



**Canal &
River Trust**

Making life better by water

Our Ref: IR 18/21
Address Correspondence to: Jane Orange, Information Governance
Date: 30th September 2021

Dear Mr Bird,

Request Under Freedom of Information Act 2000 Internal Review

I am writing to you in relation to your recent and previous correspondence under the Freedom of Information Act 2000. In particular this letter is in relation to your request for an Internal Review to be conducted by the Canal & River Trust in relation to your initial request response.

I am employed by the Canal & River Trust as an Information Governance Advisor, and I have been asked to provide an independent review of the response provided to your initial request for information, which you submitted on 23/08/2021

In the process of undertaking this review, I can confirm I have given consideration to:

- Your initial request, received 23/08/2021;
- The original Canal & River Trust response, provided to you on 17/09/2021 by Chloe Sibley-Morgan, Information Governance Assistant; *And*
- Your reply to that response, which we received on 18/09/2021.

I have initially reviewed your request for validity under the provisions of the Freedom of Information Act 2000. I can confirm that I am satisfied that your request is valid under Section 8 of the FOIA and therefore requires considering as a valid request by the Canal & River Trust.

As a valid request under the FOIA, the Canal & River Trust is required to ascertain what, if any, information is held which is relevant to your request; whether confirming or denying the holding of information is in itself harmful; and whether there are any exemptions to disclosure which are potentially engaged. If there is potential engagement of any exemptions on disclosure, then consideration of any applicable harm and/or public

interest test may be required to be undertaken. All of the above areas have been considered as part of my review into this case and your response to these points.

Outcome of Review

Having reviewed your initial request:

- 1. Can you provide information, logs, dates, events of any reported to you/by you incidents involving UAS's in the last 3 years.*
- 2. Can you provide, in a link or a document as to where its written that the CRT legally own the airspace at a minimum height of 500 metres above their land.*
- 3. Please inform me, in a link or document, as to what the fines/penalties are for "illegally" flying a UAS over your "owned" airspace.*
- 4. As I've been informed by the CRT, the CRT say they own a minimum height of 500 metres above their land, where does this end, at what height? Or is this infinite?*

And the internal review requests in which you state:

Where is the legislation is that the CRT legally own the airspace in the lower stratum (upto 500 feet) what law is this? & what is the exact legislation?

Whilst I do not believe that we are under a duty under freedom of information legislation to provide detailed analysis of the law, I can see that we did set out our understanding of the legal position in some detail in our initial response to try to assist you in your enquires.

In order to try and further aide you, we can confirm that The Civil Aviation Act 1982, Section 76 sets out the legal constraints around flight of an aircraft over property and the liability around trespass, nuisance and surface damage. Whilst the Act does not set out the specifics around the distance above land that belongs to the land-owner, there is case law that supports ownership of the airspace and confirms long-standing common law principles which would be up-held by a court.

Ownership of airspace extends to such height as is necessary for the ordinary use and enjoyment of the land. Whilst there is not a specific law to state the height of this in the UK it is generally accepted that this covers up to 500 feet above the surface of the land:

The CAA Unmanned Aircraft System Operations in UK Airspace Guidance CAP 722, states the requirements around gaining permission for flights above private land in order to avoid trespass, this is set out within section 1.3 Privacy and Security - Images and other Data Collection Requirements, this includes a link to the ICO website detail information about use of Drones and the impact on the public and restrictions regarding GDPR.

The below link to the CAA website sets out restrictions relating to flight of an aircraft, specifically the last section relating to 'Other considerations to take into account before operating' and the Canal & River Trust, under this section is classed as a statutory body for the functions inherited from the British Waterways under the Transfer of Duties

<https://www.caa.co.uk/Consumers/Unmanned-aircraft/Our-role/Airspace-restrictions-for-unmanned-aircraft-and-drones/>

The Canal & River Trust is currently in the process of creating a policy document in relation to drone flight above Trust property, once this is published this will further aid your understanding of what the Trust permit in relation to drone flights, as detailed in our previous response this will be available within the next few months.

Conclusion

As a result of the above arguments, I am satisfied that the information provided previously was correct and I have provided further evidence under our Duty to Assist. If you are still dissatisfied, you have the right to direct your comments to the Information Commissioner, details on how to contact can be found here: <https://ico.org.uk/global/contact-us/>, who will give it consideration.

Yours Faithfully

Jane Orange

Information Governance Advisor

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