

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2012

Public Authority: British Waterways
Address: 64 Clarendon Road
Watford
Herts
WD17 1DA

Decision (including any steps ordered)

1. The complainant requested considerable information about British Waterway's policies about continuous cruising and the numbers, dates and locations of boat sightings that it made.
2. British Waterways provided a small amount of information in response, but didn't address some of the requests and didn't explain why it had applied exemptions.
3. The Commissioner corresponded with British Waterways and as a result it provided a detailed internal review that provided some information and explained accurately why other information was considered exempt.
4. The complainant asked the Commissioner to issue a formal decision notice about the delays that she experienced. The Commissioner finds that the delays that were experienced constituted a breach of sections 10(1) and 17(1).
5. However, he does not require any remedial steps to be taken in this case because British Waterways have put things right.

Request and response

6. On 8 October 2010 the complainant made a number of requests for information to British Waterways. They were connected to the Autumn National Boating Brief for circulation at User Group meetings which referred on page one to *'Changes to our continuous cruising process to make use of the extensive sightings we are now collecting'*:

- 1. The minutes of all meetings during 2010 where these changes to the continuous cruising process were discussed;*
 - 2. All briefings, procedural guidance and instructions issued to staff during 2010 regarding these changes to the continuous cruising process;*
 - 3. The total number of boat sightings made by British Waterways in 2009; the total number of boat sightings made by British Waterways in 2010;*
 - 4. The dates and locations of these boat sightings in 2009; and the dates and locations of these boat sightings in 2010.*
7. On 12 October 2010 British Waterways provided the composite number of boat sightings for 2009 and 2010. It asked how the complainant wanted the information to be broken down for requests **3** and **4**.
8. On 13 October 2010 the complainant responded. She explained that she still required a response to **1** and **2**. She reiterated that for request **3** she wanted the numbers for each year. She then specified the format of information that she wanted for request **4**:
- '1. the date;*
 - 2. the name of the waterway;*
 - 3. the total number of sightings made on that date on that waterway;*
and
 - 4. a breakdown of the sightings for each day on each waterway into continuously cruising boats, boats with home moorings, hire/share boats and trading boats.'*
9. On 4 November 2010 British Waterways offered an update. It explained that it needed more time due to the quantity of the information, but anticipated that it would be able to respond by the end of the following week.
10. On 15 November 2010 British Waterways issued a response. It explained that it had considered the request in detail (although didn't explain whether it had considered each element of the request) and explained that it would not provide the information. It said that the disclosure of the information was likely to prejudice one or more of the specified purposes found in section 31(1)(g) or (h) of FOIA and that the public interest in withholding the information outweighed that in its

disclosure. It offered no more information about why it had taken this decision, but did offer its internal review details.

11. On 10 January 2011 the complainant requested an internal review. She explained that the communications were unclear, that its reasoning was opaque, that it hadn't explained why it was applying an exemption or explained what it had considered in the public interest test. She explained that there were important issues around transparency and accountability in this case.
12. The internal review request was acknowledged by British Waterways on the same day.
13. No internal review was conducted until June 2011 and the complainant referred the case to the Commissioner.
14. The Commissioner wrote to British Waterways to remind it of its obligations on 28 June 2011 and 17 October 2011. No internal review was forthcoming.
15. On 1 December 2011 the Commissioner telephoned British Waterways to confirm whether or not it was going to undertake an internal review. He was told it would. He followed that up with an email explaining to British Waterways exactly what was required to comply with FOIA and the detail that is necessary to apply any exemption.
16. On 22 December 2011 British Waterways communicated the results of its internal review and followed the Commissioner's instructions. It considered each request in turn. For **1**, it explained that it did not hold the relevant recorded information and could not provide it. For **2**, it provided the information that was requested. For **3**, it provided the total numbers for each year satisfying the request. For **4**, it explained in great detail why section 31 applied to the information and why the public interest favoured non-disclosure in this case.

Scope of the case

17. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
18. On 20 January 2012 the complainant wrote to the Commissioner to ask him to come to a formal decision about the delays that she had experienced in the handling of her request dated 8 October 2010.

Reasons for decision

19. Section 1(1) of FOIA imposes obligations on public authorities to answer requests for information that they have received. It states:

'Any person making a request for information to the 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.'

20. It must be noted that the two requirements are qualified in certain circumstances. For example, the information need not be communicated to the complainant if it is correctly covered by an exemption found in part 2 of FOIA.

21. British Waterways did not originally comply with its obligations found in section 1(1)(a) or 1(1)(b) of FOIA. However, after the Commissioner's involvement, British Waterways did then comply with those obligations.

22. FOIA has a number of procedural provisions that are designed to enable a complainant to receive an appropriate response in good time.

Section 10(1)

23. Section 10(1) of FOIA requires that a public authority complies with section 1(1) promptly and in 20 working days at the latest.

24. British Waterways failed to issue any response within 20 working days and therefore breached section 10(1).

Section 17(1)

25. Section 17(1) of FOIA requires that a public authority when refusing information issues an appropriate refusal notice in 20 working days.

26. British Waterways failed to issue any response within 20 working days and therefore breached section 17(1).

Other matters

27. There are two matters of significant concern that need to be mentioned in this case.
28. Firstly, there were also a number of defects with the refusal notice that were remedied at internal review (so are not breaches of FOIA). However, the Commissioner considers that these are worth noting to enable the public authority to improve:
 - (a) The need to consider every part of the request (and explain that this has been done);
 - (b) The necessity for British Waterways to explain why it considers there would be prejudice when using prejudice based exemptions; and
 - (c) The necessity of explaining the public interest factors that favour the maintenance of the exemption, those that favour disclosure and why the balance favours the maintenance of the exemption when applying qualified exemptions.
29. Secondly, the time taken to conduct an internal review was totally unacceptable. While there is no statutory time limit to conduct internal reviews, the Commissioner considers that internal reviews should be conducted within 40 working days even in the most complex of cases.
30. In this case, it took more than eleven months and multiple reminders from the Commissioner for British Waterways to provide an internal review. This was unacceptable.
31. In addition, the Commissioner would normally expect the internal review to be done by someone different to the refusal notice. This is so that the review can consider carefully whether the original person had got it wrong. In this case, the review was comprehensive and rectified British Waterways' original handling of the request. However, it was done by the same person.

Right of appeal

32. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

Pamela Clements
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