

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2024

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

Decision (including any steps ordered)

1. The complainant requested information held by Oxford Direct Services Ltd (ODSL) relating to the delays that occurred in paying dividends to Oxford City Council (OCC) for the year 2021-22.
2. ODSL provided the complainant with the information it considered to be relevant to the request in a redacted format.
3. The complainant has not contested redactions that were made to third party personal information under section 40 of FOIA.
4. The Commissioner has found that the only other information that has been redacted by ODSL that falls within the scope of the complainant's request is the name of a software system. The Commissioner has decided that ODSL has provided insufficient arguments to support its position that this information is subject to the exemption at section 43(2) – commercial interests, of FOIA. The Commissioner therefore finds that ODSL is not entitled to rely on section 43(2) as its basis for withholding such information.
5. The Commissioner has also found a breach of section 10 of FOIA, as ODSL failed to provide the complainant with information relevant to their request within the statutory 20 working days.

6. The Commissioner requires ODSL to take the following steps to ensure compliance with the legislation.
 - Disclose the information contained within the minutes of the ODSL Board meeting of 27 July 2022, that confirms the name of the relevant software system.
7. ODSL must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

8. Oxford Direct Services (ODS) is the group trading name for two separate companies, ODSL and Oxford Direct Trading Services Limited (ODSTL), which are both wholly owned by Oxford City Council (OCC). Decision notice [IC-242852-H6B6](#) sets out details of the Commissioner's decision that both ODSL and ODSTL are considered to be separate public authorities for the purposes of FOIA.
9. ODS currently handles and responds to information requests on behalf of both ODSL and ODSTL.
10. The request under consideration within this decision notice relates to the delay in the payment of dividends to OCC in the financial year 2021-22. Whilst both ODSL and ODSTL pay dividends to the council, the Commissioner has decided that it is appropriate to issue only one decision notice which will consider information held by ODSL. This is because the only withheld information that the Commissioner has identified to be relevant to the complainant's request is contained within the minutes of an ODSL Board Meeting.
11. At the time of the complainant's request, OCC handled requests for ODS information. Since then, this arrangement has been ended and ODS now handles requests in house.

Request and response

12. On 28 January 2023, the complainant made the following request for information:

"Can you please provide copies of all communications (emails + minutes from meetings) concerning the delay to signing off the ODS

Financial Accounts and declaring dividend payment to Oxford City Council for the financial year 2021/22.”

13. OCC subsequently advised the complainant that ODS would be better placed to respond directly to this request.
14. ODS, acting on behalf of ODSL and ODSTL, provided some information to the complainant on 2 June 2023, and 6 June 2023.
15. On 6 June 2023, the complainant raised concerns about the redactions made to the information that had been released. This was then considered as an internal review request.
16. On 3 July 2023, ODS provided a response. The complainant was advised that the redacted information was considered to either fall outside the scope of their request, or was exempt from disclosure under section 40 - personal information, section 41 - information provided in confidence, and section 43 - commercial interests, of FOIA.

Scope of the case

17. The complainant has raised concerns about the redactions made to the information that was provided to them in response to their request of 28 January 2023.
18. The complainant has not contested the decision to withhold the personal information of third parties under section 40 of FOIA. However, they have said that they are concerned about significant redactions made to some of the information which has been released.
19. The Commissioner notes that some of the information which was provided to the complainant on 2 June 2023, and 6 June 2023, was created after their request of 28 January 2023. This would therefore not fall within scope of their request.
20. The Commissioner has also found that the complainant has been provided with copies of some information that does not fall within the terms of their request of 28 January 2023. For example, some of the information that has been provided in a redacted format concerns details of the dividends and how much might be paid to OCC, but it is not about the actual delay in the payment of dividends to OCC for the year 2021-22.
21. The Commissioner has identified only one set of information within the redacted documentation provided to the complainant on 2 June 2023, and 6 June 2023, that he considers to fall within the scope of the

complainant's request of 28 January 2023. This is the name of the software system that has been redacted from the copy of the minutes of the ODSL Board Meeting of 27 July 2022.

22. ODS has advised the Commissioner that the name of the software system held by ODSL was, at the time of the request, considered to be exempt from disclosure under section 43 of FOIA.
23. The Commissioner will therefore decide whether ODSL is entitled to rely on section 43 as its basis for withholding the limited set of information that has been identified as falling within scope of the complainant's request of 28 January 2023.

Reasons for decision

Section 43 – commercial interests

24. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
25. When relying upon the exemption at section 43(2) to withhold information, the public authority must be able to demonstrate a clear link between disclosure and the commercial interests of either itself, a third party, or both. There must also be a significant risk of the prejudice to commercial interests occurring, and the prejudice must be real and significant for the exemption to be engaged.
26. The exemption is subject to the public interest test. This means that even if the exemption is engaged, the Commissioner will need to decide whether it is in the public interest to release the information.
27. ODSL has said that disclosure of the withheld information "would" or "would be likely to" prejudice its commercial interests, and that of any relevant external software system supplier.
28. As it has not been made clear to the Commissioner whether ODSL considers that the disclosure of the name of the software system 'would', or 'would be likely to', cause prejudice, he has decided it is appropriate to consider whether the lower threshold of 'would be likely to' has been met in this case.
29. The internal review response sent to the complainant on 3 July 2023, stated that information about the specific software systems used, and the external suppliers of such systems, had been withheld as it considered that the disclosure of financial and operational data relating

to the third parties has the potential to prejudice their business interests.

30. ODSL has also said that the information about the software system was not in the public domain at the time of the request, and argues that the release of information about its business model which it considers to be commercially sensitive would prejudice its ability to negotiate best value arrangements with existing and future partners and suppliers.
31. Given that the withheld information would reveal details of the operation of the business, in that it will provide information relating to a software system which has been purchased and used by ODSL to assist with the management of financial information, the Commissioner is satisfied that such information relates to ODSL's commercial interests.
32. The Commissioner notes that ODSL has released information about various factors which may have contributed to the delay in the payments of dividends to OCC; this includes potential issues with its IT systems. However, it is the Commissioner's view that ODSL has not provided any explanation about how, at the time of the request, the disclosure of the name of the software system would be likely to cause prejudice to itself or any software supplier, or how its competitors could use the withheld information to its detriment.
33. It is not for the Commissioner to speculate as to why information would be likely to cause commercial prejudice to ODSL, or any other party. It is for ODSL to explain why the information would be likely to cause the prejudice it considers will occur with direct reference to the information in question.
34. The Commissioner does not consider the primary argument presented by ODSL in support of its position, that being that the name of the relevant software system was not in the public domain at the time of the request, to be an adequate explanation as to why disclosure would be likely to cause prejudice to the software provider, or ODSL.
35. In the absence of any further arguments from ODSL, it is the Commissioner's decision that section 43 is not engaged in respect of the information contained within the minutes of the ODSL Board meeting of 27 July 2022, which identifies the relevant software system used by ODSL.
36. As the Commissioner's decision is that section 43 is not engaged, he is not required to carry out a public interest test.

Other matters

37. Although it does not form part of this decision notice, the Commissioner regards it appropriate to highlight the difficulties he experienced in obtaining the relevant response and withheld information from ODSL. This led to a significant delay in reaching a decision in this case.
38. The initial failure of ODSL to provide the specific information requested by the Commissioner will be recorded. He may revisit this matter if he experiences similar difficulties with obtaining the required information from ODSL in future cases.

Right of appeal

39. 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

40. 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.
41. 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