

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 May 2025

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

Address: St Aldates Chambers
109 St Aldates
Oxford
OX1 1DS

Decision (including any steps ordered)

1. The complainant requested correspondence sent by or to the People Advisor at Oxford Direct Services Limited ("ODSL"). ODSL disclosed some correspondence, but relied on section 40(2) of FOIA (third party personal information) to redact information from the correspondence. The complainant argues that ODSL has over-redacted the information it disclosed under section 40(2).
2. The Commissioner's decision is that ODSL has correctly relied on section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 10 September 2024, the complainant wrote to ODSL and requested information in the following terms:

"The job specification for the position of People Advisor states: "The purpose of this role is to lead on reducing employee absenteeism and to develop a positive culture around attendance management."

Please provide copies of all email communications sent by the People Advisor (including CC'd communications) to The People Manager and The HR Manager.

Time frame to consider is the past 6 months from 10 September 2024."

5. ODSL responded on 24 September 2024. It refused the request on the basis that section 12 of FOIA applied (appropriate limit).
6. On 8 October 2024 the complainant narrowed the scope of their request: "Based on your figures, please provide copies of the most recent 540 emails held."
7. Following an internal review, ODSL wrote to the complainant on 8 and 15 November 2024. It disclosed information in response to the request, however it redacted some sections from this information, applying section 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2024 to complain about the way their request for information had been handled. They argued that ODSL had over-redacted the documents under section 40(2).
9. The following therefore considers whether ODSL was correct to redact sections of the information from the information it disclosed under section 40(2) of FOIA.

Reasons for decision

Section 40 - personal information

10. 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.
11. In this case the relevant condition is contained in section 40(3A)(a). 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 UK General Data Protection Regulation ('UK GDPR').
12. 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.
13. 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?

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

"any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.
18. The withheld information includes contact names, telephone numbers and email addresses of ODSL employees. Some of the redacted sections also include information about ODSL employees.

19. ODSL has disclosed the main body of the correspondence and has redacted information where this refers to employees' identities, contact details, or information which would allow individual employees to be identified from the records even where their specific identities have been redacted. For instance, colleagues may be able to identify individuals involved in disciplinary proceedings or who have had occupational health issues from the information even where the name of the individual has been redacted. A disclosure of such information would allow colleagues an insight into their dealings with ODSL human resources over the issue which they would not otherwise know.
20. It has also redacted some pronouns from the information. The Commissioner notes that a disclosure of pronouns would narrow down the scope of the individuals which the information could relate to. This would increase the potential for the individuals to be identified from the disclosed information.
21. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to the data subject(s).
22. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

Special category data

23. Information relating to special category data is given special status in the UK GDPR.
24. Article 9 of the UK GDPR defines 'special category' as being personal data which reveals racial, political, religious, or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
25. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
26. The Commissioner considers that the only conditions that could be relevant to a disclosure under FOIA are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
27. ODSL clarified that some of the information falls within the [special categories of data](#) due to the nature of the role of the people advisor. People advisors deal with issues such as sickness, the health and

occupational health needs of individual employees, and details regarding any criminal records from the past, or allegations of criminal actions which arise from the employees', or their roles in their day-to-day employment.

28. Having viewed the withheld information, the Commissioner accepts that it contains some personal falling within special category data definitions.
29. The Commissioner has seen no evidence that the individuals whose special category data has been redacted from the correspondence have consented to their data being disclosed in response to an FOI request. There is also no evidence (or likelihood) that they have taken steps to make this information public.
30. The Commissioner therefore accepts that ODSL was correct to apply section 40(2) of FOIA to this type of information.
31. As regards the remaining personal data, 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.
32. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

34. 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.
35. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

36. 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"¹.

37. In considering the application of Article 6(1)(f) of the UK 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.
38. 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

39. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
40. Further, 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
41. The complainant has not provided any background to their request and therefore no private legitimate interests have been taken into account. However, as ODSL is a public authority, the public has a general public

¹ 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:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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".

interest in knowing that its employees are being managed correctly, and that ODSL's Human Resource functions are being administered appropriately.

Is disclosure necessary?

42. '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.
43. ODSL does not consider that it is necessary to disclose the redacted information in order to meet the legitimate interests identified above. The Commissioner disagrees. He considers that it is necessary for the information to be disclosed in order to create transparency on how ODSL deals with personnel issues, and whether these have been dealt with appropriately, in accordance with employment laws, and with a view to protecting public safety and the public purse.
44. The Commissioner is therefore satisfied that there are no less intrusive means of achieving the legitimate aims identified.

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

45. 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.
46. 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.

47. 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.
48. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
49. When information is disclosed under FOIA, it is to the world at large. It is therefore considered to be the equivalent of the public authority publishing the information on its website.
50. The Commissioner notes that the people advisor deals with human resources issues ("HR"). The information which they deal with is therefore often personal and private issues relating to ODSL's employees. The Commissioner fully accepts that information such as this would be considered by the individuals to be confidential between the employer and the employee as they relate to personnel matters. Personnel matters will often extend beyond the remit of individuals work within a public authority; they can relate to how issues within the individual's private life impact their work.
51. The Commissioner is therefore satisfied both that the individuals would have no expectations that this sort of information would be disclosed, and that they would find it deeply distressing if such private information were to be disclosed to the whole world in response to an FOI request.
52. However, the redacted information also includes names and contact details. The Commissioner has published guidance '[Requests for Personal Data about public sector employees](#)' which highlights that senior, or public facing officers would have a greater expectation that information about them in their role may need to be disclosed in order for the authority to be accountable and transparent. On the counter side, junior staff would not expect their personal data and contact details to be disclosed to the whole world in order for the authority to be accountable for its actions.
53. As a general rule, junior officers are involved in administrative, rather than decision making, roles and therefore the Commissioner does not consider that the legitimate interests of accountability and transparency outweigh the data subjects' fundamental rights and freedoms.
54. In this case, the body of the correspondence has been disclosed and it is only the names of the individuals concerned which have been redacted, together with any personnel data relating to employees, as noted above.

55. The Commissioner does not consider that the correspondents would expect their identities to be disclosed to the whole world in response to an FOI request.
56. Further, given that the nature of the correspondence is personnel related matters, junior managers, supervisors or HR officers may find it distressing if comments they have made within HR files were able to be widely associated with them in terms of the decisions being taken about employees, for instance, such as the health or disciplinary issues of individual employees. They would also not expect their details to be disclosed to the whole world in regard to such decision making.
57. Finally, the Commissioner is satisfied that a disclosure of the individual's names and contact details would add little of public value, and that it would not add any significant information which would aid in meeting the legitimate interests identified relating to whether ODSL is transparent and accountable for its actions and decisions.
58. The Commissioner therefore considers 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.
59. 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.

Right of appeal

60. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

61. 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.
62. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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