

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2014

Public Authority: Canal & River Trust
Address: The Kiln
Mather Road
Newark
NG24 1FB

Decision (including any steps ordered)

1. The complainant has requested the Canal and River Trust (CaRT) to disclose the details of any 'high earners' employed by British Waterways in February 2010 who qualified for the 'special arrangement' referred to by British Waterways in its minutes of 2 February 2010 relating to pension benefits.
2. CaRT responded informing the complainant that his request was outside the scope of the FOIA.
3. The Commissioner has reviewed CaRT's response and he is satisfied, in this case, that the information requested does not fall within the definition of information to which CaRT has FOI obligations.
4. He therefore requires no further action to be taken in this case.

Request and response

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

"I refer to minutes of BW's [British Waterways] remuneration committee dated 2nd February 2010, item 3.

I note that BW put in place a 'special arrangement' such that qualifying 'high earners' (BW's term) have the option of receiving pension benefit as cash payment.

Please provide the following information -

1. The name of any 'high earners' who qualified on 2/2/2010.
2. The name of any 'high earners' who have subsequently qualified together with the qualification date.
3. The name of any 'high earners' expected to qualify before normal retirement date together with the approximate date of qualification.
4. The name of any qualifying 'high earner' who has decided to exercise the option to take cash payment.
5. Details of any cash payments made (i.e. person, amount, date).
6. Any documentary evidence that CaRT trustees/transition trustees (other than [name redacted] who was present at the 2/2/2010 meeting) were made aware of the 'special arrangement'.
7. An estimate of the cost implications of the special arrangement.”
6. CaRT responded on 29 July 2013. It stated that British Waterways ceased to exist from 2 July 2012 and has therefore not been subject to the FOIA since this date. CaRT confirmed that it was therefore of the view that this request was outside the scope of the FOIA. It commented that even if the request was within the scope of the FOIA and it held the requested information, it would not disclose it as the information would be exempt under section 40 of the FOIA.
7. The complainant requested an internal review on 29 July 2013.
8. CaRT responded on 19 August 2013. It again confirmed that the complainant's request was outside the scope of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 11 October 2013 to complain about the way his request for information had been handled. Specifically, he stated that he was unhappy that his request had not been considered under the Environmental Information Regulations (EIR) as well and he remained dissatisfied with CaRT's response that his request was not within the scope of the FOIA.

10. The Commissioner does not consider there was any requirement for CaRT to consider the complainant's request under the EIR. The EIR provides an applicant with the right to formally request access to environmental information. Regulation 2(1) of the EIR clearly defines what environmental information is for the purposes of these regulations (please refer to the attached Annex for the full wording of this section).
11. In this case the complainant has requested remuneration information which may or may not be relevant to previous employees of British Waterways. This is not information on the state of the elements of the environment, factors affecting the environment, measures or activities designed to protect those elements, reports or analyses of frameworks or legislation affecting those elements or information on the state of human health and safety. The request does not therefore fall within the remit on the EIR.
12. This notice will therefore only consider CaRT's response that the request is not subject to the FOIA.

Reasons for decision

13. In Paragraph 15 of Schedule 3 of the Transfer of Functions Order¹ it 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](#))."
14. The amendment to the FOIA affected by the 2012 Order provided that FOIA would apply to information held by the CaRT. However, this was only to the extent that the information related to the statutory functions taken over from British Waterways. Broadly speaking, these functions comprised those giving the CaRT the authority to operate and maintain the waterways.

¹ The British Waterways Board (Transfer of Functions) Order 2012

15. The Commissioner therefore has to determine whether the information requested relates to any or all of the functions transferred by the 2012 Order. He considers that it is a question of fact as to whether the information requested is covered by the CaRT for the purposes of the FOIA.
16. Some of the functions that were transferred to the CaRT were the Transport Act 1962, Highways Act 1980, Channel Tunnel Rail Link Act 1996 and the Planning Act 2008.
17. In support of its position, CaRT has drawn a distinction between information relating to the statutory functions described in the 2012 Order, which is potentially subject to the FOIA, and information concerning activities it undertakes pursuant to its Articles of Association.² The activities it undertakes pursuant to its Articles of Association include the general conduct of its business. Among other things, these encompass matters of administration, organisational management, employment, investment, commercial and charitable income.
18. The Commissioner considers that it would be a stretching interpretation to say that the details of any remuneration given to the individuals who were employed by the organisation entrusted with those statutory functions, is information falling within the definition of information held by the CaRT relating to the functions exercisable by the 2012 Order.
19. The Commissioner interprets functions as meaning obligations specifically entrusted to a particular public authority via statute, rather than general activities or obligations applying to all public authorities (such as personnel management).
20. The FOIA defines the extent to which the CaRT is subject to the Act and it is the Commissioner's view that details of remuneration packages are not sufficiently directly related to the transferred functions to fall within the definition of information to which the CaRT has FOI obligations.
21. It is important to note that the Commissioner is not upholding any decision to withhold information under the FOIA in this case. He simply cannot and this is because he has no remit upon which to decide whether the information should be disclosed because the information does not fall within the functions to which CaRT has FOIA obligations.

² The Companies Act 2006

22. In conclusion, the Commissioner considers that CaRT is not required under FOIA to supply the remuneration information requested. He therefore requires no further action to be taken in this case.

Right of appeal

23. 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: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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