

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2014

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

Decision (including any steps ordered)

1. The complainant has requested information on licences issued to boats at a particular mooring. The Canal and River Trust (CaRT) considered the information exempt on the basis of section 40(2) of the FOIA.
2. The Commissioner's decision is that the information within the scope of the request could not be used to identify individuals and therefore the section 40(2) exemption has been incorrectly applied.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information.
4. The public authority must take these steps 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. On 23 January 2013, the complainant wrote to the CaRT and requested information in the following terms:

"Could you please confirm or advise us which boats have been issued and/or any other licences other than the usual canal and/or river licences that are moored at Chandos Lodge Moorings, Keynsham?"

6. The CaRT responded on 25 January 2013. It stated that the information was exempt under section 40(2) of the FOIA as it was considered to be personal data.
7. The CaRT did not carry out an internal review of this decision despite intervention from the Commissioner.

Scope of the case

8. The complainant contacted the Commissioner on 9 September 2013 to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of his investigation to be to determine if the requested information constitutes the personal data of any individuals and if so whether the section 40(2) exemption provided a basis for refusing the request.

Reasons for decision

10. Section 40(2) states that information is exempt if it constitutes the personal data of a third party (other than the applicant) and one of the conditions listed in section 40(3) or 40(4) are satisfied.
11. During the investigation of the case the Commissioner asked the CaRT to clarify its reliance on section 40(2) particularly with regard to why the information would be considered personal data and how it could be used to identify individuals. The CaRT did provide some further explanations beyond simply stating that the information was personal data and as such the Commissioner has proceeded on the basis that the CaRT is relying on section 40(3)(a)(i) to engage the exemption i.e. that the information is that of a third party and disclosure would contravene any of the principles of the Data Protection Act 1998 ("DPA").
12. In order to establish whether section 40 has been correctly applied the Commissioner has first considered whether disclosing information on the

licences issued to boats at this mooring would constitute the personal data of third parties.

13. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified from that data, or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
14. The information held by the CaRT as provided to the Commissioner is a table containing the boat index number, an invoice number, the cost of the licence, the name of the boat, the nature of the licence, the contract start and end date, the mooring location of the boat and the unique customer number.
15. When considering if information is personal data there are two main points – does the information 'relate' to a living person and is the person identifiable from the information? Information will relate to a person if it is about them, linked to them, has some biographical significance to them, is used to inform decisions affecting or has them as its main focus or impacts on them in any way.
16. It is clear that the withheld information 'relates' to a living person. It is linked to boat owners and is used by the CaRT to inform decisions about them i.e. whether they are granted a licence, the type of licence etc.
17. The second part to consider is whether the withheld information identifies any individual. The Commissioner asked the CaRT to explain some of the categories of information it had provided the Commissioner with in more detail in order to enable him to establish if the information could be reasonably said to be used to identify individuals and thus constitute personal data.
18. The key categories are the boat index number, the invoice number, the name of the boat, the mooring location and the customer number. The CaRT has explained the boat index number is similar to a car registration plate and remains with the boat for its entire duration on CaRT waters even if the boat is sold. This number is required to be displayed on both sides of the boat and the CaRT uses this information along with other information in its possession to identify the boat and its registered keeper.
19. The invoice number is described as a sales document number and the CaRT has explained that this is created by its financial systems relating to the invoice renewal created for each licence. This number can be linked by the CaRT to identify the boat and the registered keeper of that boat.

20. The Commissioner considers the boat description and location to be self-explanatory and the CaRT explained that the unique reference number assigned to each customer is used to identify the customer and all other details held on file by the CaRT.
21. All of this information has been used by the CaRT to explain how the withheld information is used internally by the CaRT to identify boat owners. However, for the purposes of considering the application of section 40(2) the Commissioner must establish if the disclosure of this information could reasonably lead to the identification of a person by another individual.
22. In considering this the Commissioner has taken into account what information is already in the public domain, how motivated a person would have to be to link together information to identify an individual (and if this is indeed possible) and whether it is reasonably likely that identification could occur.
23. The Commissioner notes that the name of a boat and its index number (or registration number) is already visible on the boat and, to his knowledge, this information cannot be linked to the registered keeper of the boat by a member of the public. The remainder of the information in the table provided the CaRT is a series of internal reference numbers generated and used by the CaRT and a coded location number. This information would be unlikely to be of use to a member of the public, even in conjunction with the boat name and registration number.
24. The Commissioner accepts that the CaRT would be cautious about releasing this information due to the possibility of this information identifying boat owners but having considered the information he is not minded to accept that that it is reasonably likely this would occur. He also notes that the CaRT has not in its submissions to him argued that the information could be used by a member of the public to identify individuals.
25. The Commissioner accepts that local individuals close to the moorings may know the names of some boat owners in the area but even accepting this, he does not agree that the withheld information, if in the public domain, would enable identification to take place from the CaRT's data. The fact that a very small number of local individuals may know who owns boats at a mooring and may recognise the name of that boat in the CaRT's data should not be classed as identification.
26. The Commissioner also considers it relevant to refer back to the wording of the request – *which boats have been issued and/or any other licences other than the usual canal and/or river licences* – on this basis the information which has been provided by the CaRT to the Commissioner

is more than that which was requested, specifically the internal reference numbers and costs of licences.

27. As such based on the information that was requested which would include the boat name, registration number and type of licence issued the Commission has concluded that section 40(2) was applied incorrectly by the CaRT to the request for licence information on boat owners at this mooring. The CaRT is therefore required to disclose this information.

Right of appeal

28. 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

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

29. 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.
30. 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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