

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 January 2020

**Public Authority:** Canal & River Trust

**Address:** Head Office  
First Floor North  
Station House  
500 Elder Gate  
Milton Keynes MK9 1BB

#### Decision (including any steps ordered)

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1. The complainant has requested particular meeting minutes and papers from the Canal & River Trust ('CRT'). CRT's position is that it does not hold the requested information for the purposes of the FOIA. The complainant disputes this.
2. The Commissioner's decision is as follows:
  - The information requested in this case does not fall within the definition of information to which CRT has obligations under the FOIA.
3. The Commissioner does not require CRT to take any remedial steps.

#### Request and response

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4. On 8 January 2019 the complainant wrote to CRT and requested information in the following terms:

*"Please provide Board Minutes & papers for the following meetings -*

*12 July 2018*

*7 August 2018*

*24 August 2018"*

5. Following the Commissioner's decision in FS50821294 CRT provided a response to the request on 8 November 2019. It said that it holds the requested information but that its obligations under FOIA are limited in scope to information relating to the statutory functions which were transferred to it from the British Waterways Board. CRT said that these functions relate to the operation and licensing of vessels on its inland waterway network.
6. CRT stated that the requested information "*clearly*" falls outside the scope of its FOIA obligations.
7. CRT agreed to waive carrying out an internal review on this occasion and the matter was passed to the Commissioner.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 18 November 2019 to complain about CRT's response to his request.
9. The Commissioner will first consider whether any of the requested information can be categorised as environmental information which should be handled under the Environmental Information Regulations (EIR). If she finds the information is not environmental information the Commissioner will consider whether CRT can be said to hold the requested information for the purposes of the FOIA.

### **Reasons for decision**

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#### **Is the requested information environmental information?**

10. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
11. Regulation 2(1)(a) defines environmental information as information that concerns the state of the elements of the environment, including: water, soil, land, landscape, natural sites and biological diversity. Regulation 2(1)(b) gives a definition of environmental information as factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).
12. Regulation 2(1)(c) defines environmental information as information that concerns measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements and

activities affecting or likely to affect the elements referred to in (a) and (b) as well as measures or activities designed to protect those elements.

13. In its submission to the Commissioner CRT has discussed whether it can be considered to be a public authority for the purposes of the EIR, and whether the information is environmental information. Before considering whether or not CRT is a public authority under the EIR, the Commissioner has considered whether the information is environmental information. If she finds it is not, the EIR do not come into play and CRT's status as a public authority, or otherwise, for the purposes of that legislation is not a factor
14. The requested information in this case is the minutes and papers for particular meetings. CRT has explained that the meetings were ad-hoc Board meetings, held by email outside of the Trust's usual Board meeting programme, for specific commercial purposes. CRT has provided the information it holds to the Commissioner and she has reviewed it: it comprises the minutes for three meetings. One set of minutes concerns the sale of a trading subsidiary; one the acquisition of investment properties and the third concerns the appointment of external auditors.
15. Depending on the subject that was discussed, some information contained in meeting minutes can be categorised as environmental information. The Commissioner considers that this is not so in this case. The Commissioner is satisfied that the minutes that concern appointing external auditors is clearly not environmental information.
16. The remaining two sets of minutes concern CRT's commercial activities. Ultimately, the funds available to CRT from selling a subsidiary and acquiring property may enable it to plan and undertake work to the canal and river network. Any such activities could be categorised as environmental measures affecting water and landscape. Recorded information directly associated with such matters could therefore be environmental information that would be covered by the EIR. However, the Commissioner is satisfied that the information recorded in the minutes that concern CRT's commercial activities is too far removed from any environmental measure to be categorised as environmental information.
17. Since none of the requested information can be categorised as environmental information, the FOIA is the correct legislation under which to consider the request, rather than the EIR. The Commissioner has gone on to consider whether CRT holds the information for the purposes of the FOIA.

**Section 1 – general right of access to information held by public authorities**

18. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
19. In 2012 CRT took over the responsibilities of the state-owned British Waterways Board. Paragraph 15 of Schedule 3 of the associated Transfer of Functions Order ('the 2012 Order') 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)."*
20. The above amendment to the FOIA affected by the 2012 Order provided that the FOIA would apply to information held by the CRT. However, this was only to the extent that the information related to the statutory functions that CRT took over from the British Waterways Board. Broadly speaking, these functions comprise those giving CRT the authority to operate and maintain the waterways.
21. CRT's position is that the requested information does not relate to the above functions; that CRT is therefore not a public authority for the purposes of that information and so the information is not caught by the FOIA.
22. In its submission to the Commissioner CRT advises that the functions outlined in the 2012 Order and the various Acts listed within it - such as much [but not all] of the Transport Act 1962, the Transport Act 1968 and the Transport Act 1981 - broadly relate to CRT's powers and functions as a navigation authority for circa 2000 miles of inland waterways in England and Wales.
23. As the Commissioner has noted above, CRT also notes that the Board minutes and papers that the complainant has requested relate to: the sale of a trading subsidiary; the acquisition of investment properties; and the appointment of external auditors. CRT maintains that none of these matters for which the Board meetings were convened, and to which the information requested relates, are derived from the functions transferred from the British Waterways Board to CRT. It says that, instead, these are operations and business decisions which CRT

conducts as part of its commercial day to day activities and not as part of its powers and functions as a navigation authority. In CRT's view the information requested clearly falls outside the scope of the FOIA as it applies to CRT and is thus not disclosable.

24. The Commissioner notes that in its response to the complainant's request CRT refers only to its transferred function to operate and license vessels on its inland waterway network. CRT indicates that because the requested information does not concern that function, it is not covered by the FOIA.
25. From CRT's submission to her, the Commissioner understands that the powers and functions transferred to CRT from the British Waterways Board also include those of a navigation authority. While there may be some variation, the responsibilities of a navigation authority will usually include: maintaining locks and other structures; dredging and flood control. On its website, by way of a response to the 2010 Flood and Water Management Act, CRT confirms it is a navigation authority and that, as such, it inspects, maintains and operates the water control structures within its ownership, primarily to meet its statutory obligation to maintain navigation. Elsewhere CRT has published that the statutory functions passed to it from the British Waterways Board under the 2012 Order are essentially those giving CRT authority and obligations to operate and maintain the waterways.
26. In correspondence to the Commissioner the complainant has argued that "*the functions exercisable*" ie the functions passed to CRT through the 2012 Order and to which the complainant considers the requested information is relevant, are those under the section 10 and section 43 of the Transport Act 1962.
27. Section 10 of the Transport Act 1962 concerns the duty and powers of the British Waterways Board. [Schedule 1 of the 2012 Order](#) indicates to the Commissioner that section 10 of the Transport Act 1962 was not, in fact, passed to CRT under that Order. That section is therefore not relevant in this case.
28. Section 43 of the Transport Act 1962 concerns charges and facilities and this function was transferred to CRT under the 2012 Order. The Commissioner has noted that the requested information concerns CRT's commercial ventures and the appointment of external auditors. As such she is satisfied that the requested information is not relevant to any function under section 43 of the Transport Act 1962. The situation regarding sections 10 and 43 of the Transport Act 1962 is also discussed at paragraph 7 of the Commissioner's decision in [FS50784612](#).

29. The complainant subsequently provided the Commissioner with further arguments that concerned the 2012 Order, the Transport Act 1962 and CRT's finances.
30. The Commissioner has considered both parties' positions regarding functions transferred to it from the British Waterways Board under the 2012 Order. She is not persuaded by the complainant's arguments and does not consider that the requested information concerns any of the transferred functions. She agrees with CRT that the information concerns the operations and business decisions that CRT conducts as part of its commercial day to day activities. The Commissioner is satisfied that the requested information is therefore not caught by the FOIA and CRT cannot be said to hold the information for the purposes of that legislation.

## **Right of appeal**

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31. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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**