

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2023

Public Authority: Canal and River Trust
Address: National Waterways Museum Ellesmere Port
South Pier Road
Ellesmere Port
Cheshire CH65 4FW

Decision (including any steps ordered)

1. The complainant has requested from the Canal and River Trust (the Trust) information relating to a disputed invoice.
2. The Commissioner's decision is that the Trust should have relied on section 40(5A) of FOIA to refuse to confirm or deny whether any information was held and has applied this exemption himself proactively.
3. The Commissioner does not require the Trust to take any steps as a result of this notice.

Request and response

4. On 21 July 2022, the complainant wrote to the Trust and requested information in the following terms:
 - "1. Evidence (eg. invoices) to prove CRT did in fact incur costs in this sum.
 2. An explanation of why "banksmen, crane, transport, slipway fee" for a 30-foot glass-reinforced plastic river cruiser could ever cost remotely in the region of £9000."
5. The Trust responded on 9 August 2022. It disclosed some information within the scope of the request but refused to provide the remainder, citing commercial sensitivity as its basis for doing so.

6. The complainant was dissatisfied with the Trust's response to the request.
7. The Trust upheld its position on internal review on 13 October 2022, citing section 43(2) of FOIA as the basis for withholding information.

Reasons for decision

8. In this case, the Commissioner has exercised his discretion and proactively applied section 40(5A) of FOIA to the request. The reasons for the Commissioner's decision are explained below.

Section 40 – personal information

9. Section 40(5A) of FOIA provides that the duty to confirm or deny whether information is held does not arise in relation to information which constitutes personal data of which the applicant is the data subject.
10. Therefore, for the Trust to be entitled to rely on section 40(5A) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, confirmation or denial would need to constitute the disclosure of the complainant's own personal data.

Would the confirmation or denial constitute the disclosure of the complainant's own personal data?

11. Section 3(2) of the DPA 2018 defines personal data as:- "any information relating to an identified or identifiable living individual".
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
14. The Commissioner is satisfied that the individual is identifiable from the request. Furthermore, the request refers to an invoice in respect of action taken against that individual. Confirming or denying that the information requested was held would clearly disclose personal information about that individual – because it would reveal to the world at large whether that individual had been subject to action by the Trust.
15. The Commissioner is satisfied that if the Trust confirmed whether or not it held the requested information this would result in the disclosure of the complainant's own personal data to the world at large.

16. The Commissioner recognises that the complainant has strong personal reasons for pursuing this matter. Whilst he sympathises with those reasons, he does not consider that they justify revealing personal information to the world at large – which is what FOIA requires a public authority to do. It is not a private transaction to the requester, and therefore not an appropriate avenue for revealing whether personal information is held.
17. The Commissioner therefore considers that the Trust could not confirm or deny holding information within the scope of the request without disclosing personal information relating to the complainant. It should therefore have relied on section 40(5A) of the FOIA to neither confirm nor deny holding any information relevant to the request.
18. As section 40(5A) is an absolute exemption, there is no requirement for the Commissioner to consider the balance of the public interest.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF