

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 November 2013

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

#### Decision (including any steps ordered)

---

1. The complainant has requested information broadly concerning remuneration information of British Waterways Directors.
2. The Commissioner's decision is that the information requested does not fall within the definition of information to which the Canal & River Trust (CaRT) has FOI obligations.
3. The Commissioner requires no steps to be taken.

#### Request and response

---

4. On 20 March 2013 the complainant wrote to the CaRT and requested information in the following terms:  
*"Please supply the Remuneration Committee's report respecting the bonuses to be paid to BW directors with respect to the published Bonus Points Schemes for 2007/08. I am looking for particulars of what amounts were awarded for each of the targets identified in the scheme and how these sums were assessed".*
5. The CaRT responded on 19 April 2013. It stated that the information the complainant requested was exempt from disclosure under section 12(4).
6. Following an internal review the CaRT wrote to the complainant on 31 May 2013. It stated that the information the complainant had requested

was not a class of information covered by FOIA by virtue of the British Waterways Board (Transfer of Functions) Order 2012 (the 2012 Order.)

## Scope of the case

---

7. The complainant contacted the Commissioner on 4 June 2013 to complain about the way his request for information had been handled.
8. The Commissioner has to consider whether the CaRT had correctly interpreted and applied the 2012 Order.

## Reasons for decision

---

9. In Paragraph 15 of Schedule 3 of the Transfer of Functions Order<sup>1</sup> 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).”
10. 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.
11. The Commissioner therefore has to determine whether the information requested relates to any or all of the functions transferred by the 2012 Order.

---

<sup>1</sup> The British Waterways Board (Transfer of Functions) Order 2012

12. 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.
13. The complainant has explained that the CaRT takes the view that all British Waterways information is exempt. The complainant has therefore argued that this position is directly contrary to the intention of Parliament in ensuring that the CaRT would be liable to the FOIA in all matters wherein it succeeded to functions exercised by British Waterways. The Commissioner disagrees with this argument and 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.
14. In support of its position, the CaRT has previously 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.<sup>2</sup> 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.
15. The Commissioner would consider that it would be a stretching interpretation to say that the details of payments made 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.
16. The Commissioner would interpret 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).
17. The FOIA defines the extent to which the CaRT is subject to the Act and in the Commissioner's view details of remuneration are not sufficiently directly related to the transferred functions to fall within the definition of information to which the CaRT has FOI obligations.
18. The Commissioner notes that he is not upholding any decision to withhold information under the legislation. Rather, it is his view that he

---

<sup>2</sup> The Companies Act 2006

has no remit upon which to decide whether the information should be disclosed because it does not fall under the FOIA.

19. The Commissioner considers that the CaRT is not required under FOIA to supply the remuneration information requested. The Commissioner therefore requires the CaRT to take no further steps on this matter.

## Right of appeal

---

20. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

21. 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.
22. 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 .....**

**Racheal Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**