

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 February 2024

**Public Authority:** Oxford Direct Services Ltd  
**Address:** St Aldates Chambers  
109 St Aldates  
Oxford  
OX1 1DS

#### **Decision (including any steps ordered)**

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1. The complainant requested information held by Oxford Direct Services Limited (ODSL) which form communications between ODSL and Oxford City Council (the council) about the payment of dividends.
2. ODSL referred the complainant to two recent requests that they had made, stating that it considered that all the information held relating to dividend payments had been released in response to those requests. It also provided the complainant with explanations about payments.
3. During the course of the Commissioner's investigation, ODSL provided the complainant with copies of emails, redacting some information under section 40(2) (third party personal information) of FOIA.
4. The Commissioner's decision is that ODSL is entitled to rely on section 40(2) of FOIA as its basis for withholding third party personal information. However, he has found a breach of section 10(1) of FOIA as ODSL failed to provide the complainant with the emails relevant to their request within the required 20 working days.
5. The Commissioner's decision is that, on the balance of probabilities, ODSL does not hold any information relevant to the request in addition to that which has already been provided to the complainant.
6. The Commissioner does not require further steps.

## Request and response

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7. On 14 May 2023, the complainant wrote to ODSL and requested information relating to dividend payments to the council. Whilst the complainant's request was set out in three parts, they have only raised concerns about ODSL'S handling of part one of their request, which asked for the following information:  
  
"1. Please provide copies of any communications that you may hold between ODS and Oxford City Council concerning the payment of dividends."
8. On 18 May 2023, ODSL responded to the complainant, providing some explanations about the dividend payments made to the council.
9. On 19 May 2023, the complainant requested an internal review, stating that ODSL had failed to provide the information that they had requested.
10. On 14 June 2023, ODSL provided its internal review response. It provided further clarity regarding previous statements made about dividend payments to the council. ODSL also referred to two previous requests made by the complainant, stating that it considered that the information held relating to its dividend payments to the council had been provided in response to these requests.

## Scope of the case

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11. The complainant has raised concerns with the Commissioner about ODSL'S response to part one of their request. They have said that ODSL has failed to either provide copies of information relevant to this part of their request, or confirm that it is not held.
12. During the Commissioner's investigation, ODSL confirmed that it had identified one set of emails relevant to the request which it believed had been provided to the complainant in response to a previous request. However, as ODSL was unable to say with absolute certainty that a copy of this information had already been released, it agreed to send a copy to the complainant, in a redacted format. ODSL has confirmed that it is relying on section 40(2) of FOIA to withhold names and contact details contained within the emails.
13. The Commissioner has found that part one of the complainant's request is almost identical to a request that they submitted to ODSL on 30 April

2023 (this is one of the requests referred to by ODSL in its internal review response to the complainant). That request was for the following:

“Please provide copies of all communications you hold between ODS and Oxford City Council concerning the payment of money to the Council.”

14. On 7 June 2023, ODSL had provided the complainant with copies of some information in response to their request of 30 April 2023.
15. The Commissioner has considered the terms of the complainant’s request of 30 April 2023, and their request of 14 May 2023, and the fact that they were both submitted within the same 14 day time period. In the circumstances of this particular case, the Commissioner considers it appropriate to decide only whether, on the balance of probabilities, ODSL holds information relevant to the request of 14 May 2023, in addition to that information already released to the complainant on 7 June 2023.
16. The Commissioner will also decide whether the ODSL is entitled to rely on section 40(2) of FOIA as its basis for withholding part of the information contained within the copies of the emails recently provided to the complainant in response to their request of 14 May 2023.

## **Reasons for decision**

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### **Section 1 – information held/not held**

17. Section 1 of FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them, if it is not exempt information.
18. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, but rather will determine whether it is more likely than not that the public authority holds information relevant to the complainant’s request.
20. ODSL has advised that it does not hold any information relevant to the request in addition to that which has already been provided to the

complainant in response to their previous requests for information about dividends and payments to the council (and the set of emails which it recently sent to the complainant).

21. ODSL has provided details of the searches carried out in order to identify information that might be relevant to the request. It has said that searches were carried out by its finance department and its IT department in order to identify written communications sent between the council and ODSL about dividend payments made. ODSL has confirmed that no written communications have been located, other than those emails recently provided to the complainant.
22. ODSL has said that verbal communications did take place, and where there is recorded information held about such communications, such as minutes of meetings, these have all been released to the complainant.
23. ODSL has said that it does not consider it likely that emails relevant to the request were previously held, and subsequently deleted. It says that this is because there is no evidence to suggest that, aside from the copies of emails recently sent to the complainant, there has been any email correspondence sent between ODSL and the council about payments.
24. The Commissioner is satisfied that ODSL has conducted reasonable searches to locate all the information that is directly relevant to the terms of the complainant's request, and he has seen no compelling evidence indicating that further information is held.
25. ODSL has also explained that, aside from the small number of emails that were recently supplied to the complainant, communications between ODSL and the council about the payment of dividends consist primarily of verbal discussions, which take place at meetings between the two parties.
26. Having considered all of the available information, the Commissioner finds that, on the balance of probabilities, ODSL does not hold any further information falling within the scope of the complainant's request.

### **Section 40(2) – personal information**

27. Section 40(2) says that information is exempt information if it is the personal data of another individual (data subject) and disclosure would contravene one of the data protection principles.
28. The relevant principle in this case is Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR). This says that personal data must be processed lawfully.

29. When considering whether disclosure would be lawful, the Commissioner considers the complainant's legitimate interests and whether disclosure is necessary to meet those legitimate interests. If appropriate, he will finally go on to balance the complainant's legitimate interests against the data subjects' rights and freedoms.
30. In this case, ODSL has redacted the names and contact details of officers from the emails recently released to the complainant. The Commissioner is satisfied that the withheld information is the data subjects' personal data – they can be identified from this information, and it relates to them.
31. The Commissioner has found difficulty establishing any legitimate interest in the disclosure of information that would identify individuals in this case, other than further transparency regarding information held by the ODSL.
32. The Commissioner considers that the disclosure of the withheld information to the 'world at large' in response to an FOIA request may not have been within the reasonable expectations of such individuals, and that the loss of privacy may cause unwarranted distress.
33. Therefore, it is the Commissioner's view that there is insufficient legitimate interest in this case to outweigh the relevant individuals' fundamental rights and freedoms. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. Disclosure would therefore contravene a data protection principle, that set out under Article 5(1)(a) of the UK GDPR.
34. As such, the Commissioner's decision is that ODSL is entitled to withhold the names of officers and contact details contained within the relevant emails under section 40(2) of FOIA.

### **Section 10 – time for compliance**

35. Under section 10(1) of FOIA, a public authority must communicate relevant information that it holds, and that is not exempt information, promptly and within 20 working days following the date of receipt of the request for it.
36. In this case, during the Commissioner's investigation, ODSL identified some information that was relevant to the request. There is no evidence that this information had been released to the complainant. The Commissioner therefore finds that ODSL did not provide the complainant with all relevant information within 20 working days and has therefore breached section 10(1) of FOIA.

## Right of appeal

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37. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**