

23 May 2012

Our Ref FOIA043/12
Your Ref [Ref]

Mr Nick Brown

By e-mail to:
request-107948-9b417c8f@whatdotheyknow.com

Dear Mr Brown,

Internal review of Freedom of Information request - Transfer of Equality Obligations

I am writing further to your request of 12th April for an internal review into British Waterways' response to your request for information sent on 1st March 2012. I have reviewed all the correspondence relating to this request and considered the points which you raise in your review request, and subsequent e-mail of 14th April, and I am now in a position to respond to you.

I believe that it would be helpful at this stage for me to revisit the correspondence between you and British Waterways.

On 1st March you wrote to British Waterways, via the 'Whatdotheyknow.com' website to request the following information:

"All correspondence between Sally Ash, Damian Kemp and Greta O'Shea regarding the question whether British Waterways' equality obligations as a public body will be transferred to the Canal and River Trust, between 8 December 2011 and now.

All internal reports and briefing documents written by the BW Legal Department regarding the transfer of BW's equality obligations to the CRT."

Your request was acknowledged on 2nd March and on 29th March Miss Young sent our response to your request.

"I am writing further to your request received on 1st March 2012. In your e-mail you requested the following information from British Waterways:

1) All correspondence between Sally Ash, Damian Kemp and Greta O'Shea regarding the question whether British Waterways' equality obligations as a public body will be transferred to the Canal and River Trust, between 8 December 2011 and now.

2) All internal reports and briefing documents written by the BW Legal Department regarding the transfer of BW's equality obligations to the CRT.



We have considered your request and understand that the information you have requested above is not held by British Waterways."

On 12th April you made a request for British Waterways to undertake an internal review of our response, your request included the following information:

"I am writing to request an internal review of British Waterways Board's handling of my FOI request 'Transfer of Equality Obligations'.

You have informed me that BW holds no information that fulfils this request.

However I know that BW does hold this information as the existence of the information is identified in internal memos of which I have had sight.

Therefore BW has not responded accurately to the requisition.

In addition I note that the passage of BW to the Canals and Rivers Trust is being scrutinised by 5 Parliamentary Select Committees. I note that the issue of transfer of statutory obligations falls under this scrutiny. It is therefore inconceivable that BW has not conducted internal evaluation of this, including the information I seek. It follows that BW has not complied with my requisition."

Miss Young replied on 13th April to your request for an internal review by requesting further clarification of the memo of which you had sight. Miss Young states in this e-mail:-

"We maintain that British Waterways does not hold copies of the information you requested in your e-mail of 1st March, specifically:

"Written correspondence between Sally Ash, Damian Kemp and Greta O'Shea regarding the question whether British Waterways' equality obligations as a public body will be transferred to the Canal and River Trust, between 8 December 2011 and now."

You mention that you believe this information does exist because "the existence of the information is identified in internal memos". We are not aware of any internal memos which mention correspondence between Sally Ash, Damian Kemp and Greta O'Shea regarding the question of whether British Waterways' equality obligations as a public body will be transferred to the Canal and River Trust, between 8 December 2011 and now.

Please forward me a copy of this internal memo you refer to and we will look into the matter further."

On 14th April you, very helpfully, responded to this request and provided more specific details of the internal memo you referred to in your e-mail of 12th April. This e-mail states:-

"Please could I draw your attention to the web page:

http://www.whatdotheyknow.com/request/ka_mooring_and_mooring_strategy

This Fol requisition response contains a ZIP file URL

<http://www.whatdotheyknow.com/request/92175/response/258616/attach/2/FOIA024%20reports.zip>

The ZIP file contains a document named "BANES meeting notes 8 Dec 2011.pdf".

This is a copy of the notes taken by BW of a meeting held between BW and BANES Council on 8th December 2011.

It is clear from these notes that:

- 1. BW attended a meeting with BANES to discuss mooring strategy on the Kennet and Avon Canal*

2. *the meeting discussed equality issues*
3. *Further correspondence had been entered into and was ongoing, between Sally Ash and Greta O'Shea, on the subject.*

Please could I draw your attention to the web page:

http://www.whatdotheyknow.com/request/policy_on_boat_dwellers

This FoI requisition response contains a ZIP file URL

<http://www.whatdotheyknow.com/request/107947/response/271891/attach/4/Requested%20Information.zip>

The ZIP file contains a document named "Meeting notes - BW and B&NES 8 December 2011.pdf". This is a copy of the notes taken by BANES of the same meeting.

It is clear that Sally Ash presented to BANES on the issues of equality.

In turn it follows that

- (1) BW does indeed hold documents relating to the transfer of equality obligations*
- (2) that these documents are held by Sally Ash and Greta O'Shea*
- (3) that these documents have been withheld from me; and*
- (4) that it is likely that these documents have been concealed internally within BW.*

I also note that I previously requested an internal review of the disclosure by BW. In your response you state that BW maintains its position, that it holds no documents meeting the description that I have laid out.

I also stated that it was incumbent on BW for another member of staff (other than yourself) to conduct the review. I note that you responded to and conducted the review.

Therefore I require the documents that I have requested to be made available to me within seven (7) days upon the expiry of which, if the documents have not been made available to me, I shall refer the matter to the ICO."

Firstly I would like to apologise for any confusion caused by Miss Young's e-mail to you of 13th April. It is clear from your subsequent e-mail dated 14th April that you believe this to be British Waterways' substantive response to your request for an internal review. Clearly, as you have highlighted in your correspondence of 12th and 14th April, the Internal Review should be conducted by another individual within British Waterways. Miss Young had written to you in order to seek some further clarification of the 'internal memo' you referred to in your request for a review. As we maintained that none of the information you requested was held by British Waterways and it was your belief that it must, based on this memo, it was appropriate for British Waterways to have sight of this document in order to be in a position to properly respond to your concerns.

I would also like to thank you for then supplying the links to the document you referred to in your e-mail of 12th April. This has enabled us to undertake a more thorough investigation into these matters and to understand the basis for your concerns.

The document in question is a note of the meeting held on 8th December between Sally Ash, Damian Kemp and representatives from Bath & North East Somerset Council. I also enclosed a copy of this note. Reading through this note I can see that the second bullet point refers to our equalities obligations, specifically:

"We gave background detail on move to Third Sector. We were unsure whether our equalities obligations as a public body were also being transferred – Sally has subsequently contacted Greta for input."

In light of this document I can understand your concern when our response to your request for information informed you that no relevant information was held by British Waterways.

Following my investigations and discussions with the staff involved I am now fully informed of the background and chronology of events.

I can confirm that British Waterways' original response to your request was incorrect as my investigations have located a single piece of correspondence which falls within the scope of your request for:

"All correspondence between Sally Ash, Damian Kemp and Greta O'Shea regarding the question whether British Waterways' equality obligations as a public body will be transferred to the Canal and River Trust, between 8 December 2011 and now."

However, this correspondence is exempt from disclosure under section 42 (1) [Legal Professional Privilege] of the Freedom of Information Act 2000. This is because the correspondence that you requested, which we have located, is confidential and was made between British Waterways and our lawyers, who were acting in their professional capacity. In addition to this the information you requested was made for the sole, or dominant, purpose of obtaining legal advice.

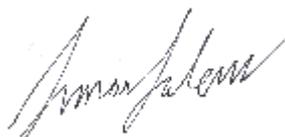
Furthermore, we believe that the public interest in maintaining this exemption outweighs any public interest in disclosing it. We believe this to be the case because the advice sought by British Waterways from our Lawyers was recent and relates to live issues.

I can also confirm that, following the meeting with BANES Council representatives, Sally Ash met with Greta O'Shea in person to discuss this matter. I understand that there were no notes made at this meeting.

It was for this reason that when your request for information was considered initially we were confident that no such information or correspondence was held. I sincerely apologise for any inconvenience caused by our initial response to you and I trust that this review clarifies the situation for you now.

However, should you remain dissatisfied by our response then you should contact the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF www.ico.gov.uk/Global/contact_us.aspx.

Yours sincerely,



SIMON SALEM
Marketing & Fundraising Director

Enc: BANES meeting notes 8 Dec 2011