

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 10 June 2014

**Public Authority:** Canal and River Trust  
**Address:** First Floor North  
Station House  
500 Elder Gate  
Milton Keynes MK9 1BB

**Summary**

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1. The complainant requested information about unscheduled closures on the Canal and River Trust's network. The Canal and River Trust ('the Trust') asked the complainant to narrow the scope of their request, which they did. The Trust did not then provide a response or appear to respond to a request for an internal review.
2. During the Commissioner's investigation, the Trust provided a response to the modified request. The Commissioner's decision, however, is that the Trust breached regulation 5 of the EIR as it did not provide the response within 20 working days of the request.
3. Although there were failings in the Trust's handling of the complainant's request for an internal review, the Commissioner has decided that, on balance, the Trust complied with the requirements of regulation 11.
4. Since the Trust has now released information to the complainant, the Commissioner does not require the Trust to take any further action.

## Request and response

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5. On 6 November 2013, the complainant wrote to the Canal and River Trust and requested information in the following terms:

*"For each of these eight closures please provide the following information -*

*1. The place.*

*2. A short description of the failure.*

*3. The number of days of navigational closure.*

*4. The number of days of any towpath closure.*

*5. The total cost of repair (including any ancillary costs such as craning boats around the stoppage).*

*6. Any report that contains data as to the cause of the failure.*

*7. The latest inspection report together with any earlier reports referred to by the latest.*

*Can you also provide similar information with regard to this financial year to date. In the case of works as yet uncompleted please provide estimates for 3,4 and 5."*

6. The Trust responded on 28 November. It had aggregated this request with a separate request the complainant had made about the Trust's assets. It said these requests were "manifestly unreasonable" and that to comply with them would exceed the appropriate cost limit. (The Commissioner notes that in this response, the Trust appeared to conflate aspects of the Freedom of Information Act and the Environmental Information Regulations, without citing either.) By return, the complainant offered to withdraw the request about assets.
7. After receiving a reminder from the complainant on 6 December, the Trust responded on 4 February 2014. It acknowledged the withdrawal of one of the requests and asked if the complainant could narrow down the scope of their remaining request.
8. The complainant replied on 5 February to complain about the Trust's handling of their request and to modify the request.

9. On 25 February, the complainant wrote again to prompt the Trust for a response, and formally requested an internal review:

*"Please also carry out a review to determine why it has taken more than 20 working days to provide the information requested."*

10. The Trust replied on 5 March. It said that it was still reviewing the request and now confirmed that it was considering it under the Environmental Information Regulations.
11. The complainant subsequently sent the Trust five reminders but did not appear to receive a response to their request for an internal review.
12. On 9 April, the Trust wrote to the complainant. Although it did not expressly say that this communication was the outcome of an internal review, the Trust did apologise for the delay in responding to the complainant's request for a review. The Trust also released some of the requested information.
13. On 9 May, the Trust released further information and explained that, having received a supplementary request from the complainant on 29 April, it appreciated that it had misunderstood an element of the original request. The Trust told the complainant that there would be a further delay while it collated the necessary information, and apologised. It provided a date by which the complainant could expect to receive the outstanding information.
14. The complainant was not satisfied with these responses because the way the information they had received so far had been presented did not align with the request as they had formulated it.
15. The Trust provided an amended response on 15 May and committed to releasing the outstanding available information on or before 23 May. The Trust released the remaining information to the complainant on 23 May.

### **Scope of the case**

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16. The complainant had contacted the Commissioner on 7 April to complain about the lack of any response to their information request of 6 November 2013 and their request for an internal review.

17. As mentioned at paragraph 13, the complainant submitted a separate request for information to the Trust on 29 April. This was for the information requested at paragraph 5, but for the period 6 November 2013 to 31 March 2014. The complainant received a response to this request within 20 working days, which complied with the EIR requirement under regulation 5.
18. The Commissioner therefore focussed his investigation on the Trust's handling of the request made on 6 November 2013.

## **Reasons for decision**

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### **Regulation 5 – duty to make environmental information available on request**

19. Regulation 5 of the EIR provides that a public authority should make information available within 20 working days of a request.
20. The Commissioner notes that the Trust accepts that it has breached this regulation in relation to the complainant's request of 6 November 2013 as it did not release all the relevant information it held until 23 May 2014.
21. The Trust has explained to the Commissioner that the delay occurred for two reasons. Initially it had incorrectly treated the request as an FOIA request and concluded that, under section 12 of the Act (cost of complying exceeds appropriate limit), it did not need to provide a response. Second, it took the Trust longer than it expected to obtain the information from different parts of the organisation.

### **Regulation 11 – representations and reconsideration (ie internal review)**

22. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if they consider that the authority has failed to comply with the requirements of the EIR in relation to their request.
23. Regulation 11(3) provides that the authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and decide whether it has complied with the requirements of the EIR.
24. Regulation 11(4) provides that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.

25. If an authority decides it has breached 11(3) and/or 11(4), regulation 11(5) requires the authority to include in its notification: its failure to comply; the action it will take to comply; and the period within which it will take action.
26. The Commissioner considers that the complainant's email of 25 February 2014 was a clear request for an internal review.
27. As mentioned in paragraph 21, in its submission to the Commissioner the Trust had explained that it had initially treated the complainant's request as a Freedom of Information Act request. During the period between 5 February, when it had received the complainant's modified request, and 5 March, when it confirmed to the complainant that it was considering the request under the EIR, the Trust says that it did review its response. It recognised that the request was, in fact, a request for environmental information, and that the Trust should manage it under the Environmental Information Regulations.
28. At this point, the Trust says that it concluded that the requested information should be released, subject to any exceptions. However, because it had not yet reviewed the information to consider whether any exceptions applied, the Trust did not confirm to the complainant that it would release any information.
29. The Trust has acknowledged to the Commissioner that it failed to clearly communicate to the complainant that it had undertaken a review, or the outcome of the review.
30. The Commissioner considers that regulation 11 of the EIR provides a clear statutory right for an applicant to have his or her request reconsidered by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or handling issues, as well as an opportunity to explain to the complainant how their request was handled.
31. The Commissioner is prepared to accept that the Trust conducted an internal review, albeit somewhat inadequate, in response to the complainant's email of 25 February and therefore complied with regulation 11(3).
32. The Commissioner is also prepared to accept that it was reasonable for the Trust to treat the complainant's email of 25 February as a request for an internal review, rather than their email of 5 February. This being so, the Trust's substantive response of 9 April was provided within the required 40 working days and therefore the Trust has complied with regulation 11(4).

33. The Commissioner notes that the Trust has acknowledged that this response was, again, somewhat inadequate as it did not clearly explain the cause of the delay in releasing all the requested information. The Commissioner considers that the Trust's subsequent email to the complainant of 9 May only partly addressed the omissions, with a more satisfactory explanation provided to the Commissioner at paragraph 21.
34. However, since the Commissioner considers that the Trust has, on balance, complied with regulation 11(3) and 11(4), he has not gone on to consider whether it has breached regulation 11(5).

### **Other matters**

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35. In the email to the complainant dated 9 May, the Trust told the complainant that where it did not currently hold some of the requested information, it was prepared to hold the request on file and provide the information to the complainant when it did become available.
36. The Commissioner reminds the Trust that regulation 5 of the EIR requires a public authority to make available only information that it holds at the time of the request. It is therefore acceptable for a requester to be required to make a new request for any information that a public authority may hold at a later date.

## Right of appeal

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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: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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.

**Signed .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**