

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2024

Public Authority: Canal & River Trust

Address: National Waterways Museum
Ellesmere Port
CH65 4FW

Decision (including any steps ordered)

1. The complainant has requested copies of the original brief and terms of reference, correspondence and information published on the website prior to 2023 and since removed from the website by the Canal and River Boat Trust (CRT).
2. The Commissioner's decision is that, on the balance of probabilities, CRT does not hold any further information that falls within the scope of the request.
3. The Commissioner does not require further steps

Request and response

4. On 17 March 2024, the complainant wrote to CRT and requested information via What do they Know¹ in the following terms:

"Please provide the following -

¹ https://www.whatdotheyknow.com/request/djs_research_brief

1. A copy of the original brief and/or Terms of Reference agreed with DJS Research that resulted for the "Boat licence consultation 2023".

(For the avoidance of doubt , the DJS definition of brief can be found at -

<https://www.djsresearch.co.uk/glossary/i...>)

2. Copies of all subsequent correspondence between CRT and DJS related to this consultation.

3. Copies of any information related to consultation published on your website prior to June 2023 but now removed."

5. CRT responded on 12 April 2024. It stated that:

"I can confirm that the Canal & River Trust holds the information you have requested but is refusing to provide it on the basis of an exemption as set out in the Act. The exemption(s) applicable to the information on this occasion are as follows - Section 12 – Cost of Compliance Exceeds Appropriate Limit.

I have undertaken a search of emails in our system, which has returned almost 2000 results. There is no way of refining the search in order to return fewer results.

In order to comply with your request, the Trust is required to manually review each of these items to determine whether they are relevant to the request as we cannot assume that they are. This will require reading each email, which in many cases are several threads long. This amounts to the task of finding the information requested and this is estimated to take well in excess of the reasonable time limit set down, namely 18 hours.

I can confirm that the problematic request is request numbered 2, with 1 and 3 coming within the timescale. However, the guidance is that I am unable to make a unilateral decision as to how to refine your request.

There is nothing I can suggest that will narrow down the documents returned or that will refine your request to a level manageable within this time period, except as above, to remove one of the queries."

6. On 12 April 2024 the complainant responded with CRT and revised his request as follows:

"My request is now limited to -

1. A copy of the original brief and/or Terms of Reference agreed with DJS Research that resulted for the "Boat licence consultation 2023

(please note, I no longer require 3 as I have now found the requested information. With regard to 2, I will make a new information request limiting the number of records you need to examine manually.)".

7. On 23 April 2024 CRT responded stating that the request had not been dealt with as an internal review, but as a fresh request. CRT provided a copy of the CRT 8696 Inception meeting notes, and timeline notes and stated:

"There was no written brief or terms of reference. It was more of a discussion to develop the framework for the consultation. Please see the attached notes from the 'kick-off meeting' with DJS research."

8. The complainant requested an internal review on 23 April 2024 stating:

"in your initial response you stated that you held the information
12 April 2024 -

I can confirm that the Canal & River Trust holds the information you have requested but is refusing to provide it on the basis of an exemption as set out in the Act."

9. CRT provided an internal review on 21 May 2024 in which it stated that the response sent to the complainant on 12 April 2024 was in error and should have stated that it held "some of the information requested".

Scope of the case

10. The complainant contacted the Commissioner on 12 May 2024 to complain about the way their request for information had been handled, as they believed that CRT holds further information stating:

"part 1 and part 2 of my request are mutually inclusive. It is impossible to hold information for part 2 unless information is held for part 1

Its 21 May 2024 position is that it does not hold part 1 info. Obviously, if it does not hold the brief/TOR document, it cannot hold subsequent correspondence. Despite this the request is

refused on the basis that a (sic) it holds a brief/TOR dated 1 December 2024.”

11. The Commissioner has considered whether, on the balance of probabilities, CRT holds further recorded information within scope of the complainant’s revised request and whether it has complied with section 1(1) of FOIA.

Reasons for decision

12. Under section 1(1) of 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 them if it is held and is not exempt information.
13. The right of access to information, under FOIA, relates only to information which is held in a recorded form at the time a request is received. There is no obligation to create or obtain information, generate answers to general questions nor to provide statements, opinions, and explanations, unless these are already held in a recorded form. Nor does the legislation require a public authority to amend or verify the accuracy of the information it holds.
14. The Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
15. In its submissions to the Commissioner, CRT advised that they had considered the scenario that disclosure of some information for the second and revised request (albeit not what was requested by the complainant), may imply that it held subsequent information and further correspondence between the trust and DJS Research, which had engaged section 12 of FOIA at part 2 of the original request.
16. CRT further advised that it had contacted the Head of Customer Service Support and National Boating Manager (HCSS), who is the individual with detailed knowledge of the consultation and responsible for instructing DJS Research who confirmed that; other than the information voluntarily disclosed to the complainant in its response and internal review that

“all of the correspondence regarding this consultation was via email. There are no paper records, and no information or documentation would have been destroyed. Even if it had, it would

still be in our e-mail archive. The e-mail search has not returned any brief or terms of reference."

17. CRT further advised that for the sake of completeness and to ensure that it had not missed information which may satisfy the request, that it conducted a further review of its electronic records using eDiscovery and identified further information which has subsequently been disclosed stating:

"We do not consider that this document constitutes a brief, for various reasons, most notably because it was not originally created for the purpose of disclosing to DJS Research. It was an internal document, created when the Trust was preparing to undertake the consultation itself. It was ultimately sent to DJS Research for context and to demonstrate the work that the Trust has so far undertaken."

18. The Commissioner considers that both the complainant and CRT have taken a different interpretation of what information is held in relation to the request and that semantics has come into play on this matter.
19. Although the complainant has stated that he would submit a new request for "Copies of all subsequent correspondence between CRT and DJS related to this consultation which was part 2 of the original request, he has assumed that CRT must hold the information as the original request engaged section 12, of FOIA and CRT would require over 18 hours to check 2,000 emails to see if they fell within the scope of the request.
20. Whilst the Commissioner recognises that the complainant believes further information within the scope of this request is held by CRT the Commissioner is satisfied that CRT carried out appropriate searches of its electronic and IT record systems and consulted with all responsible, authorised, and appropriate staff members to determine whether further information within the scope of the revised and second request was held.
21. CRT have voluntarily provided the complainant with two items of information outside the scope of the request.
22. Section 1 of FOIA is a matter of fact of whether information is held or not held. It is not an opinion on whether it should be held or recorded.
23. As such, the Commissioner has decided that CRT has complied with section 1(1) of FOIA and that, on the balance of probabilities, CRT did not hold further recorded information falling within the scope of the revised request.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
Group Manager
Information Commissioner's Office
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