

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to various different stoppages. The Canal and River Trust provided answers to the questions but stated no Board minutes referring to the stoppages were held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has correctly relied on 12(4)(a) of the EIR because it does not hold the requested Board minutes.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 23 January 2024 the complainant wrote to the Canal and River Trust (the Trust) and requested information in the following terms:

"Can you tell me please how many permanent stoppages of Elsans have occurred by year since inception of Canal and River Trust?

Similarly for water points?

And again for rubbish disposal sites?

Please can you show me any board minutes referring to these stoppages?

And finally, how many of your waste disposal sites cater for recycling?"

5. The Trust responded on 19 February 2024 under the EIR. It answered all parts of the request but did not address the part of the request asking for any board minutes referring to the stoppages.
6. Following an internal review the Trust wrote to the complainant on 27 March 2024 stating it did not hold the Board minutes requested.

Scope of the case

7. The complainant contacted the Commissioner on 27 March 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to be to determine if the Trust holds any further information in scope of the request, specifically any relevant Board minutes.

Reasons for decision

Regulation 12(4)(a) – information not held

9. A public authority may rely on this exception when it does not hold the specific information that has been requested.
10. Where there is a dispute over the extent of the information a public authority holds, the Commissioner must decide whether it is more likely than not that the public authority has provided all the information it holds.
11. In making this determination, the Commissioner will consider the complainant's evidence and argument and the actions taken by the public authority to check whether the information is held, and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held.
12. The Commissioner is not expected to prove categorically whether the information was held; he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Tribunal when it considered the issue of whether information was held.
13. The Trust explained that its Board papers are overseen by its Corporate Governance Manager (CGM) who reports directly to the Director of Legal and Governance (DLG). In establishing if it held any information the

Trust started its enquiries with the DLG who confirmed that matters of this nature ie stoppages are not Board business so it would be highly unlikely any reference to such items would appear in Board minutes.

14. For completeness the CGM conducted a search of Board minutes and found no relevant records. In response to the Commissioner's questions during the investigation the Trust and CGM conducted new searches to make sure no relevant information was held.
15. The Trust explained its Board minutes are filed electronically in a central library created specifically for this purpose. The library contains all Board minutes going back to 2012 and if information existed it would be found in this library.
16. Searches of the information in this library were carried out using search terms designed to locate any relevant information. These were as follows: "permanent stoppages of Elsans"; "permanent stoppages of water points"; "permanent stoppages of rubbish disposal"; permanent stoppages Elsans"; "permanent stoppages water points"; "permanent stoppages rubbish disposal"; "elsans"; "water points"; "rubbish"; "permanent stoppages"; and "stoppages".
17. The Trust opened each set of minutes held in the library and searched the documents using these search terms. No relevant results were returned. The Trust explained there were occurrences of some of the words but not in a way that was relevant to the information request. For example, the terms "stoppage" occurred in the context of winter stoppage season or temporary canal stoppages due to ongoing works.
18. The complainant had argued that the decisions referred to in his request are material decisions based on budgetary constraints so the decisions must be made at Board level and minutes must exist.
19. The Commissioner considers the Trust has provided clear explanations as to why it has established the requested information is not held. The searches conducted by the Trust were, in the Commissioner's view, extensive enough to have returned relevant information if it were held. The search terms used were both broad and specific and would have captured relevant references in the Board minutes. The Trust has manually checked any returns from the searches. The Commissioner's view is that all of these steps taken were proportionate and on balance there is no reason to dispute that no relevant Board minutes are held.
20. The Commissioner is therefore satisfied it is more likely than not that the information is not held and regulation 12(4)(a) applies.

21. Although regulation 12(4)(a) is technically subject to the public interest test, the Commissioner can see no public interest argument capable of requiring a public authority to disclose information it does not hold.

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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