

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

### **Decision notice**

**Date:** 29 February 2024

**Public Authority:** Oxford Direct Services Limited (ODSL)

**Address:** St Aldates Chambers

109 St Aldates

Oxford

OX1 1DS

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

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1. The complainant requested details of a contract between Oxford Direct Services Limited ('ODSL') and another company, Cuckoo Fish Limited. ODSL said that it does not hold any information, but clarified that its associated company, Oxford Direct Services Trading Limited ('ODSTL'), would do. At review stage, ODSL upheld its decision that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, ODSL was correct to state that it does not hold the requested information for the purposes of section 1 of FOIA.
3. The Commissioner does not require ODSL to take any steps.

## Request and response

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4. On 20 August 2023, the complainant wrote to ODSL and requested information in the following terms:

*"Dear Oxford Direct Services Limited,*

*Since 2018, please provide details of all work awarded to Cuckoo Fish Ltd. Please provide the following information for each contract:*

- 1. Contract reference number.*
- 2. Start and end date of work undertaken.*
- 3. Cost of individual contract and payment date.*
- 4. Scope of work undertaken for each contract.*
- 5. Job title of ODS manager who awarded each contract.*

*Please consider "contract" to mean any individual job or work undertaken on behalf of ODS Ltd.*

*If the information you provide is in any way different to the information provided in the following FOI request:*

*<https://www.whatdotheyknow.com/request/o...>*

*then please provide an explanation for the discrepancies."*

5. ODSL responded on 22 September 2023. It said that no information is held by it. It clarified to the complainant that there was an error on its contracts register which mistakenly showed a contract between ODSL and Cuckoo Fish, but this entry was incorrect and has subsequently been amended. It said that ODSTL did have contracts with Cuckoo Fish Ltd, but that ODSL did not. It confirmed that no information is held by ODSL falling within the scope of the request for information.
6. Further correspondence took place, following which, on 20 October 2023, the complainant requested that ODSL carry out a review, arguing that *"I made no reference to ODSTL and not interested in ODSTL."* The complainant therefore asked ODSL to respond to the questions asked in the request.
7. ODSL wrote to the complainant on 20 October 2023. It upheld its previous decision that ODSL does not hold any information falling within the scope of the request.

## Scope of the case

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8. ODSL and ODSTL work together under the group name ODS, or ODS Group in terms of the services which they provide. ODSL is subject to the Public Contracts Regulations 2015 and is therefore required to publish a register of contracts. ODSTL is not required to do so as it is a purely commercial trading entity.<sup>1</sup>
9. For the purposes of FOIA, ODSL and ODSTL are separate and individual public authorities which are both subject to the terms of FOIA.
10. ODSL clarified to the complainant that it does not hold the requested information, but that ODSTL would do.
11. The complainant contacted the Commissioner on 21 October 2023 to complain about the way their request for information had been handled. They clarified to the Commissioner that their only interest relates to contracts between ODSL and Cuckoo Fish, not any contracts between ODSTL and Cuckoo Fish.
12. The Commissioner therefore considers that the scope of his investigation is to determine whether ODSL holds any information falling within the scope of the complainant's request for information.

## Reasons for decision

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### Section 1 – General right of access to information

13. 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.
14. 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.

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<sup>1</sup> <https://www.odsgroup.co.uk/About-ODS>

15. 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

16. The complainant argues that ODSL will hold information falling within the scope of his request for information.
17. The complainant argues that, following a previous FOI request, they are trying to establish details of contracts awarded by ODSL to Cuckoo Fish as the details in the current ODSL contracts register differ from the information it had supplied previously.

#### The ODSL's position

18. ODSL highlighted that both the request for information and the subsequent request for review only relates ODSL, not to ODSTL. In their request for review, the complainant specifically stated that the request relates only to ODSL, not to any contract between ODSTL and Cuckoo Fish Ltd.
19. ODSL argues that it does not hold information falling within the scope of the complainant's request for information because ODSL has not contracted with Cuckoo Fish. It explained that there was previously an error on its contracts register in which Cuckoo Fish was listed as having a contract with ODSL, however the register has now been corrected.
20. ODSL also confirmed that it has carried out searches for relevant information. It said that if relevant was held, it would be held electronically. It clarified that the information would be held on its networked systems, not individual computers, as all contract and procurement information is stored within a specific system/database.
21. It said that searches were therefore carried out by its Procurement and Finance teams for any information/data relating to Cuckoo Fish contracts. It searched all systems & programmes used in which the information requested would have been held. No information was located.
22. It confirmed that no information has been deleted as there has been no contracts between Cuckoo Fish and ODSL.

23. It also explained that, if held, the requested information would have been required to have been retained for the purposes of accounting.
24. Following its searches ODSL confirmed that no information is held by it falling within the scope of the complainant's request for information.

The Commissioner's conclusion

25. The Commissioner has considered the arguments of both parties. Whilst the complainant argues that information will be held by ODSL, it has confirmed that after adequate and appropriate searches of its systems it has not located any relevant information falling within the scope of the request. It has also provided an explanation as to why that is the case.
26. There is no contradictory evidence available to the Commissioner that indicates that ODSL's position is wrong.
27. On this basis the Commissioner has concluded that, on the balance of probabilities, ODSL does not hold the requested information for the purposes of section 1 of FOIA.

## Right of appeal

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28. 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)

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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