

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 December 2013

**Public Authority:** Department for Environment Food & Rural Affairs ("DEFRA")  
Inland Waterways Team

**Address:** Area 3D Ergon House  
Horseferry Road  
London  
SW1P 2AL

#### **Decision (including any steps ordered)**

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1. The complainant has requested information on the position of a post under an agreement made between Defra and the Canal and River Trust.
2. Defra provided a response to the complainant. However, the complainant was dissatisfied with the clarity of this response and the length of time it took to be issued.
3. The Commissioner has identified that Defra's response was provided on the 20th working day from the complainant's request. He has found that Defra did comply with section 1(1)(a) and 1(1)(b) within the statutory time for compliance and therefore did not breach section 10(1) of the FOIA in its handling of this request.
4. The Commissioner requires no steps to be taken by Defra.

## Request and response

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5. On 5 May 2013, the complainant wrote to Defra and requested information in the following terms:

*"As to the position of 'Protector' under the Agreement dated 28 June 2012 made between the SoS (DEFRA) and the Canal and River Trust entitled the 'Grant Agreement';*

- (i) Has any offer of such post been made?
  - (ii) If so, has any recipient of such offer accepted such appointment?
  - (iii) If so, who has been appointed?
  - (iv) From what date will such appointment take effect?"
6. Defra responded on 6 June 2013. It informed the complainant that an offer of the post of Protector had been made to a candidate and the candidate had accepted that offer. Defra explained how this formal appointment was subject to agreement of a contract and an announcement of the Protector will be made by Government and the Canal & River Trust (CRT) once the position had been finalised. This information answers questions (i) and (ii) of the complainant's request.
7. In relation to request (iii), Defra argued that pending agreement of a contract, the name of the candidate who had accepted the offer of the post was being withheld under section 40(2) of the FOIA, (third party personal data) as the information constituted personal data relating to a third party.
8. Regarding question (iv), Defra advised that the date of the appointment would be set out in the contract.
9. On 13 June 2013 the complainant requested an internal review. In his letter the complainant raised three points. Defra responded to the points he had raised as follows:

- The failure of Defra to reply promptly to a request for information section 10(1) of the FOIA.

*"The response letter from the Inland waterways team was sent on 6 June 2013, which was the 20<sup>th</sup> working day from receipt of your request and thus in line with the statutory time limit."*

- The lack of clarity of Annex A to the actual information.

*"You are correct in your assumption that this is indeed standard wording that is appended to all FOI and EIR response letters. We consider this to be fit for purpose but are always actively considering improvements to such guidance and your comments will be passed on to relevant colleagues."*

- The Irrelevance of the Data Protection Act.

*"this relates to the fact that no formal appointment had been made as of 8 May and that we should have responded to say there was no appointment rather than relying on the personal information exemption in section 40 of the FOIA. Whilst we could have replied to say that the information was not held, the Inland Waterways Team did not consider that this would have fulfilled their duty to advise and assist. They therefore sought to provide you with the fullest information they could at the time – namely that an offer had been made and accepted by the candidate, but that candidate's identity would be withheld subject to the agreement of a contract."*

10. On 16 July 2013 the complainant made a complaint to the Commissioner about Defra's handling of his request for information.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 16 July 2013 to complain about the way his request for information had been handled.
12. The complainant believes that each of the first three questions could have been answered upon receipt of the request – albeit that the then replies would not necessarily have been the same as the replies made on 6 June 2013.
13. The complainant has stated that he does not accept that Defra was justified in failing to comply with the statutory requirement to comply "promptly" and he requested to progress this case to a formal resolution.
14. As the Commissioner considers the internal review to be an opportunity for the public authority to reconsider its initial response, this case has only focused on the length of time it has taken Defra to respond to the request.
15. The Commissioner considers the scope of the case to be whether Defra breached section 10(1) of the FOIA.

## Reasons for decision

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### Section 1(1)(a)

16. Section 1(1)(a) and 1(1)(b) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him/her.

### Section 10(1) – Time for compliance

17. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
18. In this case Defra responded to the request on the 20<sup>th</sup> working day following the date of receipt. The complainant complained that this was not in line with section 10 of the FOIA, and the requirement that a public authority responds to a request promptly.
19. The Commissioner has published guidance on section 10. In regard to the requirement to respond to a request promptly, the guidance states that an authority should comply with a request as soon as is reasonably practicable. Paragraph 25 of this guidance notes that,  
  
*“It also follows that an authority which provides its response close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to comply with the request.”*
20. The complainant’s request was submitted to Defra on 5 May 2013 and it replied on 6 June 2013.

### Conclusion

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21. The information requested is not held, but Defra should have said this at the time of the request. It should have confirmed to the complainant that the information is not held. The Commissioner will find Defra in breach of section 1(1)(a) of the FOIA if confirmation has not been provided by the completion of the internal review or the time for statutory compliance.

22. After a further investigation, Defra explained to the complainant the reason for not sending the response until the twentieth working day. It stated that it was expecting the name of the protector to be agreed and announced imminently, within the 20 day period.
23. Defra had added that it hoped that by waiting until it was announced it would be able to provide the full information to the complainant, which Defra considered would be a more helpful response than replying immediately to say that the information was not held.
24. Defra also confirmed to the complainant that the name of the protector was not announced until a couple of months later, but Defra stated that it was not to know that at the time and it expected to be able to release the name within the original time frame.
25. In light of Defra's explanation as to why it waited until the 20<sup>th</sup> day to respond, the Commissioner has found that Defra had acted reasonably and it did comply with section 1(1)(a) and 1(1)(b) within the statutory time for compliance. Therefore Defra did not breach section 10(1) of the FOIA in its handling of this request.

## Right of appeal

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26. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. 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.
28. 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**