

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2014

Public Authority: Canal & River Trust
Address: The Kiln
Mather Road
Newark
NG24 1FB

Decision (including any steps ordered)

1. The complainant has requested the Canal and River Trust (CaRT) to disclose the name(s) of the employee(s) who responded to his previous request. He has also requested any information CaRT holds which confirms that it is not subject to the Environmental Information Regulations (EIR).
2. CaRT responded informing the complainant that his request was outside the scope of the FOIA.
3. The Commissioner has reviewed CaRT's response and he is satisfied, in this case, that the information requested does not fall within the definition of information to which CaRT has FOI obligations.
4. He therefore requires no further action to be taken in this case.

Request and response

5. On 20 August 2013, the complainant wrote to CaRT and requested information in the following terms:

"The name of the person who responded to the request.

The name of the person who responded to the request for you to review your decision.

Any information you hold that confirms that you are not subject to EIR.”

In relation to the first two elements of this request these are referring to the complainant's previous information request to CaRT dated 5 July 2013 and how this was handled by CaRT.

6. CaRT responded on 18 September 2013. It stated that the complainant's request was not for information relating to the statutory functions transferred to it by the British Waterways Board (Transfer of Functions) Order 2012 and therefore falls outside the scope of the FOIA, as it applies to CaRT.

Scope of the case

7. The complainant contacted the Commissioner on 30 September 2013 to complain about the way his request for information had been handled. Specifically, he stated that he is unhappy that CaRT has falsely claimed it is not subject to the EIR and he believes CaRT has concealed information to which he was entitled in relation to this request, as he made a very similar request to the Commissioner himself and he released a number of documents detailing previous decisions he had made relating to CaRT in relation to the EIR and a consultation with DEFRA.
8. The Commissioner can only consider whether the request detailed in paragraph 5 above is subject to the FOIA and whether CaRT has acted appropriately by saying that it is not.
9. The Commissioner does not consider the EIR is relevant in this case. The EIR provides an applicant with the right to formally request access to environmental information. Regulation 2(1) of the EIR clearly defines what environmental information is for the purposes of these regulations (please refer to the attached Annex for the full wording of this section).
10. In this case the complainant has requested the name(s) of the employee(s) who responded to his previous request and any recorded information that is held by CaRT detailing whether it is subject to the EIR. Although the EIR is referred to and the request is essentially to know what obligations CaRT has if any under it, the request itself is not a request for environmental information. Information on the state of the elements of the environment, factors affecting the environment, measures or activities designed to protect those elements, reports or analyses of frameworks or legislation affecting those elements or information on the state of human health and safety is environmental

information. As the request is not for information falling within any of these categories, it does not fall within the remit of the EIR.

Reasons for decision

11. In Paragraph 15 of Schedule 3 of the Transfer of Functions Order¹ it states:

- (1) The Freedom of Information Act 2000 ([24](#)) is amended as follows.
- (2) In Part 6 of Schedule 1 (other public bodies and offices: general)—
 - (a) omit the entry relating to the British Waterways Board;
 - (b) at the appropriate place insert—

“Canal & River Trust, in respect of information held by it relating to functions exercisable by it by virtue of the British Waterways Board (Transfer of Functions) Order 2012 ([S.I. 2012/1659](#)).”

12. The amendment to the FOIA affected by the 2012 Order provided that FOIA would apply to information held by the CaRT. However, this was only to the extent that the information related to the statutory functions taken over from British Waterways. Broadly speaking, these functions comprised those giving the CaRT the authority to operate and maintain the waterways.

13. The functions that were transferred to the CaRT are:

Public general Acts

[Transport Act 1962](#), except sections 1, 10 to 14, 16 to 21A, 24, 25, 27(1) to (5) and (7) to (8C), 36, 73 to 75, 81, 89 (except so far as it relates to section 27(6)), Schedule 1 and Part 4 of Schedule 7.

[Harbours Act 1964](#).

[Transport Act 1968](#), except sections 41, 46, 48 to 52, 107, 109, 134, 135 and 137.

[Salmon and Freshwater Fisheries Act 1975](#).

[Ancient Monuments and Archaeological Areas Act 1979](#).

[Highways Act 1980](#).

[Transport Act 1981](#).

[Agricultural Holdings Act 1986](#).

[Pilotage Act 1987](#).

[Town and Country Planning Act 1990](#).

[Water Resources Act 1991](#)

¹ The British Waterways Board (Transfer of Functions) Order 2012

[Transport and Works Act 1992.](#)
[Welsh Language Act 1993.](#)
[Channel Tunnel Rail Link Act 1996.](#)
[Licensing Act 2003.](#)
[Planning and Compulsory Purchase Act 2004.](#)
[Gambling Act 2005.](#)
[Natural Environment and Rural Communities Act 2006.](#)
[Crossrail Act 2008.](#)
[Planning Act 2008.](#)
[Flood and Water Management Act 2010.](#)

Subordinate legislation

The Utilities Contracts Regulations 2006.

The Community Drivers' Hours and Recording Equipment Regulations 2007.

14. The Commissioner therefore has to determine whether the information requested in this case relates to any or all of the functions transferred by the 2012 Order. He considers that it is a question of fact as to whether the information requested is covered by the CaRT for the purposes of the FOIA.
15. Concerning the complainant's request for any recorded information CaRT holds relating to its obligations under the EIR, this element of his request does not relate to any of the functions transferred to it by the 2012 Order, as detailed in paragraph 13 above. It is therefore outside the scope of the FOIA.
16. Regarding the complainant's request for the name(s) of the employee(s) who dealt with his previous request, CaRT has dealt with similar requests to this in the past and made a clear distinction between information relating to the statutory functions described in the 2012 Order, which is potentially subject to the FOIA, and information concerning activities it undertakes pursuant to its Articles of Association.² The activities it undertakes pursuant to its Articles of Association include the general conduct of its business. Among other things, these encompass matters of administration, organisational management, employment, investment, commercial and charitable income.

² The Companies Act 2006

17. The Commissioner considers that it would be a stretching interpretation to say that the details of CaRT's employees entrusted with those statutory functions, including their name, is information falling within the definition of information held by the CaRT relating to the functions exercisable by the 2012 Order.
18. The Commissioner interprets functions as meaning obligations specifically entrusted to a particular public authority via statute, rather than general activities or obligations applying to all public authorities (such as personnel management).
19. The FOIA defines the extent to which the CaRT is subject to the Act and it is the Commissioner's view that the information requested in this case is not sufficiently directly related to the transferred functions to fall within the definition of information to which the CaRT has FOI obligations.
20. It is important to note that the Commissioner is not upholding any decision to withhold information under the FOIA in this case. He simply cannot and this is because he has no remit upon which to decide whether the information should be disclosed because the information does not fall within the functions to which CaRT has FOIA obligations.
21. In conclusion, the Commissioner considers that CaRT is not required under FOIA to supply the requested information. He therefore requires no further action to be taken in this case.

Right of appeal

22. 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

23. 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.
24. 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

Rachael Cragg
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF