

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

Decision notice

Date: 22 May 2019

Public Authority: The Canal and River Trust
Address: Fearn's Wharf
Neptune Street
Leeds
LS9 8PD

Complainant: [REDACTED]

Address: [REDACTED]

Decision (including any steps ordered)

1. The complainant has requested information relating to a breach that occurred between the Wardle Lock and Stanthorne Lock, in Middlewich on 15 March 2018.
2. The Commissioner's decision is that the Canal and River Trust has failed to provide a response to the complainant's request within 20 working days of receipt and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 March 2019, the complainant wrote to the Canal and River Trust via the "What Do They Know" website and requested information in the following terms:

"In my request of 13 November, I said:

'Please can you supply the engineers survey & investigation reports which the C&RT have which relate to the cause of the breach which occurred on 15th March 2018 between the Wardle Lock & Stanthorne Lock, in Middlewich.'

I am again requesting the information regarding the investigation report on the basis that it is now complete or, alternatively, it is now in the public interest to disclose it."

6. The complainant followed up his request with the Canal and River Trust on 2 April 2019.
7. The Canal and River Trust responded on 3 April 2019. It stated that it responded to the request at 7:48am.
8. On 4 April 2019, the complainant wrote to the Canal and River Trust advising that it may have been mixing up this request with another request he had submitted to it.
9. The Canal and River Trust responded on 5 April 2019. It stated:

"Please accept my apologies for the mix up. The response sent at 07:48 was to one of your other requests for information regarding the Middlewich breach.

Your email received on the 3rd March requests the same information requested in an earlier request for information submitted in November 2018. You have complained to the Information Commissioner about this case and we are currently waiting for the commissioners investigation to commence. Since you are requesting the same information for a request where the information commissioner is investigating at your request I have not logged this as a new request for information."

10. The complainant responded to the Canal and River Trust on the 5 April 2019 clarifying that *"This request is for a subset of information previously requested. The complaint to which you refer does not relate to the information now requested. Even if it did, there is no reason not to respond to this request within 20 working days. The basis on which*

the request was made, more than three months after a previous request, was plainly stated:

I am again requesting the information regarding the investigation report on the basis that it is now complete or, alternatively, it is now in the public interest to disclose it.

Please provide me with the report or a refusal notice such that I can progress this matter."

11. On 6 April 2019, the complainant wrote to the Canal and River Trust requesting that it carry out an internal review of its handling of his request. The complainant requested that the Canal and River Trust investigate why it failed to respond to his request and why it failed to provide him with the requested report or a refusal notice.
12. The complainant followed up his internal review request on 22 April 2019.

Scope of the case

13. The complainant contacted the Commissioner on 22 April 2019 to complain about the way his request for information had been handled. In particular, the complainant asked the Commissioner to issue a decision notice in relation to the Canal and River Trust's failure to respond to the request within 20 working days.
14. The Commissioner first considered whether the request is for environmental information and should therefore be handled under the EIR, rather than the FOIA. She then considered whether the Canal and River Trust has met the timescale for compliance under the appropriate access regime.

Reasons for decision

Is the information environmental information?

15. Information is 'environmental information' and must be considered for disclosure under the terms of EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
16. The Commissioner considers the information in this case can be broadly classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities

affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. Two of the elements listed under 2(1)(a) are water and land.

17. The request is for information relating to the cause of a canal breaching. The Commissioner considers the request therefore relates to a measure as defined in regulation 2(1)(c) of the EIR which will or would be likely to affect the elements described in 2(1)(a), namely water and land.

Regulation 5 – duty to make available environmental information on request

18. Regulation 5(1) of the EIR says that a public authority that holds environmental information must make it available on request.
19. Regulation 5(2) of the EIR says that the authority must make the information available as soon as possible and no later than 20 working days after the date of receipt of the request.
20. The request in question was received on 3 March 2019 and a response should therefore have been provided no later than 29 March 2019.
21. In this case, the Canal and River Trust wrote to the complainant on the 5 April 2019, 33 working days after receiving the request. It referred to the complainant's previous information request made in November 2018 which is the subject of a separate complaint to the Commissioner. The Canal and River Trust considered this request sought the same information as the November 2018 request. It therefore advised that it was waiting for the Commissioner's investigation to begin and did not therefore intend to process the 3 March 2019 request.
22. This response does not comply with regulation 5(1) and it is not a valid refusal in accordance with regulation 14 of the EIR which says that:
 - (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.
 - (2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
 - (3) The refusal shall specify the reasons not to disclose the information requested, including—
 - (a) any exception relied on under regulations 12(4), 12(5) or 13; and

- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

- 23. The complainant has clearly explained that he is requesting this information "*on the basis that it is now complete or, alternatively, it is now in the public interest to disclose it*". The complainant is therefore of the view that the position regarding the requested information may have changed since his previous information request to the Canal and River Trust.
- 24. The Commissioner considers that the complainant's request dated 3 March 2019 is a valid information request and, as of the date of this decision notice, the Canal and River Trust has failed to respond to the complainant's request in accordance with the EIR. The Commissioner therefore finds that the Canal and River Trust has breached regulation 5(2) of the EIR by failing to respond to the request within 20 working days.

Right of appeal

25. 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

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

26. 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.
27. 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



Gemma Garvey
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