

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 16 March 2020

**Public Authority:** Canal and River Trust  
**Address:** First Floor North  
Station House  
500 Elder Gate  
Milton Keynes  
MK9 1BB

**Decision (including any steps ordered)**

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1. The complainant has requested all lease agreements granted between the Canal and River Trust (the CRT) and the Pike Anglers' Club (PAC) for the period from March 2013 to present day, including the lease costs for the fishing rights of a stretch of the Lancaster canal. Initially, the CRT refused the request under section 14(2) of the FOIA. It however later disclosed the recorded information it holds, with redactions made under sections 40 and 43 of the FOIA.
2. No complaint was made in respect of the application of section 40 of the FOIA. But the complainant did raise concerns over whether the CRT had identified all recorded information held and the application of section 43.
3. During the Commissioner's investigation it was established that the request should have been considered under the EIR. The CRT confirmed that it now wished to rely on regulation 12(5)(e) of the EIR.
4. The Commissioner's decision is that on the balance of probabilities no further recorded information is held to that already identified. In relation to the application of regulation 12(5)(e) of the EIR, the Commissioner has decided that the CRT is entitled to rely on this exception and that the public interest rests in maintaining the exception.

5. She has however found the CRT in breach of regulation 11 of the EIR, as it failed to carry out the internal review within 40 working days of receipt.

## **Request and response**

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6. On 14 June 2019, the complainant wrote to the CRT and requested information in the following terms:  
“...all lease agreements granted between the CRT to the PAC for the period from March 2013 to present day, including the lease costs.”
7. The CRT responded on 10 July 2019. It refused to comply with the request, citing section 14(2) of the FOIA.
8. The complainant emailed the CRT on 11 July 2019. The CRT wrote to the complainant on 16 July 2019 to advise the complainant that it was treating his correspondence of 11 July 2019 as a request for an internal review and would therefore initiate the process.
9. As the complainant heard nothing further, he referred the matter to the Commissioner on 27 August 2019.
10. The Commissioner wrote to the CRT on 16 September 2019 and requested that it complete the internal review process within 10 working days.
11. The complainant contacted the Commissioner again on 1 October 2019, as he had still not received the outcome of the internal review.
12. The CRT carried out an internal review and notified the complainant of its findings on 2 October 2019. It upheld the application of section 14(2) but then provided the complainant with a further copy of the only agreement in existence between the CRT and PAC and advised that information had been redacted under sections 40 and 43 of the FOIA.

## **Scope of the case**

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13. The complainant contacted the Commissioner again on 2 October 2019 to complain about the way his request for information had been handled.
14. The Commissioner's understanding is that the complainant is dissatisfied with the application of section 43 of the FOIA and the fact that no signed agreement for the period 2015 to the present day is held. No concerns

were raised over the application of section 40 of the FOIA. This has therefore been the basis of the Commissioner's investigation.

15. During the Commissioner's investigation it was decided that the request should have been considered under the EIR. The Commissioner considers the requested information is information 'on' and 'relating to' an activity (a Fisheries or Angling agreement providing PAC with the angling rights to a particular stretch of canal) which affects the elements of the environment. It therefore falls within the definition of environmental information at 2(1)(a) and (c) of the EIR. The Commissioner considers the example provided at the bottom of page 13 of her guidance supports this, which can be accessed here:

[https://ico.org.uk/media/for-organisations/documents/1146/eir\\_what\\_is\\_environmental\\_information.pdf](https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf)

16. The Commissioner will therefore proceed to consider regulation 12(5)(e) of the EIR (similar exception to the exemption at section 43 of the FOIA) and whether the CRT holds any further recorded information to that already identified.

## Reasons for decision

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### Does the CRT hold any further recorded information?

17. The CRT has to date confirmed that it holds the angling agreement with PAC from 2013 but holds no other signed agreements with PAC. The agreement identified was for a period of three years commencing on 1 May 2013, so the complainant has understandably questioned what agreement(s) have been in place with PAC since the 2013 agreement came to an end.
18. In its internal review response the CRT advised the complainant that the 2013 agreement is the only agreement in existence between the CRT and PAC. It stated that it appreciated that the agreement identified was only for a three year period. However, it confirmed that the agreement has continued on a rolling basis since the official end date while both parties negotiate the terms of a new agreement. It informed the complainant that the new agreement would follow the terms of the CRT's standard angling agreement, which is available on its website. However, the new agreement was yet to be finalised and executed by both parties.
19. The complainant believes there is a history of wrongdoing in relation to this particular stretch of canal and in relation to the fees PAC has

actually paid the CRT for the angling rights since 2013. He believes a member of staff at the CRT has provided more than favourable terms to PAC since 2013 and the CRT's decision not to disclose the requested information is to conceal that rather than protect any commercial sensitivity.

20. In his correspondence to the Commissioner the complainant questioned again whether there are any further signed agreements held with PAC since 2015 to the present day. He commented that PAC is still charging people for access to the canal and profiting from these charges when there is no formal agreement in place.
21. The Commissioner asked the CRT to explain what searches it had undertaken to date to ensure that it has identified all the recorded information it holds. The CRT responded advising the Commissioner that enquiries were made with the CRT's Angling and Fisheries Team and the CRT's National Fishing and Angling Manager, who has been in that role since 2009. The National Fishing and Angling Manager confirmed that any agreements made would have been made with his knowledge and confirmation. It stated that the manager is not aware of any other agreement; only the 2013 agreement which the complainant has received in redacted form. The CRT also stated that it has checked all relevant paper and electronic records for any agreements with PAC and this did not return any records apart from the 2013 agreement.
22. Considering the explanation that the CRT provided to the complainant in its internal review response regarding the ongoing arrangements with PAC following the end of the signed 2013 agreement, the Commissioner has no reason to doubt that no further agreements are held. She is satisfied that the CRT has carried out sufficient searches to ensure that this is the case and consulted the members of staff that would be aware of all agreements confirmed with PAC and other angling clubs.
23. The Commissioner is therefore satisfied that on the balance of probabilities no further recorded information is held to that already identified.

### **Regulation 12(5)(e) – commercial interests**

24. Regulation 12(5)(e) of the EIR states that a public authority can refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

25. For the Commissioner to agree that the withheld information is exempt from disclosure by virtue of regulation 12(5)(e) of the EIR, the authority must demonstrate that:
  - the information is commercial or industrial in nature;
  - the information is subject to confidentiality provided by law;
  - the confidentiality provided is required to protect a legitimate economic interest; and
  - that the confidentiality would be adversely affected by disclosure.
26. In accordance with regulation 12(2) the public authority should apply a presumption in favour of disclosure. So, a public authority should only refuse to disclose the information if it considers the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.
27. Dealing with the first bullet point the Commissioner is satisfied that the withheld information is commercial in nature. It relates to the leasing of angling rights for a particular stretch of canal for a negotiated cost per annum. Such agreements involve the selling of angling rights generally to individual angling clubs for a specified period and for an annual rent.
28. Turning now to the second bullet point, the Commissioner notes that there is no obvious confidentiality clause in the 2013 agreement itself. However, she considers it is not necessary for there to be a formal confidentiality clause for this element of the exception to be met. If the withheld information has the necessary quality of confidence (more than trivial and not otherwise publicly known) it can be said that it is protected by a common law duty of confidence.
29. The CRT has stated that the information is commercially sensitive and disclosure would adversely affect the commercial interests of the CRT and PAC. It therefore regards the withheld information as having the necessary quality of confidence. The Commissioner does not consider the withheld information is trivial in nature for these reasons and she is not aware of the withheld information being otherwise publicly available. For these reasons she is satisfied that a common law duty of confidence is owed and this element of the exception is met.
30. Turning now to the third and fourth element, the CRT has explained to the Commissioner that there was a formal agreement in place with PAC from 2013 for a period of three years. After that, the agreement has just rolled on year on year whilst it negotiates with PAC over a new formal agreement. Prior to 2013 this stretch of canal was un-leased for several years and little interest from angling clubs was shown. In 2013 the CRT

was particularly interested in ensuring that an agreement could be reached with PAC for these reasons, as not only do such agreements generally provide the CRT with revenue but angling clubs also assist with the day to day site management of the fishery itself, including being aware of potential illegal fishing and pollution incidents (referred to by the CRT as bailiffing). It argued that such agreements are therefore not only valuable as a source of revenue but valuable for the day to day management and overseeing of the CRT's waterways and rent is therefore only one of many considerations.

31. The CRT explained that disclosure would adversely affect its commercial interests when finalising a new agreement for this stretch of canal and negotiating future agreements for other waterways with respective clubs. Agreements are individually negotiated, taking into account a variety of individual factors. If the withheld information was to be disclosed it would enable other clubs to compare the rents paid for this stretch over the last few years with their own and enable these clubs to negotiate and insist on, potentially, more favourable terms.
32. The CRT also stated that although it is in discussions with PAC over a new agreement and PAC was entitled to first refusal (being a term of the 2013 agreement), it remains a possibility that an agreement may not be reached. If this was to occur the CRT may then go to tender. If this indeed happens, prior knowledge of the rents previously paid by PAC would be very useful to other interested clubs. They would know what the CRT has previously accepted and be in a position to tailor their tender accordingly. This would place other interested clubs at an advantage during any negotiations, to the detriment of the CRT. The CRT would be unable to secure the best possible terms available and therefore optimal rent for this stretch of canal.
33. Disclosure would also place PAC at an unfair disadvantage if it did go to tender and it wished to submit a bid. Other interested clubs would have prior knowledge of the rents it has previously paid and enable interested clubs to potentially work out what PAC's offer would likely be.
34. The CRT provided the Commissioner with an example of a recent tender to highlight its point. It stated that it recently went to tender for the fishing rights at Castleford on the Aire and Calder Canal. It confirmed that there were five fishing clubs/groups who made formal offers for the fishing rights however it decided to go out to tender as it believed this would allow it to obtain the best value both financially and from an active bailiffing and community engagement perspective. It argued that knowledge of the previous rent paid would have assisted all clubs by acting as a guide price for what they could potentially bid for the fishing rights. It confirmed that this would have been a detriment to the CRT which, in this instance, received a substantially higher rental offer and

enhanced standards of bailiffing compared to before. It explained that this would not have been achieved if all the clubs knew the previous rents paid and would have significantly eroded the CRT's bargaining power in a competitive market.

35. The CRT also reiterated that knowledge of the previous licence agreement and fees paid would also be useful to the CRT's competitors who operate fisheries in the vicinity.
36. The Commissioner notes in this case that the withheld information dates back to 2013 and arguably one may question whether the very early fees are outdated. She has considered this point in some detail and has reached the view that despite this, the fees paid even as far back as 2013 would cause detriment to the CRT commercially if they were disclosed (although this is with the caveat that this may not always be the case with the further passage of time). Although agreements vary between individual stretches of waterway and the CRT will always aim to secure the best possible rent and bailiffing terms possible at each agreement, the waterway itself is unlikely to change greatly over time. Therefore knowledge of prior rent for a particular stretch of waterway when bidding for or negotiating with the CRT for the fishing rights of that stretch would be very useful to the interested clubs/groups even dating back several years. The Commissioner agrees that disclosure would erode the CRT's bargaining power and ability to secure the most favourable terms.
37. There is also the issue of the present ongoing negotiations with PAC. If an agreement cannot be reached the CRT may go out to tender. Knowledge of current rent, rent in the last couple of years and of that proposed going forward would enable interested clubs to tailor their bid accordingly and prevent the CRT from obtaining the best possible deal. The CRT has provided a recent example of a tender, where this would have happened had the interested clubs had prior knowledge of previous rent.
38. For the above reasons, the Commissioner is satisfied that disclosure would adversely affect the legitimate economic interests of the CRT. She is therefore satisfied that regulation 12(5)(e) of the EIR is engaged.

### **Public interest test**

39. The CRT stated that it acknowledged the public interest in disclosing information that facilitates the accountability and transparency of the CRT. However, on this occasion it felt the public interest factors in favour of maintaining the exception were much stronger. It stated that it is not in the public interest to disadvantage the CRT when negotiating licence fees with other clubs/groups across the network. For this

particular stretch of waterway, it also argued that it is not in the wider interests of the public to prejudice the CRT's ability to negotiate future rents. Disclosure would reduce its bargaining position and potentially result in less favourable terms for the CRT and the wider public. It would prevent it from maximising revenue; revenue required to spend on its charitable purposes.

40. The Commissioner considers there are public interest arguments in favour of disclosure. Disclosure would promote accountability and transparency and enable interested members of the public to understand more closely what rents were previously secured for this stretch of waterway. It would enable the public to scrutinise the agreement more closely and consider whether value for money was achieved.
41. However, on this occasion the Commissioner is in agreement with the CRT that there are stronger public interest arguments in favour of maintaining the exception. She has accepted that disclosure would adversely affect the commercial interests of the CRT, as disclosure of the withheld information would erode its ability to secure the most favourable terms for this stretch of waterway should it need to go to tender. Knowledge of previous rents would provide interested clubs/groups with an advantage and enable them to tailor their bids accordingly.
42. Disclosure would also lead other clubs/groups with similar agreements to compare their terms to those that were and have been proposed with PAC. It could potentially lead other clubs/groups to feel that they have secured less favourable terms and insist on lower rents at renewal.
43. Such consequences are not in the wider interests of the public. Instead it is in the public interest to maintain the CRT's ability to negotiate fairly and competitively and secure the most favourable terms and rents for its waterways that it can. Leasing fishing rights provides a valuable source of revenue for the CRT and also assists with the day to day management of the waterways. Reduced revenue and less assistance of clubs in overall maintenance would be detrimental to the CRT and what services it is able to provide. It would also affect its ability to meet its overall statutory functions.
44. For the above reasons the Commissioner is satisfied that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.



### **Procedural matters**

45. The Commissioner notes that the complainant requested an internal review on 11 July 2019. However, the CRT failed to complete the process and notify the complainant of the outcome until 2 October 2019.
46. Regulation 11 of the EIR requires a public authority to carry out the internal review and notify the complainant of the outcome within 40 working days of receipt. As the CRT failed to do this on this occasion, the Commissioner has recorded a breach of regulation 11 of the EIR.

## Right of appeal

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47. 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**