

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2019

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 has requested particular meeting minutes and papers from the Canal & River Trust ('CRT'). CRT did not provide a response to the request. Its position for a number of months was that it was not obliged to provide any response since the requested information fell outside the scope of its obligations under the FOIA. CRT subsequently provided the complainant with a response to his request.
2. The Commissioner's decision is as follows:
 - CRT breached section 10(1) of the FOIA as it did not provide the complainant with a response to his request within 20 working days.
3. Since CRT has now responded to the request, the Commissioner does not require it to take any remedial steps.

Request and response

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. CRT did not provide any response to the request and the matter was passed to the Commissioner.
6. Following the Commissioner's intervention, and after resisting doing so for a number of months, CRT provided the complainant with a response to his request on 8 November 2019.

Scope of the case

7. The complainant contacted the Commissioner on 18 February 2019 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether CRT complied with section 10(1) of the FOIA.

Reasons for decision

9. 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.
10. Section 10(1) of the FOIA obliges a public authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
11. By way of background, in 2012 CRT took over the responsibilities of the state-owned British Waterways. Paragraph 15 of Schedule 3 of the associated Transfer of Functions 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)."
12. 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 taken over from British Waterways. Broadly speaking, these functions comprise those giving CRT the authority to operate and maintain the waterways.

13. In the current case CRT's position, which it maintained for a number of months, was that the requested information did not relate to the above functions and so it was not a public authority for the purposes of that information. It was therefore not obliged to provide any response under the FOIA, not even simply to advise the complainant that the requested information was not caught by the Act.
14. CRT referred the Commissioner to section 7 of the FOIA which concerns public authorities to which the Act has limited application. Section 7(1) states that where a public authority is listed in Schedule 1 (*Public authorities*) only in relation to information of a specified description, nothing in Parts I to V of the Act applies to any other information held by the authority.
15. Moreover CRT appeared to argue that since Parts I to V of the FOIA did not apply to the requested information and so it was not a public authority for the purposes of that information, the Commissioner could not compel it to provide a response to the request.
16. The Commissioner referred CRT to the House of Lords judgement in *Sugar v BBC* [2009]¹. This confirmed that the Commissioner has the jurisdiction to issue a decision notice determining whether or not information held by the BBC is caught by its particular derogation.
17. The Commissioner explained to CRT that she is satisfied that she has the power to make similar decisions in respect of CRT.
18. As with the BBC, CRT is a body listed as a public authority in Schedule 1 of the FOIA; albeit CRT is only listed in respect of certain functions - what the House of Lords has called a 'hybrid authority'. However, because CRT is listed as a public authority in Schedule 1, if it receives a request for information that satisfies the requirements of section 8 of the Act (*Request for information*) it has a duty to respond to that request under section 1.
19. It is clear from the House of Lords judgement in the *BBC v Sugar* case that the Commissioner has the power to investigate cases where a

¹ <https://publications.parliament.uk/pa/ld200809/ldjudgmt/jd090211/sugar-1.htm>

request is made to a 'hybrid authority'; that she can serve decision notices on that public authority and can also issue information notices.

20. The House of Lords found that the alternative, which was for an applicant to have to take a case through judicial review, was clearly undesirable when there already exists an expert regulator and tribunal that are better placed to consider such issues.
21. The Commissioner advised CRT that when considering its obligations, and so what response is required when it receives a request, the starting point must be that someone making a request to a hybrid public authority is making a request to that part of the organisation which is a public authority. So even if the request seeks information that is not held for the purposes of the FOIA, the public authority has still received a valid request. Therefore that public authority has a duty to deal with the request in accordance with section 1 of the FOIA. Where a request seeks information that is not held by the CRT as a public authority under the FOIA, the CRT should provide the applicant with an 'information not held' response.
22. At this point, CRT finally accepted the Commissioner's position and agreed that it would provide the complainant with a response to his request.
23. The complainant submitted his request to CRT on 8 January 2019. CRT has provided the complainant with a response to his request. However, CRT breached section 10(1) of the FOIA because it did not provide the complainant with this response until 8 November 2019, some ten months after receiving the request.
24. The Commissioner makes the observation that CRT is entitled to dispute both its obligations under the FOIA and the Commissioner's powers. However the Commissioner hopes that she has made the position regarding those matters clear to CRT through her investigation and decision in this case. As such, she expects CRT to respond appropriately to any similar requests it may receive in the future.

Right of appeal

25. 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

26. 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.
27. 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
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