Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: **14 February 2013**

Public Authority: **The 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 concerning the names of the companies that were tendering, or enquiring to tender or buy, the river dredgings at Gunthorpe, Nottingham in 1995 from The Canal and River Trust ("CRT") (previously British Waterways ("BW")). The complainant also requested correspondence regarding the processing, sale and tendering of the dredgings including negotiations, tender documents and agreed prices for the sale of the aggregates and the names of individuals who may have such information. There was also a request in relation to planning permissions which were held in respect of the above use.

2. The CRT stated that it did not hold some of the requested information. Some information was provided following enquiries made of staff that had knowledge of the information that had been requested. The complainant was advised to contact the relevant planning authority for some of the information. The Commissioner's decision is that the outstanding information is not held. He therefore does not require the CRT to take any steps to comply with the legislation.

Request and response

3. On 24 March 2012, the complainant wrote to BW and requested information in the following terms:

> *"…the names of the companies that were tendering, or enquired to tender or buy, the river dredgings landed at Gunthorpe, Nottingham, in 1995. Your letters refer as follows:-*
>
> *Mrs Caroline Sanderson (BW NE Region) letter ref RMC/8/819/CMS/JS dated 30.05.95 and Ian White, Regional Manager NE, letter ref RM/P/IAW dated 24.05.95*
>
> *Also, any associated correspondance regarding the processing, sale or tendering of the dredgings(aggregates) at Gunthorpe."*

4. BW responded in detail on 5 April 2012. It explained that it had conducted a thorough search of its records and did not hold the information requested.

5. On 10 April 2012 the complainant asked whether information had been put into the archives. On the same date BW responded. It advised that it had found a record of a box where the information may be located but that the records showed that it had been signed out in 2000 (later confirmed to be 2003) and a search revealed it had not been returned. BW confirmed that thorough searches had been made of the East Midland and Leeds Offices and no information had been found. The complainant was also advised that the organisation had undergone several restructures since 1995 and as the box where the information could be located had been signed out of the archive for many years it was felt that the information was unlikely to be located.

6. On 13 April 2012 the complainant asked that other individuals and departments within BW be approached for information about negotiations/tenders and agreed prices. An additional request for information was also made as follows:

> *"What are the current operations allowed at Gunthorpe in Nottingham?*
> *When was this permission granted?*
> *Who was the actual operator (not BW) when the planning was granted?*
> *What was the allowed use at Gunthorpe prior to the above?*
> *When was this previous planning granted?*
> *Who was the operator at that time?"*

7. On 16 April 2012 BW responded. It confirmed that the information requested would only have been held by BW. It confirmed that it had made additional enquiries of staff who had worked in the relevant area at the time. Whilst documentation had not been located, information was provided based upon personal knowledge of an employee.

8. The complainant requested that further enquiries be made of named individuals and BW confirmed it could not locate the information requested.

9. On 8 May 2012 the complainant requested an internal review.

10. On 21 June 2012 BW gave its decision confirming the documents could not be traced, that there was no further information available about what had happened to the information and that it had used its best endeavours to locate the information. It referred the complainant to the relevant local authority for details concerning planning permissions and allowed use at the site.

11. On 2 July 2012 BW was dissolved and its responsibilities handed over to the CRT.

12. The complainant contacted the Commissioner on 16 July 2012 to complain about the way the request for information had been handled. The complainant maintains that the requested information is held by the CRT as the activities in the scope of her request continued beyond the date of 1995 referred to in her request. The CRT maintains that it does not hold the information requested as it has made extensive searches on several occasions and its own document retention policy relevant to the period of time from when the information is sought specifies that this type of document would be destroyed after 6 years.

Scope of the case

13. The original request of the complainant was made to BW on 24 March 2012. A further request for additional information was made on 13 April 2012. Information was provided to the complainant in respect of the later request and therefore the scope of the case is limited to the first request of 24 March 2012.

14. BW was dissolved on 2 July 2012 and its responsibilities were transferred to the CRT.

15. The scope of this case has been to consider:

    - whether CRT is a public authority for the purposes of the EIR;

- whether the requested information is environmental information for the purposes of the EIR; and
- whether the CRT was correct to inform the complainant that it did not hold some of the information as requested by the complainant.

Reasons for decision

Is the CRT a public authority for the purposes of the EIR?

16. The CRT has argued that it does not fall under the definition of a public authority for the purposes of the EIR. However, in this instance it has indicated that, notwithstanding its position, it is content to deal with this matter on the basis that the EIR applies.

17. The issue of whether CRT is a public authority for the purposes of the EIR has already been considered by the Commissioner in a previous decision notice (Ref: FER0436344). The Commissioner has considered the CRT's further representations about its status. In particularly it has argued that some of the factors previously considered are not in themselves determinative. However, as explained in the earlier decision notice, determining whether an organisation is a public authority under Regulation 2(2)(c) of the EIR involves consideration of multiple factors that must be balanced in order to reach a decision. Having considered CRT's further submissions the Commissioner's conclusion remains the same as set out in paragraphs 17 to 44 of the aforementioned decision notice. Therefore the Commissioner considers that the CRT is a public authority for the purposes of the EIR.

18. The CRT does not accept that the information requested in this matter is "environmental" for the purposes of the EIR. The Commissioner has gone on to consider this point further below.

Is any of the requested information, if held, "environmental"?

19. "Environmental Information" is defined at regulation 2 of the EIR. In order for it to be environmental, information must fall within one or more of the definitions set out at regulation 2(1)(a) to (f) of the EIR – constituting "information on" any of the subjects covered by those six sub-sections.

20. The Commissioner has not had sight of the requested information itself as the CRT maintains that it does not hold the information. However, he is satisfied on the balance of probabilities that the requested information is on an activity likely to affect the elements and factors cited in regulations 2(1)(a) and 2(1)(b) of the EIR and therefore it is

environmental information falling within Regulation 2(1)(c). The Commissioner is satisfied that river dredging and processing the resulting aggregates is an activity likely to affect the state of the elements of the environment, specifically water.

21. As explained above the requested information is about the processing, sale and tendering of river dredgings at Gunthorpe, Nottingham in 1995 including negotiations, tender documents and agreed prices for the sale of the aggregates and the names of individuals who may have such information is still on the aforementioned activity. The phrase "information on" in the context of Regulation 2(2) is interpreted broadly. Bearing this in mind, the Commissioner is satisfied that what has been requested is information on the aforementioned activity.

22. He has therefore concluded that the requested information, falls within the definition of environmental information set out at regulation 2(1)(c) of the EIR.

Regulation 5 – Duty to make environmental information available

23. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. A claim that information is not held is covered by an exception under regulation 12(4)(a) of the EIR.

24. In situations where there is a dispute between a public authority and a complainant about whether the requested information is held, the Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request. In making this decision the Commissioner will in particular consider the extent of the scope, quality, thoroughness and results of the searches and other explanations offered as to why the information is not held.

25. The CRT has provided the Commissioner with documentation which set out in full detail the extensive enquiries that it had made to try and locate the information requested. It has advised him that advice had been sort at any early stage from a senior manager with knowledge of the relevant area and document retrieval systems. Physical searches were also made in all relevant offices where the information may be conceivably located including central archives.

26. In addition the CRT provided the Commissioner with details of its archive electronic records system (TRIM) and results of searches it had made in respect of the request. From this search a box was identified which may have provided the information requested. As mentioned

previously, this box had been removed some years previously and not been returned. The person who was identified as removing the box was traced and had no recollection of removing the box and could not provide any further details.

27. The Commissioner was also provided with details as to the organisation's current document retention policy and the one that was applicable at the time the information was sought. This stated that tender documents should be kept for 6 clear years after the financial year to which it relates and therefore would not have been required to have been held beyond 2003. The CRT also confirmed that the information requested by the complainant would have only been held in hard and not electronic copy.

28. Having considered the explanations provided by the CRT including the fact that there had been several organisation changes since the date of the information requested, the extensive searches undertaken, its document retention and destruction policy at the relevant time, the steps the CRT took to provide some of the requested information from employees in the absence of recorded information and the age of the information sought, the Commissioner considers that, on the balance of probabilities, the outstanding information is not held.

The Public Interest Test

29. Regulation 12(1)(b) of the EIR requires that all exceptions, including regulation 12(4)(a), are subjected to a public interest test. However, it is not possible for the Commissioner to do this given his finding that the CRT does not hold the information to which the public interest could apply.

Right of appeal

30. 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: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.

32. 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 .....

Jo Pedder
Group Manager Policy Delivery
Information Commissioner's Office
Wycliffe House
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