

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 January 2023

Public Authority: Oxford City Council
Address: Town Hall
St Aldate's
Oxford
OX1 1BX

Decision

1. The complainant requested information from Oxford City Council ("the Council") relating to contracts awarded by Oxford Direct Services to a specific company.
2. The Commissioner's decision is that the Council has failed to carry out adequate searches for information held within the scope of the request and therefore, on the balance of probabilities, has not identified all information held within the scope of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request following searches aimed at identifying all information held within the scope of the request.
4. The Council must take this step within 35 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

5. The complainant made the following information request to the Council on 14 July 2022:

"A recent FOI request was made against Oxford Direct Services concerning contracts awarded to 1st Choice Scaffolding:

<https://www.whatdotheyknow.com/request/o...>

The response from Oxford Direct Services (ODS) was that no contracts have been awarded to 1st Choice Scaffolding. I believe that this is not the case. I would therefore like to submit the following request:

1. Please provide full details of all contracts awarded by Oxford Direct Services to 1st Choice Scaffolding Oxford Ltd for the past five years.
 2. For each contract awarded please give details of Total cost of contract and the scope of work undertaken/Measure (Per M2)/ Hire Rates?
 3. For each contract awarded £5,000 and Over can Oxford Direct Services confirm that the proper procurement procedures were followed and all work was put out to tender to the appropriate number of contractors before it was awarded to the chosen contractor?
 4. Please can you confirm the Manager/Department in charge of assigning these contracts and overseeing these works being done?"
6. The Council responded on 12 August 2022. It stated that Oxford Direct Services does not have any current active contracts in place with 1st Choice Scaffolding Ltd and therefore, it denied holding information within the scope of the request.
7. On 12 August 2022, the complainant requested an internal review. By the date of this notice, the Council has not provided the complainant with the outcome of its internal review.

Reasons for decision

8. This reasoning covers whether the Council is correct when it says that it does not hold information within the scope of the request.
9. The complainant considers the Council to hold information within the scope of their request. The complainant considers that when searching for information within the scope of their request, the Council has only searched for current contracts awarded to 1st Choice Scaffolding Ltd by Oxford Direct Services, rather than all contracts awarded in the last five years to 1st Choice Scaffolding Ltd by Oxford Direct Services as requested.
10. Furthermore, the complainant explained that Oxford Direct Services' contract register lists Oxford Direct Services as having awarded at least one contract to 1st Choice Scaffolding Ltd which is currently ongoing. The complainant therefore considers the Council to hold information within the scope of their request.
11. The Council considers that it does not hold information within the scope of the request. In its response to the request, the Council stated that Oxford Direct Services does not have any current active contracts in place with 1st Choice Scaffolding Ltd. The Council explained that whilst the contract register may list Oxford Direct Services Ltd as having awarded a contract to a company, it does not necessarily mean that a contract has been awarded as the contract register also lists purchase orders.
12. Based on the Council's response to the request, it appears to the Commissioner that when searching for information within the scope of the request, the Council only searched for current active contracts awarded by Oxford Direct Services to 1st Choice Scaffolding. The Council did not search for all contracts awarded by Oxford Direct Services to 1st Choice Scaffolding within the last five years as requested, or search for contracts that are no longer active but fall within the scope of the request.
13. Furthermore, the Commissioner notes that when conducting its search for information within the scope of the request, it appears that the Council has not considered information relating to purchase orders to fall within the scope of the request. However, the Commissioner considers a purchase order to constitute a contract. He therefore, considers information relating to any purchase orders awarded to 1st Choice Scaffolding Ltd by Oxford District Services within the five years prior to that date of the request to fall within the scope of the request.

14. The Commissioner notes that Oxford Direct Services' contract register lists at least one contract that has been awarded to 1st Choice Scaffolding and therefore, he considers that the Council is likely to hold information relating to that contract which falls within the scope of the request.
15. The Commissioner considers that the Council has failed to conduct adequate searches for the information held within the scope of the request. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council has not identified all the information it holds within the scope of the request.
16. The Commissioner requires the Council to issue the complainant with a fresh response to their request following searches aimed at identifying all information held within the scope the request. If the Council locates information within the scope of the request, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.

Other matters

17. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
18. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. By the date of this notice, the Council has not provided the complainant with the outcome of its internal review, four months after it was originally requested. The Commissioner considers that the Council has failed to act in accordance with the section 45 code of practice.
19. The Commissioner is also disappointed in the quality of the engagement the Council has had with his office. As part of his investigation, the Commissioner offered the Council the opportunity to provide him with further information to support its position. However, by the date of this notice, the Council has failed to provide the Commissioner with any supporting information.

20. These concerns are part of a pattern that has led to the Commissioner issuing a practice recommendation to the Council¹. It is vital that improved engagement with the Commissioner's investigations forms part of the Council's response to the practice recommendation.

¹ <https://ico.org.uk/action-weve-taken/information-notices/#FPR0987662>

Right of appeal

21. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Ben Tomes
Group Manager
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Wilmslow
Cheshire
SK9 5AF