

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2025

Public Authority: Canal & River Trust
Address: National Waterways Museum
South Pier Road
Ellesmere Port CH65 4FW

Decision (including any steps ordered)

1. The complainant has requested an unredacted version of a particular Board paper and any appendices associated with that paper.
2. The Canal & River Trust (CRT) maintained the redactions previously made to the report under sections 36(2)(b)(ii) and 36(2)(c) of FOIA. It also disclosed one document associated with the report and has advised it holds no other relevant appendices to that report. In the course of the Commissioner's investigation, CRT advised that, due to the passage of time, it could now disclose a little information it had previously withheld.
3. The Commissioner's decision is that the remaining information in the Board paper that CRT has redacted is exempt information under sections 36(2)(b)(ii) and 36(2)(c) of FOIA. The Commissioner also finds that, on the balance of probabilities, CRT holds no further information within scope of the complainant's request.

Request and response

4. CRT has provided a background to the current request, which the Commissioner will summarise here.
5. In November 2023 CRT had received a request from an individual for the "report providing an update on the outcome of the consultation on

future options for boat licence fee pricing." CRT had disclosed information including a Board paper titled "Trust/695." CRT had made redactions to this paper under sections 36(2)(b)(ii) and 36(2)(c) of FOIA.

6. CRT had also disclosed a series of documents and implied that these were appendices to - or part of - Trust/695. This was an error, which CRT had subsequently acknowledged.
7. On 21 April 2024, the complainant in this case requested "Appendix A" and "Appendix B" and "Any other Appendix not named A or B" to Trust/695. CRT says that the complainant was essentially requesting the documents that it had disclosed to the other individual.
8. CRT responded to this request – and other of the complainant's outstanding requests – on 10 June 2024.
9. In that correspondence, CRT discussed what became known as "Version 4" of a particular report. In relation to the 21 April 2024 request, CRT noted that the only 'appendix' to Trust/695 was that Version 4 document.
10. Through its 10 June 2024 response, CRT says it confirmed that: there were no documents labelled or referred to as 'Appendix A' or 'Appendix B'; there was only one 'appendix' to Trust/695, namely Version 4 of a particular report; and that it had disclosed that report to the complainant.
11. In further correspondence dated 5 August 2024, CRT re-iterated that the only 'appendix' to Trust/695 was Version 4 and that this had been disclosed without redactions.
12. The complainant made the following information request to CRT on 16 September 2024:

"Please provide an unredacted copy of Trust /695 including any appendices (part of July 2023 board papers)."
13. As part of wider correspondence to the complainant dated 29 October 2024, CRT advised that it believed that the complainant was aware that Trust/695 had been published (in response to the request submitted by the other individual) with some of the information redacted under section 36(2)(b)(ii) and 36(2)(c) of FOIA.
14. Regarding appendices, CRT refused this request as being repeated. It referred the complainant to its letter dated 5 August 2024 in which it had advised that the only appendix was 'Version 4' of the report, which it had disclosed.

15. The complainant requested an internal review on 3 November 2024, saying:

"In view of the above, I would asked [sic] the reviewing officer to provide an unredacted copy of Trust /695 including any appendices as a single document extracted from the board papers. Please ensure that the document includes "recommendations for future boat licence pricing and timing for implementation" (Appendix A) which appears to be missing."

16. CRT provided a review on 27 November 2024; maintaining its reliance on section 36 of FOIA to withhold some of the requested information.
17. In its submission to the Commissioner, CRT has advised that, due to the passage of time, it's now able to disclose a small amount of information – in paragraph 3.6 of Trust/695 – that it had previously withheld under section 36 of FOIA. The Commissioner expects CRT to disclose that particular information to the complainant as soon as possible.

Reasons for decision

18. On the basis of the complaint to the Commissioner, this reasoning covers CRT's application of sections 36(2)(b)(ii) and 36(2)(c) of FOIA to the information in Trust/695 that CRT is continuing to withhold. It will also consider whether CRT holds any further relevant information.
19. CRT has provided the Commissioner with a copy of the information that it's withholding. The information is in a Board paper dated July 2023. It's associated with responses to a consultation on future options for boat licence fee pricing and discusses those options.
20. The Commissioner understands that that matter remained live at the point of the complainant's request of 16 September 2024. In its submission to the Commissioner, CRT has said that issues associated with boat licencing fees are also currently live whilst CRT's latest consultation – the [Future of Boat Licensing Review](#) – is ongoing.
21. Under section 36(2)(b)(ii) information is exempt from disclosure if, in the reasonable opinion of a qualified person, its disclosure would or would be likely to inhibit the free and frank exchange of views.
22. Under section 36(2)(c) information is exempt from disclosure if, in the reasonable opinion of a qualified person, disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

23. CRT has provided the Commissioner with a copy of the qualified person (QP) submission that was relied on in relation to the request received in 2023, and email correspondence associated with that submission. Its view is that it invoked section 36 appropriately in that instance and that the key question now is whether the passage of time means the position has changed to the extent that CRT can no longer rely on it.
24. The QP in that case was David Orr CBE, Chair of CRT's Board of Trustees. The Commissioner is satisfied that this individual was authorised as the QP under section 36(5) of FOIA.
25. From the QP submission the Commissioner accepts that the QP gave their opinion that the two exemptions were engaged. The submission indicates that the QP gave their opinion on "5 January 2023". This is a typo as the associated email correspondence shows that the QP gave their opinion on 5 January 2024 and that this was an appropriate time in relation to the 2023 request.
26. The QP was provided with details of the request. They were advised which section 36(2) exemptions were being considered and the exemptions were explained. The QP was advised why the inhibition and prejudice envisioned under the two exemptions would or could occur.
27. The QP's opinion confirms that they considered that disclosing the information "would" cause the envisioned inhibition and prejudice.
28. In relation to section 36(2)(b)(ii), their opinion was that disclosure would have a chilling effect on discussion about CRT's financial position and long term strategy and would remove the 'safe space' CRT needs to explore strategic choices. In its submission to the Commissioner, CRT also says that disclosure would have a chilling effect on people's willingness to engage in future consultations, if the consultation information were to be disclosed. This would make such consultations less robust and meaningful.
29. In relation to section 36(2)(c), the QP's opinion was that disclosure would prevent effective communications and briefings taking place during the period that CRT is considering the related, live matters. CRT has also included issues broadly associated with this in its public interest arguments, discussed below.
30. It's important to note that 'reasonableness' in relation to the QP's opinion isn't determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it's a reasonable opinion, and not necessarily the most reasonable opinion.

31. The Commissioner considers that the QP in this case had sufficient background knowledge and was provided with sufficient information to enable them to form an opinion on the matter.
32. The Commissioner considers it to be a reasonable opinion that disclosing information about potential changes to boat licence fees, while that matter remained 'live,' would or could cause the inhibition and prejudice that CRT envisions.
33. Finally, he's considered the likelihood of the envisioned inhibition and prejudice occurring.
34. The Commissioner understands from CRT's submission that boat licencing fees is a matter of significant controversy and heightened concern for some in the boating community. It has also led to behaviours and actions by some in that community that have concerned CRT. In that context, in relation to section 36(2)(b)(ii) the Commissioner is persuaded that disclosing the information would inhibit CRT's ability to exchange free and frank views about those fees. He considers it's also more likely than not that disclosure would dissuade some members of the boating community from engaging in CRT's consultations, inhibiting the exchange of views that way.
35. The Commissioner has considered section 36(2)(c) next. The opinion is that disclosure would frustrate CRT's ability to communicate about its fee pricing strategy and to carry out its public functions effectively. He has noted that CRT does regularly communicate about boat licence fees on its website. However, given the wider context, the Commissioner considers that disclosing the information would be more likely than not to generate queries and comment (and perhaps actions) that CRT would need to address. This would make it more difficult for CRT to communicate its intentions clearly and effectively, and at the appropriate time. It would also prejudice its ability to carry out its core functions more generally, for the reasons given under the public interest test discussion.
36. To summarise, the Commissioner finds that – in the context of a live review of its boat licence fee pricing and the generally heated context of those fees - the QP's opinions are reasonable opinions. He accepts that disclosing the information would have a chilling effect and undermine CRT's safe discussion space. It would also undermine CRT's ability to carrying out its public functions effectively, including communicating about the pricing strategy. The information being withheld therefore engages sections 36(2)(b)(ii) and 36(2)(c) of FOIA. The Commissioner has gone on to consider the public interest tests.

Public interest test

37. The Commissioner has found that disclosing the withheld information would inhibit CRT from exchanging views freely and frankly and would otherwise prejudice CRT's ability to conduct its affairs.
38. He will consider whether, in September 2024, the public interest in the information was such that it would justify causing the above inhibition and prejudice.
39. When he considers the balance of the public interest, the Commissioner takes account of the weight of the QP's opinion, the timing of the request, and the severity and extent of the envisioned inhibition and prejudice.
40. First, the Commissioner considers that CRT's QP had the requisite knowledge of how their organisation works and the consequences of any disclosure. He has therefore given the QP's opinion a measure of respect.
41. In relation to timing, the public interest in CRT being able to conduct its affairs without inhibition and prejudice will be greater if associated matters are ongoing and live at the time of a request. As noted, the matter of boat licence fees was live at the time of the first request in November 2023, at the time of the complainant's request in September 2024, and currently. In its submission CRT has also said that there may be a legal challenge brought around the imposition of the new licence fee structure.
42. The complainant hasn't provided any public interest arguments for disclosure, in their request for an internal review or their complaint to the Commissioner.
43. In their submission, CRT has provided the Commissioner with the following argument in favour of disclosure:
 - There are significant issues at play - the decision to impose higher increased licence fees on continuous cruisers is capable of having a material adverse impact on the lives and experience of that group of boaters especially, particularly with regards to the cost of living. Given the impact of the decision on a particular section of the boating community, that community has a right to know details of the logic underpinning the decision made.
44. In relation to both section 36 exemptions, CRT has provided arguments against disclosure which the Commissioner will summarise, rather than reproduce in full. CRT considers that imposing the increased licence fee structure has created and continues to create tension among the boating

community. It remains the subject of significant controversy and heightened anger. CRT says that it continues to face resistance from some elements of this community. Some of this is appropriate and conducted in a civil manner, however some is extremely concerning. As indicated, CRT has provided the Commissioner with more detail about that.

45. In relation to section 36(2)(b)(ii) CRT considers there's greater public interest in:

- As many stakeholders as possible being willing to participate in CRT's consultations
- CRT's officers being prepared to exchange free and frank views based solely on the facts and not influenced by fear of undue pressure or inappropriate targeting and behaviours.

46. In relation to section 36(2)(c) CRT considers there's greater public interest in:

- CRT being able to carry out its core function of governing use of inland waterways and keeping them in a safe and usable condition for public enjoyment
- Reducing the likelihood of the current heated and delicate situation worsening
- Not worsening relationships between parts of the boating community and between a part of that community and CRT
- Reducing the likelihood of incidents of concerning behaviours and activities and rendering the waterways harder to use or, more generally, more difficult to enjoy for other members of the public who use the waterways but don't live on them
- Protecting CRT's financial resources.

47. The Commissioner recognises that boat licencing fees is an important matter for the boating community, and for CRT. There's public interest in CRT being transparent generally and in being transparent about how it's making decisions about those fees. But in the Commissioner's view the information CRT has disclosed addresses the general public interest in transparency to a sufficient degree.

48. The Commissioner has considered the wider circumstances and context of this request. He doesn't consider the withheld information has such a degree of wider public interest that it would justify causing the inhibition

and prejudice that CRT envisions. He agrees with CRT that there's greater public interest in:

- CRT being able to discuss changes to its fees strategy freely and frankly
- all sections of the boating community being willing to engage with CRT
- not inflaming an already heated situation
- maintaining and improving relationships where possible
- protecting CRT officers and finances
- CRT being able to communicate about any changes to boat licencing fees when and as it considers appropriate; and
- in CRT being able to focus on carrying out its core functions effectively – for the benefit of boaters and the public generally.

49. In coming to a decision, the Commissioner has taken account of:

- the QP's opinions
- the fact that the matters that the withheld information concern were live at the time of the request and currently
- the possibility of legal action; and
- the potential severity of the consequences of disclosure.

50. The Commissioner has weighed the arguments for and against disclosure and finds there's greater public interest in withholding the information to which CRT has applied sections 36(2)(b)(ii) and 36(c) of FOIA.

Procedural matters

51. Section 1(1) of FOIA requires a public authority (a) to confirm whether it holds information that has been requested and (b) to communicate the information if it's held and isn't exempt from disclosure.

52. In its submission to the Commissioner, CRT says that it analysed the complainant's request of 16 September 2024 as being for (a) an unredacted version of Trust/695 and (b) the appendices to that

document ie the same document the complainant had already requested on 21 April 2024 and which CRT had dealt with as detailed above.

53. The redactions made to Trust/695 have been considered under the section 36 analysis.
54. Regarding the matter of the appendices and whether any other information relevant to the request is held, in its submission CRT had confirmed that there is only one 'appendix' - Version 4 of a report, which it has disclosed in full. CRT has confirmed that it's sure that there are no further documents because it has reviewed the bundle of papers several times. It says it's clear that no other appendices exist.
55. CRT has gone on to say that, as discussed at paragraphs 5 - 6, to the extent that it had advised the other individual that there were other appendices, this was an error, which it has explained to the complainant several times. CRT has confirmed that there are no documents labelled 'Appendix A' or 'Appendix B,' and no reference made to 'Appendix A' or 'Appendix B' in the papers, despite the complainant's apparent insistence that there is.
56. The complainant has had a protracted communication with CRT about a particular report – Trust/695. In the course of that communication – and the resulting complaint to the Commissioner - CRT has had cause to consider what relevant information it holds, and to review the relevant information it **does** hold – several times.
57. In 2023 CRT had erroneously indicated to another applicant that there were appendices to Trust/695. In fact, and which it subsequently acknowledged, the only other material associated with Trust/695 was Version 4 and that report – Version 4 – had been disclosed without redactions. CRT says it has explained and clarified that matter to the complainant a number of times.
58. The Commissioner has considered the long history to this request. He hasn't been presented with evidence to suggest that CRT holds any further relevant information. It has already disclosed Version 4, the only other information associated with Trust/695, and has clarified an earlier misunderstanding. And as noted, CRT has considered what information it holds that's relevant to the request multiple times at this point.
59. On the balance of probabilities, the Commissioner's decision is that CRT doesn't hold any other information falling within scope of the complainant's request.

Other matters

60. On this occasion the Commissioner has accepted the QP's opinion that was given in January 2024 in relation to a separate request, 10 months before CRT responded to the complainant's request. He's accepted this opinion because the complainant's request is for broadly the same information, the time period between the two responses although long, wasn't significantly long and because the circumstances remained broadly the same between the first request and the complainant's request.
61. However, the Commissioner reminds CRT that the Commissioner would generally expect the QP to provide a fresh opinion in relation to each new request, even if a new request is for the same information as a previous request. This is because the opinion should take account of the circumstances as they are at the time of the new request, and circumstances can and do change.

Right of appeal

62. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

63. 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.
64. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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