

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

### **Decision notice**

**Date:** 7 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 any information held by Oxford Direct Services Limited ("ODSL") regarding whistleblowing over the last three years. ODSL said that it does not hold any relevant information.
2. The Commissioner's decision is that ODSL was correct to state that it does not hold any information falling within the scope of the complainant's request for information.
3. The Commissioner does not require ODSL to take any steps.

## Request and response

---

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

*"Please provide me with a copy of the following information:*

*1) The number of concerns that have been raised with ODS by whistleblowers during the past 3 calendar years.*

*For clarity, I am interested in concerns raised by employees, members of the public, agency staff or third-party contractors."*

5. ODSL responded on 24 January 2024. It said that it does not hold any information falling within the scope of the complainant's request for information.
6. On 26 January 2024, the complainant requested that ODSL carry out an internal review of its decision. They suggested that if ODSL was aware that whistleblowing complaints had been made to Oxford City Council ("OCC") then these should also have been included within its response.
7. Following its internal review, ODSL wrote to the complainant on 15 May 2024. It upheld its position that no information is held by it, but it said that OCC might hold relevant information which it has not been made aware of.
8. Following further correspondence between the parties, on 15 May 2024, ODSL again confirmed that no information is held by it.

## Scope of the case

---

9. The complainant contacted the Commissioner on 9 March 2024 to complain about the way their request for information had been handled. The complainant argued that:
- "I asked specifically if concerns had been raised by employees, members of the public, agency staff or third-party contractors.*
- ODS responded in respect of only their own whistle blowing policy which does not include anyone other than ODS employees."*
10. The following analysis therefore considers whether ODSL is likely, on the balance of probabilities, to hold any information falling within the scope of the request for the purposes of section 1 of FOIA.

## Reasons for decision

---

### **Section 1(1) – is further information held by ODSL?**

11. Section 1(1) of FOIA 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.
12. 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.
13. 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.
14. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

#### The complainant's position

15. The complainant argued that ODSL does hold information falling within the scope of the request. They argued that ODSL had restricted its searches to its employees only, but the request was specified more widely than that.

#### ODSL's position

16. ODSL clarified to the Commissioner that it considered that the request was for any concerns raised by "whistleblowers." It confirmed that its searches were therefore limited to workers making whistleblowing complaints.

17. It said that it had carried out its searches for information which fell within the scope of 'whistleblowing,' as defined by the Commissioner's guidance.<sup>1</sup>

18. The Commissioner's guidance states that:

"'Whistleblowing' is when a worker passes on information about wrongdoing they have witnessed or experienced usually, but not always, at work."

"The whistleblowing provisions protect any 'worker' who makes a 'protected disclosure' of information, from being dismissed or penalised by their employer because of the disclosure.

'Worker' has a broad definition and applies to anyone who works (or worked) under a contract in the UK. It includes:

- Employees;
- home workers;
- casual workers;
- temporary or agency workers;
- people who work via personal service companies; and
- people involved in training programmes or work experience.

It doesn't generally apply to the self-employed or to Crown servants involved in national security."

19. Whistleblowing law is provided by within the Employment Act 1996, as amended by the Public Interest Disclosure Act 1998. Specific definitions on the types of individuals who are able to whistle blow, and the types of disclosures which fall within the scope of whistleblowing are provided within this legislation.

20. ODSL clarified that it had carried out searches of its HR department, and its electronic files. It said that searches were on electronic data as this would be where information would be if held by it. It said that if it received whistleblower case in writing it would then be filed electronically via a scanner.

---

<sup>1</sup> <https://ico.org.uk/make-a-complaint/protection-for-whistleblowers-guidance/>

21. It said that it had carried out checks with its Executive Director of People & Corporate services, and with the Managing Director of ODS as it believed that these individuals would be aware of any whistleblowing complaints received by it unless OCC had not passed these on.
22. In its internal review response, it confirmed to the complainant that it may not have been made aware of whistleblowing complaints made directly to its parent authority, OCC, and suggested that the complainant make an additional request to OCC about this if they wished.
23. It said that it had carried out searches of the files of the relevant teams who would deal with complaints of this nature, but no information was located.
24. It considered whether any FOI requests or complaints may fall within the scope of the request, but found that none had been made by its employees.

The Commissioner's analysis

25. The Commissioner has considered the arguments of both parties.
26. The complainant argues that ODSL restricted its searches to its employees only.
27. ODSL confirmed to the Commissioner that its searches had excluded some types of complaints as it considered that they fell outside the scope of the complainant's request for information. It clarified that:  
  
*"In response to this request, we considered 'whistleblowing' and 'worker' and did not include general issues being raised or those being raised under other policies."*
28. Whistleblowing refers to disclosures made under the Employment Act 1996 as amended by the Public Interest Disclosure Act 1998.<sup>2</sup> The Government has also published guidance to employers explaining what a

---

<sup>2</sup> The Public Interest Disclosure Act 1998 sets out the types of individuals and disclosures where protection is provided for disclosing information. The types of disclosure falling within its scope are defined within section 43(b), and the types of individuals who fall within the scope of the protection are defined within section 230(3)(b) of the Employment Rights Act 1996, as extended by section 43(k) of the Public Interest Disclosure Act 1998.

whistleblowing is: "Whistleblowing. Guidance for Employers and Code of Practice (March 2015)".<sup>3</sup>

29. The term whistleblowing therefore specifically refers to a limited set of circumstances, defined in law.
30. Complaints from members of the public will only fall within the scope of a request about whistleblowing if they also fall within one of the specified types of individuals defined within the Employment Act 1996 as amended by Public Interest Disclosure Act 1998. Additionally, only the specified types of disclosure will engage the protections awarded.
31. A general complaint received from a member of the public is not a 'whistleblowing' complaint.
32. Concerns expressed by employees, agency or third-party contractor complaints will only be whistleblowing where they fall within the definition of a protected disclosure within those Acts.
33. ODSL's searches therefore excluded general complaints from members of the public, and it did not include any complaints made by workers under policies other than its whistleblowing policy.
34. The Commissioner has therefore decided that ODSL's searches were adequate and appropriate to locate all of the information falling within the scope of the complainant's request for information.
35. The Commissioner has therefore decided that, on the balance of probabilities, ODSL was correct to state that it holds no information falling within the scope of the complainant's request for information.
36. The Commissioner's decision is therefore that ODSL complied with the requirements of section 1 of FOIA.

---

3

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415175/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415175/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf)

## **Right of appeal**

---

37. 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)

38. 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.
39. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**