

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2024

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 from Oxford Direct Services Limited ('ODSL') information relating to the furloughing of specified staff within 2020. ODSL initially argued that it did not hold any information falling within the scope of the request. During the course of the Commissioner's investigation, however, ODSL located and disclosed some information but it argues that no further relevant information is held by it.
2. The Commissioner's decision is that on a balance of probabilities, ODSL has now complied with section 1 of FOIA. However, he has also decided that ODSL did not comply with the requirements of section 10 of FOIA as it did not disclose the information which it did hold within 20 working days of receiving the request for information.
3. The Commissioner does not require ODSL to take any steps.

Request and response

4. On 5 August 2023 the complainant wrote to ODSL making the following request under FOIA:

“With the onset of the covid pandemic in March 2020, from information on the ODS website, there were around 10 employees furloughed per month in Parks - DS between April 2020 and September 2020, with no employees furloughed in October 2020. However, from November 2020 to March 2021, there was a massive increase in the number of personnel from Parks-DS who were furloughed.

Please provide all the documents and communications you hold relating to the decision to furlough Parks - DS employees from November 2020 onwards.

Obviously, I do not expect any personal information to be revealed, however, I do expect you to provide information relating to the decision and justification for the large increase in numbers furloughed from November 2020 onwards within that department.”

5. ODSL responded on 4 September 2023. It said that the requested information is no longer held by it.
6. On the same date the complainant requested that ODSL carry out an internal review of its response. He also asked it further questions in relation to its retention and deletion practices, but these do not form part of this decision notice.
7. ODSL responded on 5 September 2023. It said that it would treat the questions he had asked as a new request for information, but it did not respond again to the initial request for information.

Scope of the case

8. The complainant contacted the Commissioner on 21 September 2023 to complain about the way his request for information had been handled. He argued that ODSL would hold relevant information in its archive files.
9. During the course of the Commissioner’s investigation, on 6 February 2024, ODSL disclosed some information which it had subsequently located to the complainant. However, the complainant wrote to the Commissioner on the same date arguing that ODSL would still hold further relevant information.

10. The following decision notice therefore analyses whether, on the balance of probabilities, ODSL holds further relevant information falling within the scope of the complainant's request of 5 August 2023.

Reasons for decision

Section 1 – General right of access to information

11. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled—

- (a) *to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
 - (b) *if that is the case, to have that information communicated to him.*
12. 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.
13. 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.
14. 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

15. The complainant argues that even if ODSL has deleted the emails in question it will hold back ups or archived copies of that information.

ODSL's position

16. ODSL said that it asked teams and individuals to search all drives on their computers for any relevant emails, documents, and related communications, and it also asked its IT department to assist with searches. Whilst an initial letter was sent to staff who were likely to be affected by furloughing a lot of the consultation was carried out verbally.
17. It said that no information is held on personal PC's or laptops. Any relevant information would all be held on work-based computer equipment, which is all networked.
18. It confirmed that information was held previously, but it said that due to the age of the information, this has now been deleted as part of its records retention policy. It said that due to the length of time since furlough took place, the emails would no longer be required, and they would therefore have been deleted as part of its information management and retention practices.
19. It said that it does not hold a record of when the data was deleted, as it does not routinely record the dates of the deletion of emails. However, they would have been deleted over a broad period of time since furloughing took place, as and when they became surplus to requirements. It considered that the information would not have been deleted at the same time, as this would be dependent upon each department and the records concerned. It said, for example, that HR would have deleted its records after a 6-month period of inactivity on the topic to which it is regarding. All processing and audits would have been completed by that point, and it would then have been surplus to requirements. It said that this is in accordance with its retention policy and data minimisation.
20. It said that a lot of emails would have been destroyed when it migrated its systems to Office 365. It only has a small mailbox capacity on each account, so mailboxes are cleared out regularly by means of deleting emails.
21. It said that its back up facility only holds information for 30 days. Whilst back-ups are made, it would not be able to recover relevant information from these unless there was a critical incident. Back ups are carried out on 30-day basis and only the latest version would be accessible. If data was stored on drive, following the 30-day period it would not then be recoverable.

The Commissioner's conclusion

22. The Commissioner has considered the arguments of both parties. Whilst the Commissioner recognises that the complainant believes that further information would be held by ODSL, given the time which has passed since furlough was in place, the searches which ODSL has described it undertook, and its description of its records management policies, it argues that it no longer holds any relevant data falling within the scope of the complainant's request for information.
23. The Commissioner notes that back-ups do exist, but are only recoverable within 30 days prior to a new back up being taken. The information requested by the complainant would not therefore still be held by ODSL in its back up.
24. The Commissioner has considered the arguments submitted to him by ODSL. There is no contradictory evidence available to the Commissioner that indicates the ODSL's position is wrong.
25. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further relevant information is held for the purposes of section 1 of FOIA.

Section 10 - Time for Compliance

26. Section 10(1) of FOIA requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
27. ODSL received the request for information from the complainant on 5 August 2023. It did not, however, disclose the information which it did hold to the complainant until February 2024.
28. The Commissioner has therefore decided that ODSL did not comply with the requirements of section 10(1) of FOIA.

Right of appeal

29. 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

30. 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.
31. 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

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