

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2024

Public Authority: Oxford Direct Services Limited
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 Limited (ODSL) relating to communications it has exchanged with the Information Commissioner's Office (ICO).
2. ODSL refused the complainant's request, citing section 12(1) (cost limits) of FOIA.
3. The Commissioner's decision is that ODSL has not sufficiently demonstrated that section 12(1) is engaged.
4. The Commissioner requires ODSL to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the complainant that does not rely on section 12(1) of FOIA.
5. ODSL must take this step within 30 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.

Request and response

6. On 18 January 2024, the complainant wrote to ODSL and requested information in the following terms:

“For calendar year 2023, please provide copies of all communications you hold between ODS and the Information Commissioner’s Office. Where possible and with the necessary redactions, include copies of third party documents that were exchanged between the two parties.

Please provide ALL information you hold, including Freedom of Information and Data Protection matters that includes service updates; meetings and event arrangements, advice sought/received; instructions/responses on complaints, regulatory recommendations and discussions/responses around these recommendations; ad hoc emails”

7. On 8 February 2024, ODSL issued a refusal notice, citing section 12 of FOIA. It said that to provide the requested information would require a manual search of 348 files, and that it had estimated that each file would require 30 minutes of work to retrieve and extract the relevant information. ODSL said that the estimated time to comply with the request would therefore be approximately 104 hours, which would exceed the cost limit.
8. ODSL advised the complainant that they could consider refining their request and it recommended “shortening the time parameters or restricting communications to between ICO and ODS.” ODSL also explained that even if a new refined request were to fall within the cost limit, it might be that the exemptions under section 40 (personal data) and section 31 (law enforcement) of FOIA, would be applicable to the request.
9. At the internal review stage, ODSL upheld its original decision to refuse the request under section 12 of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. This reasoning covers whether ODSL is correct to apply [section 12\(1\)](#) of FOIA to the request. This states that a public authority is not obliged to comply with a request for information, if the authority estimates that the cost of compliance would exceed the [appropriate limit](#). The appropriate limit for ODSL is £450, which is based on one officer’s time of 18 hours at a cost of £25 per hour.

11. When estimating the cost of compliance, authorities can only take into account the cost of the following activities:
 - determining whether it holds the information;
 - finding the requested information, or records containing the information;
 - retrieving the information or records; and
 - extracting the requested information from records.
12. A public authority does not have to make a precise calculation of the cost of complying with a request; only an estimate is required. However, it must be a reasonable estimate, and the Commissioner considers that for an estimate to be reasonable it must be sensible, realistic, and supported by cogent evidence.
13. Section 12 is not subject to a public interest test. Therefore, if the public authority has estimated reasonably that complying with the request would exceed the cost limit there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
14. It is important to note that, when calculating any estimate of costs and time for compliance, the permitted activities listed in paragraph 11 of this decision notice do not cover time taken to apply exemptions from Part II of FOIA. This means that the time taken, or likely to be taken, to consider whether any exemptions apply, or to redact exempt information, cannot be taken into account when forming a cost estimate.
15. ODSL has confirmed to the Commissioner that its refusal notice contained an error, and should have said that it would require 174 hours (rather than the 104 hours stipulated) of staff time to manually search the 348 items identified at that time as being relevant to the request.
16. In any event, ODSL has revised its position in its submissions to the Commissioner. It has said that, upon further review, it has found that there are additional sets of information contained within the main folders it originally identified as being relevant to the request. ODSL has also said that it no longer considers that it would require 30 minutes of work per item of information located in order to comply with the request.
17. ODSL has confirmed that there are "14 main file locations", which it describes as "ICO folders", that have been identified as holding information relevant to the request. It says that these 14 ICO folders

are all held on one drive and contain all of the information held about ICO investigations.

18. ODSL has explained that within the 14 ICO folders, there are multiple subfolders and zip files. It has said that the zip files contain duplicate information to that contained within the folders, as they are created only for the purpose of sending information to the ICO, or a requester.
19. ODSL has said that having now considered the full content of the 14 ICO folders, it has identified 1002 items relevant to the request; 128 emails and 874 documents. It has also said that it has located an additional four emails from its Outlook system (making a total of 1006 items).
20. ODSL has confirmed to the Commissioner that its original estimate of 30 minutes of work per item of information had not been based on a sampling exercise.
21. ODSL has said that it has now conducted a "dip sampling" exercise of 30 separate items taken from the 14 ICO folders. It claims that it would require, on average, three minutes of time to locate and retrieve the information from each stored file and copy it to a separate folder for "review before disclosure"; one minute and 30 seconds to locate each item of information, and then a further one minute and 30 seconds to retrieve the information.
22. ODSL set out the following calculation in its response to the Commissioner:

1006 items x three minutes = 50 hours and 18 minutes. This equates to a total cost one officer's time (at £25 per hour) of approximately £1257.
23. ODSL said in its submissions to the Commissioner that, in addition to the searches already carried out, it would need to conduct a search of its Outlook system in order to identify if any more general email communications are held that fall within scope of the request. In the same submissions, ODSL confirmed that it has located four emails from the Outlook system that were not within the "ICO folders," but did not explain how or why these particular emails were identified, and others were not.
24. ODSL has not provided the Commissioner with details of any preliminary searches or estimated cost of work in relation to the additional information that may be held within its Outlook system. However, if ODSL is able to provide a sensible and realistic estimate, and cogent evidence, that the work required for compliance in relation to the information already identified (within the 14 ICO folders and four emails) would exceed the cost limit, then the unknown additional time

likely to be required to search and gather information contained within ODSL's Outlook system becomes a moot point.

25. ODSL has confirmed that it holds specific folders (14 ICO folders) that contain all of the information which it has exchanged with the ICO, and that these are all in one known location. As it has also said that "whole documents and emails would be in scope of this request", the Commissioner considers that minimal time would be required to search and locate this information.
26. The Commissioner cannot identify any good reason why the information contained within the 14 ICO folders could not remain in its current format, as a full set of information that falls within the scope of the request. Therefore, he does not consider it to be necessary to "retrieve" information or copy information to another file for the purpose of "review", or because information may be duplicated within the folders, in order to comply with the request.
27. Given how the requested information is held, the Commissioner also considers that ODSL has failed to provide sufficient explanation as to why it would take one minute and 30 seconds to locate each item contained within the 14 ICO folders.
28. The Commissioner acknowledges that there may be additional information held by ODSL relevant to the request within its Outlook system, and that this would add to the cost of compliance with the request. However, as ODSL has not provided any preliminary estimates in relation to the time likely to be required in order to search, locate, retrieve and extract this information, the Commissioner is unable to establish the effect that these activities might have on the cost of compliance with the request. He is therefore unable to take this into account when making his decision.
29. The Commissioner considers that ODSL has not provided sufficient explanation as to why the tasks it has identified would be necessary in order to comply with the request. Given this, he is unable to conclude that the estimate provided by ODSL is reasonable.
30. Therefore, for the reasons set out above, the Commissioner has decided that ODSL has failed to provide sufficient "cogent evidence" to demonstrate that its estimate of 50 hours and 18 minutes of staff time required to comply with the request is sensible and realistic. As the Commissioner is not persuaded that the cost estimate was reasonable, he finds that ODSL is not entitled to rely on section 12 of FOIA as its basis for refusing to comply with the complainant's request. At paragraph 4 above ODSL is now required to issue a fresh response to the complainant's request.

Other matters

31. Whilst the Commissioner has concluded that section 12 does not apply, the step specified at paragraph 4 above does not necessarily require ODSL to disclose the requested information.
32. ODSL is required to reconsider the request and issue a fresh response which does not rely on section 12 of FOIA. This fresh response could be in the form of a refusal notice if other exemptions apply.

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.

Suzanne McKay
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Wycliffe House
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