

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2021

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)

1. The complainant requested from the Canal & River Trust ("CRT") information regarding the running of commercial and not-for-profit business ventures in Birmingham. CRT withheld the requested information informing the complainant that the request was outside the scope of its obligations under the FOIA.
2. The Commissioner's decision is that 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

4. On 20 July 2020, the complainant wrote to CRT and requested information in the following terms:

"I am making a request for information in relation to the running of commercial and not-for-profit business ventures in Birmingham, in line with the Freedom of Information Act 2000 and Canal & River Trust's commitment to 'be open and transparent'. The information is requested in text format and is listed as below:

- *Full list containing total number of both home and trading moorings per (each) registered boating business in Birmingham, covering the last 10 years*
- *Full list of home and trading mooring rates/costs per year, for boating businesses registered in Birmingham, over the last 10 years*
 - *Please provide information or formula on how Canal and River Trust has calculated costs per businesses over the last 10 years*
 - *Please provide breakdown all of costs including, home mooring, trading mooring and utilities bills (if any)*
- *Full list containing total number of both home and trading moorings per (each) registered charity and/or not-for profits with a boat in Birmingham, covering the last 10 years*
- *Full list home and trading mooring rates/costs per year, for charities and not-for-profits registered with boats, in Birmingham over the last 10 years*
 - *Please provide information or formula on how Canal and River Trust has calculated costs per businesses over the last 10 years*
 - *Please provide breakdown all of costs including, home mooring, trading mooring and utilities bills (if any)*

I request the above data for the last 10 fiscal years (2009/10, 2010/11, 2011/12, 2012/13, 2013/14, 2014/15, 2016,17, 2017/18. 2019,20, 2020,21. If this is not deliverable in a single request could you provide details for the last five fiscal years and summary total for fiscal years 2014/15, 2015/16, 2016/17, 2017/18 and 2018,19 (with category breakdown of home, trading and utilities costs).

If you cannot provide all of the above within the scope mentioned above, please provide what available information you have and

an explanation for why you cannot provide the data broken down into that field.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under your Section 16 obligations, as to how I can refine my request to be included in the scope of the Act."

5. The CRT responded on 14 August 2020 and confirmed that it held the requested information. However, it explained that the CRT's obligations under the FOIA are limited in scope to information relating to statutory functions which were transferred to it from British Waterways under the British Waterways Board (Transfer of Functions) Order 2012. It stated that these functions relate to the operation and licensing of vessels on its inland waterway network.
6. It stated that the provision of home and business moorings is a commercial activity for the CRT and one where it faces competition from other marinas and mooring providers across the network. It explained that there is no statutory obligation on it to provide these moorings since the provision of home and business moorings was not one of the statutory functions transferred to it. Therefore any information in relation to this falls outside the scope of the Act.
7. In its response the CRT also disclosed the "fixed business licensing charges for each sector" to the complainant. However it also added that it only held that specific information going back to 2016.
8. Following an internal review, the CRT wrote to the complainant on 11 September 2020 and upheld its original position. It added that it is noted in schedule one of the FOIA that the CRT is only covered by the Act in respect of information held by it relating to functions exercisable by it by virtue of the British Waterways Board (Transfer of Function) Order 2012.

Scope of the case

9. The complainant contacted the Commissioner on 9 October 2020 to complain about the way her request for information had been handled. She stated:

"As a not-for-profit business owner in Birmingham, I am trading at an unfair advantage with unfair increased mooring costs in comparison to like for like businesses in the same area. These like for like businesses have also received many years of grace free periods supporting new

start-ups, yet when I acquired my new business three years ago I was not given any support as a new start-up and instead Canal and River Trust as an organisation allowed a fellow business owner to illegally sublet a mooring to me, instead of rightfully transferring the mooring into my name in the first instance. This matter was resolved with legal support on my part and the mooring was finally transferred into my name, with no grace periods, and increased costs in comparison to other businesses also trading at the same location."

10. The scope of this notice is to determine whether the CRT was correct in asserting that the requested information does not relate to functions exercisable by it by virtue of the British Waterways Board (Transfer of Functions) Order 2012, and therefore it is not obliged to provide it in response to an information request.

Reasons for decision

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

11. 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.
12. In 2012 CRT took over the responsibilities of the state-owned British Waterways Board. The British Waterways Board (Transfer of Function) Order 2012¹ (the Order) dealt with the transfer of functions from the British Waterways Board to the CRT. Paragraph 15 of Schedule 3 of the Order states that:

"Freedom of Information Act 2000

15.—(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)—

¹ <https://www.legislation.gov.uk/ukdsi/2012/9780111521045/contents>

(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."*²

13. The amendment to the FOIA by virtue of the 2012 Order provided that the FOIA would apply to information held by the CRT. However, this was limited to the extent that the information had to relate to the statutory functions taken over from the British Waterways Board. Broadly speaking, these functions comprised those giving the CRT the authority to operate and maintain the waterways.
14. The Commissioner therefore has to determine whether the information requested relates to any or all of the functions transferred by the Order.

CRT's view

15. Section 10 of the Transport Act 1962 is as follows:

"(1) It shall be the duty of the British Waterways Board in the exercise of their powers under this Act to provide to such extent as they think expedient –

(a) services and facilities on the inland waterways owned or managed by them, and

*(b) port facilities at any harbour owned and managed by them and to have due regard to efficiency, economy, and safety of operation as respects the services and facilities provided by them."*³

16. Section 43 of the Transport Act 1962 provides for the following –

"(3) Subject to this Act and to any enactment as is mentioned in the last foregoing section, the British Waterways Board and Canal & River Trust shall each have power to demand, take and recover

² <https://www.legislation.gov.uk/ukdsi/2012/9780111521045/schedule/3>

³ <https://www.legislation.gov.uk/ukpga/Eliz2/10-11/46/section/10/enacted>

or waive such charges for their services and facilities, and to make the best use of those services and facilities subject to such terms and conditions as they see fit...

(8) The services and facilities referred to in subsection (3) of this section include, in the case of the British Waterways Board and Canal & River Trust, the use of any inland waterway owned or managed by them by any ship or boat.”⁴

17. In order to determine whether the request falls within the scope of CRT's FOIA obligations requires the consideration of the functions of the Board which were transferred to the CRT by the Order.
18. In response to the Commissioner, the CRT explained that, as noted in schedule 1 of the FOIA, the CRT is only covered by the Act in respect of information held by it relating to functions exercisable by virtue of the British Waterways Board (Transfer of Functions) Order 2012.
19. It explained that the amendment to the FOIA by virtue of the 2012 Order provided that FOIA would apply to information held by CRT however that this was limited to the extent that the information had to relate to the statutory functions taken over from the British Waterways Board. It explained:

"This includes functions by virtue of any enactment, any functions of a harbour authority, navigation authority or statutory undertaker and therefore all other functions are not otherwise transferred by this Order.

The provision of home and commercial moorings was not a function that was transferred and is an activity that is operated independently from our boat licensing functions not governed by the Transport Act 1962, it therefore relies on the Trust's land ownership in setting terms and conditions."

20. It concluded that the provision of home and business moorings is a commercial activity for the CRT and one where it faces competition from other marinas and mooring providers across the network. It stated that as there is no statutory obligation on the CRT to provide these moorings that the requested information therefore falls outside the scope of the FOIA.

⁴ <https://www.legislation.gov.uk/ukpga/Eliz2/10-11/46/part/III>

The complainant's view

21. In her internal review request the complainant stated *"unfortunately this response does not honour the trust's commitment 'to be open and transparent', in respect to me as a not-for-profit business owner, trading at an unfair advantage."*

The Commissioner's view

22. Schedule 1, part VI of the FOIA includes the CRT in the list of bodies and offices that are subject to the FOIA. The application of the FOIA to the CRT is limited to:

"(...) information held by it relating to functions exercisable by it by virtue of the British Waterways Board (Transfer of Functions) Order 2012."

23. The Commissioner notes that there was a public consultation⁵ held in 2011 on the content of the proposed Transfer Order. In its summary of responses to this consultation⁶ the Government justified its decision to limit the applicability of the FOIA to those statutory functions that the CRT inherited from the British Waterways Board through the draft Transfer Order by the need for a balanced approach between its private and public functions. This was to ensure a level playing-field with other navigation authorities in the voluntary and private sectors that provide competing mooring services whilst ensuring public access to information.
24. It is the Commissioner's understanding that the FOIA does not apply to the information in relation to home and business moorings as this is a commercial activity and falls within the private function of the CRT, not a statutory function that was transferred to the CRT. It is consequently the Commissioner's view that the requested information falls outside of the CRT's duties under the FOIA.

⁵ https://www.legislation.gov.uk/ukxi/2012/1659/pdfs/ukxi0d_20121659_en_001.pdf

⁶ https://www.legislation.gov.uk/ukdsi/2012/9780111521045/pdfs/ukdsiem_9780111521045_en.pdf
(8.22-8.24)

25. The Commissioner acknowledges that she has considered similar complaints regarding the CRT's obligations under the FOIA and ruled on in Decision Notices FS50891241⁷ and FS50784612.⁸
26. The Commissioner is not upholding any decision to withhold information under the FOIA in this case. She has no remit upon which to decide whether the information should be disclosed because the information does not fall within the functions in relation to which CRT has obligations under the FOIA.
27. The Commissioner does not consider that the CRT is required under FOIA to supply the information request. The Commissioner therefore requires the CRT to take no further steps in this matter.

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617163/fs50891241.pdf>

⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615020/fs50784612.pdf>

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: 0870 739 5836
Email: grc@justice.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

Ben Tomes
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Wycliffe House
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