

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2024

Public Authority: Oxford Direct Services Limited (ODSL)

Address: St Aldates Chambers
109 St Aldates
Oxford
OX1 1DS

Decision (including any steps ordered)

1. The complainant requested from Oxford Direct Services Limited ('ODSL') information relating to the furloughing of specified staff within 2021. ODSL initially argued that it did not hold any information falling within the scope of the request. During the course of the Commissioner's investigation, however, ODSL located and disclosed some information but it argues that no further relevant information is held by it.
2. The Commissioner's decision is that on a balance of probabilities, ODSL has now complied with section 1 of FOIA. However, he has also decided that ODSL did not comply with the requirements of section 10 of FOIA as it did not disclose the information which it did hold within 20 working days of receiving the request for information.
3. The Commissioner does not require ODSL to take any steps.

Request and response

4. On 5 August 2023 the complainant wrote to ODSL making the following request under FOIA:

“Please provide all your documents and communications concerning the decision to furlough 47 employees in Building Planned Operations in January 2021.

I understand the need to redact any personal information, but this should not stop you from providing the operational and logistical information that resulted in you taking that decision.”
5. ODSL responded on 1 September 2023. It said that the requested information is no longer held by it due to a mail box clean up.
6. On the same date the complainant requested that ODSL carry out an internal review of its response. He also requested:
 - a) “What date was the mailbox clean-up carried out?
 - b) Can you confirm or deny that the requested information has been archived on or offsite?
 - c) Please provide a copy of your data retention policy.”
7. ODSL responded on 1 September 2023. It said that since it had fully responded to the initial request it would treat the internal review request as a new request for information. It did not respond to again to the request for the initial information.
8. On 12 September 2023 it responded to the complainant's further requests for information. It said that it does not have a record of when the information was deleted, but believed that this would have been around 6 months prior to the request. It also provided a link to its data retention policy.
9. Following a further chaser email from the complainant, on 6 October 2023 ODSL confirmed that the requested information has not been archived or held offsite. The emails had been permanently deleted from its systems and therefore unrecoverable.

Scope of the case

10. The complainant contacted the Commissioner on 9 October 2023 to complain about the way his request for information had been handled. He argued that ODSL holds relevant information.
11. During the course of the Commissioner's investigation, on 6 February 2024, ODSL disclosed some information which it had subsequently located relating to its decisions to furlough staff. On the same date, the complainant wrote to the Commissioner on an associated case, stating that he believed further information would be held by it.
12. The following decision notice therefore analyses whether ODSL is likely, on the balance of probabilities, to hold further information for the purposes of section 1 of FOIA.

Reasons for decision

Section 1 – General right of access to information

13. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled—

- (a) to be informed in writing 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.*
14. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
 15. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
 16. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls

within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.

The complainant's position

17. The complainant argues that even if ODSL has deleted the emails in question it will hold back ups or archived copies of that information.
18. He further questioned whether public authorities should be obliged to archive all emails. He argued that, otherwise, if authorities have done something they would rather not make public, they could purge all emails to prevent disclosure.

ODSL's position

19. ODSL said that IT staff conducted searches of network files and mailboxes. Searches were also carried out by individuals within the teams that were likely to hold documentation and emails on the topic of furlough. Whilst an initial letter was sent to staff who were likely to be affected by furloughing a lot of the consultation was carried out verbally.
20. It said that no information is held on personal PC's or laptops. Any relevant information would all be held on work-based computer equipment, which is all networked.
21. It confirmed that information was held previously, but it said that due to the age of the information, this has now been deleted as part of its records retention policy. It said that due to the length of time since furlough took place the emails would no longer be required, and they would therefore have been deleted as part of its information management and retention practices. Once all furlough claims had been completed and audited, there would be no need to retain the detailed information. Therefore, this would have been deleted in line with its data minimisation principle.
22. It said that it does not hold a record of when the data was deleted, as it does not routinely record the dates of the deletion of emails. However, it considered that this was likely to have been 12 months before the request was submitted.
23. It said that emails would have been deleted over a broad period of time since furlough took place, as and when they became surplus to requirements. It considered that the information would not have all been deleted at the same time, as this would be dependent upon each department and the records concerned. It said, for example, that HR would have deleted its records after a 6-month period of inactivity on the topic to which it is regarding. All processing and

audits would have been completed by that point, and it would then have been surplus to requirements. It said that this is in accordance with its retention policy and data minimisation.

24. It said that a lot of emails would have been destroyed when it migrated its systems to Office 365. It only has a small mailbox capacity on each account, so mailboxes are cleared out regularly by means of deleting emails.
25. It said that back-ups are carried out on a 30-day basis and only the latest version is accessible. If data was stored on a drive, following the 30-day period, it would not then be recoverable.

The Commissioner's conclusion

26. The Commissioner has considered the ODSL's position. Whilst the Commissioner recognises that the complainant believes that further information would be held by ODSL, given the time period which has passed since furlough was in place, the searches which ODSL has described it undertook, and its description of its records management policies, the Commissioner considers that it no longer holds any relevant data falling within the scope of the complainant's request for information.
27. The Commissioner notes that back-ups are only recoverable within 30 days prior to a new back up being taken. The information requested by the complainant would not therefore still be held by ODSL in its back up.
28. The Commissioner has considered the arguments submitted by ODSL. There is no contradictory evidence available to the Commissioner which indicates that ODSL's position is wrong.
29. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held by ODSL for the purposes of section 1 of FOIA.

Section 10 - Time for Compliance

30. Section 10(1) of FOIA requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
31. ODSL received the request for information from the complainant on 5 August 2023. It did not, however, disclose the information which it did hold to the complainant until February 2024.
32. The Commissioner has therefore decided that ODSL did not comply with the requirements of section 10(1) of FOIA.

Right of appeal

33. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

34. 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.
35. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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