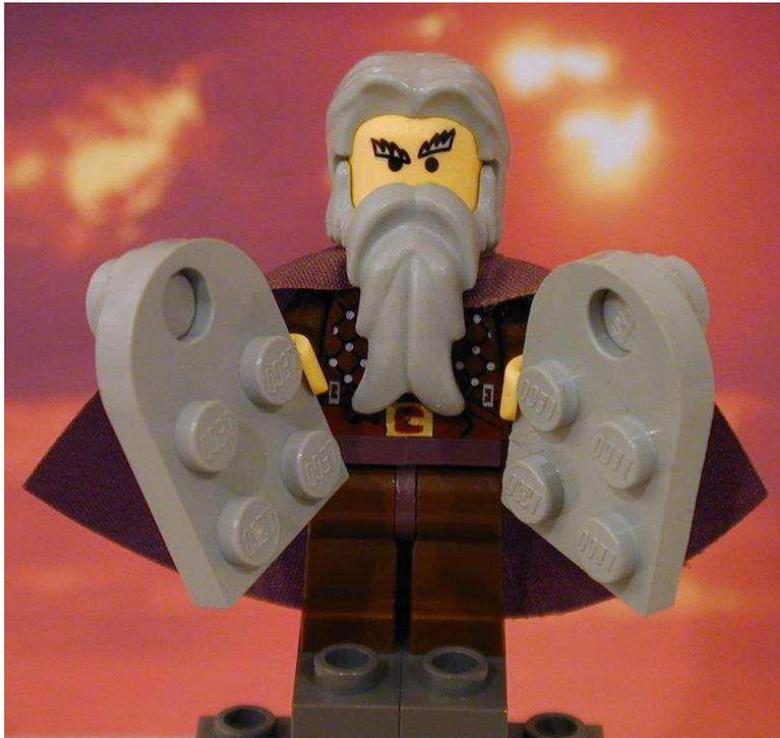*(1) Any person making a request for information to a public authority is entitled—*

(a) to be informed by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

Our very own Freedom of Information Act 2000

The roots of transparency

- Moses (mid-13th century BCE)
- Egyptian prince
- Israelite leader
- Once appeared in a holy book

The roots of transparency

Moses wasted no time when the Tabernacle was completed, for he said to the people: "Come, and I will furnish you with the complete details of all the expenditure involved."

Why did Moses need to account to the people when the Eternal One trusted him so implicitly? ...

Exodus Rabbah 51:6

The roots of transparency

…It was because Moses overheard certain Israelites scoffing behind his back. They said, "See the back of Moses's neck: how fat it is." To which his friend retorted, "What! Do you expect a man in charge of the construction of the tabernacle not to be rich?"

When Moses heard all this, he said, "I vow that as soon as the Tabernacle is completed, I will give you an account of everything."

Exodus Rabbah 51:6

Modern transparency

There is a long-standing lack of public confidence in the system of MPs' allowances. The extent of current disclosure is not sufficient to enable the public to know how the money is spent. Nor is the existing system sufficient to create public confidence that it is being spent properly.

Information Tribunal in EA/2007/0060

The roots of accountability

Rabbi Yochanan said in the name of Rabbi Simeon ben Jehozadak: One should not appoint anyone leader of a community, unless they carry a basket of reptiles on their back, so that if he became arrogant, one could tell him: 'Turn around!'

bYoma 22b

Modern accountability

The publications complained of contained criticism of the two politicians in strong, polemical, sarcastic language. No doubt they were offended, and may have even been shocked. However, in choosing their profession, they laid themselves open to robust criticism and scrutiny; such is the burden which must be accepted by politicians in a democratic society.

European Court of Human Rights in [2005] ECHR 72713/01

The roots of responsible leadership

Judges: Do you imagine that I offer you rulership? It is servitude that I give you.

bHorayot 10a-b

The one who collects donations must not enter while wearing a cuffed garment, and not with a shoe, and not with a sandal, and not with tefillin, and not with an amulet, since all of these have places into which money can be inserted. The concern is that perhaps the one collecting the funds will one day become rich and people will say that they became rich from stealing the funds of the chamber, even though they did not actually do so.

mShekalim 3:2

Modern responsible leadership

When we realise that the civil servant acts as a trustee and as an agent of the public, they are therefore bound by the duties of an agent, including the duty to account for their actions, ie to disclose to their principals — the entire public — what they have done and what they have not done, why they have done one thing and not another, and when they take no action, why they took no action.

The Israeli Supreme Court in HCJ 3751/03

The roots of Public Interest

Seven conditions for speaking lashon hara:
1. *Conduct definitely happened*
2. *Conduct is definitely wrongful*
3. *Must have rebuked the transgressor privately*
4. *No exaggeration*
5. *Must have pure intentions*
6. *Exposure must be a proportionate response*
7. *Exposure must not be overly damaging*

Chofetz Chaim (1873)

Modern Public Interest

Ten conditions for risking libel:

1. Conduct must be of a serious nature

2. Conduct must be of concern to the public

3. The source should be reliable

4. The information should have been verified

5. The information shouldn't contradict an earlier, responsible investigation

6. Publication must have been urgent

7. The subject should have been asked their side

8. The subject's side should be published

9. Suspicions should not be presented as definite facts

10. Publication should be fair in all the circumstances

The House of Lords (Supreme Court) in [1999] UKHL 45

How can you use FOI?

- Who is subject to the FOIA?

- What can I ask for?

- What can't I ask for?

- How can I go about it?

- What's in it for me?

Who is subject to the FOIA?

- Government departments (eg the Foreign Office)
- Local authorities (eg Barnet Council)
- Police and fire services
- State schools
- NHS bodies

What can I ask for?

- "Recorded information"
- Documents
- Answers to (some) questions

What can't I ask for?

- Vexatious requests
- Expensive requests
- Information available elsewhere
- Exemptions to safeguard others' interests