

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

### **Decision notice**

**Date:** 27 November 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 has requested information from Oxford Direct Services Limited ("ODSL") relating to the resignation of one of its directors. ODSL withheld the information under section 40(2) of FOIA.
2. The Commissioner's decision is that ODSL was correct to apply section 40(2) of FOIA to withhold the resignation letter and the date that the resignation was tendered. However, he has decided that the date that the resignation became effective should be disclosed.
3. The Commissioner requires ODSL to take the following steps to ensure compliance with the legislation.
  - To disclose the date when the resignation became effective to the complainant.
4. The public authority must take these steps 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

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5. On 24 June 2024, the complainant wrote to ODSL and requested information in the following terms:  

“Dear Oxford Direct Services Limited,

  1. What date did the Director of Finance tender his resignation?
  2. What date is the current Director of Finance's resignation effective.
  3. Please provide a copy of the Director of Finances resignation letter/email.”
6. ODSL responded on 11 July 2024. It applied section 40(2) of FOIA and refused to disclose the requested information.
7. Following an internal review, ODSL wrote to the complainant on 9 July 2024. It maintained its previous decision.

## Scope of the case

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8. The complainant contacted the Commissioner on 9 July 2024 to complain about the way their request for information had been handled. The complainant argues that ODSL was not correct to withhold the information under section 40(2) of the Act.
9. ODSL argues that the requested information is part of a settlement agreement. The arguments it has submitted to the Commissioner relate to the settlement agreement as a whole. However, the complainant's request was specifically for a copy of the former finance director's resignation letter, and the two relevant dates. It was not a request for a copy of the settlement agreement as a whole.
10. The following decision notice therefore solely considers whether ODSL was correct to withhold the resignation letter and the dates requested under section 40(2) of FOIA.

## Reasons for decision

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### Section 40 – personal information

11. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

12. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

15. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The withheld information is a resignation letter submitted by the former director of finance to ODSL, together with relevant dates associated with their resignation.
20. The former director is identifiable from the request and the withheld information. A disclosure would disclose biographical information about the director, namely details about their resignation and the date when they left their employment at ODSL.

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<sup>1</sup> 2 As amended by Schedule 19 Paragraph 58(3) DPA

21. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information both relates to, and identifies, the director concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
22. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
23. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

24. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

25. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the GDPR**

27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>2</sup>.

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<sup>2</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

28. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- i. **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii. **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii. **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interests**

30. In considering any legitimate interests in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
31. The complainant has asked for details regard the resignation of ODSL's director of finance. As ODSL is a publicly owned company, the public has a legitimate interest in understanding more about its senior officers and directors from the view of general transparency and accountability.

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"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

### **Is disclosure necessary?**

32. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
33. Beyond the fact that such a letter exists, there is little information of public value in the resignation letter itself. A disclosure of the information would provide details of the date, (meeting part 1 of the request), and also a copy of the letter (meeting part 3 of the request).
34. The Commissioner considers that it is already known that the former director has resigned and no longer works for ODSL. A disclosure of the resignation letter would not add any information of public value beyond the date on which the director submitted the letter.

### **Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

35. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
36. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
37. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
38. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

39. The Commissioner notes that it is already known that the director has resigned from their position at ODSL. He questions, therefore, whether disclosing the requested information would add anything of public value into the public domain.
40. The Commissioner also considers that a disclosure of the resignation letter is likely to cause the director distress if it is disclosed. The Commissioner considers that it is a generally recognised principle that a person's correspondence is private and confidential; even where the contents of that correspondence relate to their employment. The director would consider it intrusive, and into a primarily private matter. Its disclosure would also directly contradict the confidentiality terms of the settlement agreement.
41. In order to counter-balance the expectation of privacy there would need to be good reasons or circumstances which would warrant disclosure in a particular case. The Commissioner has not been made aware of any such circumstances in this case.
42. Taking the above into consideration, the Commissioner considers that the director would have had a reasonable expectation that their letter would not be disclosed to the whole world in response to an FOI request.
43. The Commissioner considers that the important aspect of this request is that it is known that the former director has left their role at ODS, and that the details of this are subject to confidentiality agreement between the parties. The former director would have a reasonable expectation that a copy of their resignation letter would not be disclosed to the public in response to an FOI request, and its disclosure would provide little of public value.
44. As regards the reasons for the former director leaving his role, there may be a legitimate interest in these being made public where the reasons have an impact on ODS or the public directly. However, where there is a decision to resign for personal reasons, the public would not have a legitimate reason in knowing this information beyond the fact that there has been a change in senior management. Neither of these options is highlighted in the resignation letter. The Commissioner's therefore considers that a disclosure of the withheld information would not further public understanding of this matter in this respect.
45. The Commissioner considers that the former director would have a strong and reasonable expectation that their personal letter of resignation would not be disclosed to the world without any lawful basis for doing so.

46. As such, the Commissioner had decided that a disclosure of the letter would not be lawful.
47. However, the Commissioner considers that the former director would have far less of an expectation that the date they left ODSL would be withheld. This date provides information on ODSL's financial management and oversight, and the former director would have a stronger expectation that this might be disclosed in order for ODSL to be transparent about its management structure and financial decision-making.
48. The Commissioner therefore considers that the date on which the former director left ODSL should be extracted and disclosed, purely as a date, rather than any specifically redacted document itself.
49. Other than the date of the former director's departure, and based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
50. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
51. The Commissioner has therefore decided that ODSL was correct to withhold a copy of the former director's resignation letter under section 40(2) of FOIA, however it should disclose a copy of the termination date to the requestor.



## **Right of appeal**

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52. 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)

53. 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.
54. 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**  
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