



Department
for Environment
Food & Rural Affairs

Nobel House
Area 5B
17 Smith Square
London
SW1P 3JR

T: 03459 33 55 77
helpline@defra.gov.uk
www.gov.uk/defra

Mr Allan Richards
By email: request-679714-ada5fe3c@whatdotheyknow.com

Our ref: IR2020/22393
26 October 2020

Dear Mr Richards,

INTERNAL REVIEW: Statutory duties under the Transport Act 1968

Thank you for your email which we received on 28 August 2020 appealing against the decision to withhold information regarding statutory duties under the Transport Act 1968. Your original request was dealt with under the Environmental Information Regulations 2004 (EIRs). We have handled your request for an internal review under the same legislation.

Summary

In accordance with Defra's internal review procedures, your case has been reviewed by the Information Rights Team within Defra in discussion with colleagues who handled your original request.

On reviewing this case I contacted the Inland Waterways & Navigation Team and asked them to confirm that we do not hold information for each of Canal and River Trust's (CRT) commercial and cruising waterways, as specified in your request. I can confirm that this is the case.

I set out in the annex below a fuller explanation of our decision.

Yours sincerely,

Andrew Mobsby

Head of Information Rights

Email: InformationRequests@defra.gov.uk

Annex

Chronology

25 July 2020	<p>Your initial request was received. This was as follows:</p> <p><i>I refer to Section 12.4 and 12.5 the Memorandum of Understanding between the Secretary of State for Environment, Food and Rural Affairs and Canal & River Trust</i></p> <p><i>12.4 CRT is successor to statutory duties under the Transport Act 1968 to maintain certain of the waterways in its care (those classified as either commercial or cruising waterways under the provisions of that Act) to specified statutory dimensions. BW (as its predecessor in respect of those statutory duties) had been subject to a long standing ministerial direction that in its management of such waterways it should maintain to such dimensions as reflected their use and prospects of use. It was further understood between BW and Government that, in the event of enforcement of the statutory dimensions in circumstances that did not reflect use and prospects of use, Government would exercise its powers under the Transport Act 1968 to revise those dimensions so that they reflected actual use and prospects of use.</i></p> <p><i>12.5 Defra confirms to CRT its intention that the maintenance of statutory dimensions of the classified waterways should continue to reflect actual use and prospects of use.</i></p> <p><i>Also I refer to CRT's last published Annual Report which states that £134.7m was spent on waterway operation, maintenance and repair but only £7.2m of this sum spent on dredging which would allow statutory dimensions to be maintained.</i></p> <p><i>Please provide for each of CRT's commercial and cruising waterways -</i></p> <ul style="list-style-type: none"><i>- Statutory dimensions in force when when CRT took over responsibility from British Waterways.</i><i>- Maps or other recorded information showing main or other navigable channels to which these statutory dimensions apply.</i><i>- Any changes to statutory dimensions since CRT took over BW's responsibilities.</i><i>- Any information held regarding changes in use or prospects of use since 2012.</i>
24 Aug 2020	<p>Defra responded to say that, following a search of our paper and electronic records, we had established that the information that you had requested was not held by Defra. We confirmed that to the best of our knowledge the information was not held by another public authority.</p>
23 Aug 2020	<p>Your internal review request was received. This was as follows:</p> <p><i>I am writing to request an internal review of Department for Environment, Food and Rural Affairs handling of my FOI request 'Statutory duties under the</i></p>

	<p><i>Transport Act 1968'.</i></p> <p><i>My understanding is that you have a duty to assist me with this request. As such I would expect you to address a simple request for clarification of your response in a responsible manner.</i></p> <p><i>I wish the reviewing officer to limit the scope of the review to my request for clarification dated 28 August 2020 and your response to it -</i></p> <ul style="list-style-type: none"> <i>- Confirm that CRT is a public authority under EIR.</i> <i>- State if Defra checked if CRT held the information.</i> <i>- If CRT did hold this information, explain why this request was not forwarded as required rather than claiming that it was not held by a public authority.</i> <i>- Take the appropriate action as required by EIR.</i>
--	--

Consideration of which legislation applies (i.e. FOIA or EIRs)

I have considered whether your request was correctly handled under the Environmental Information Regulations 2004 (EIRs), or whether it should have instead been handled under the Freedom of Information Act 2000 (FOIA).

Regulation 2(1)(a) of the EIRs defines environmental information as including information on the state of the elements of the environment, such as air and atmosphere, water, land and natural sites including wetlands, coastal and marine areas.

Regulation 2(1)(c) relates to measures and activities that affect or are likely to affect the state of the elements of the environment, either directly or through various factors, examples of which are set out in regulation 2(1)(b).

I consider that the original request fell under the EIRs as the CRT has responsibility for managing certain canals and rivers. Some of this activity would fall under the definition above of measures and activities that affect or are likely to affect the state of the elements of the environment set out in regulation 2(1)(a), such as water, land and natural sites. Examples of that activity would include maintenance of the statutory dimensions of the relevant waterways, and information in recorded form showing the original statutory dimensions would be included as information on that activity.

Timeliness

In addition to the points that you have raised, I have considered whether Defra complied with the requirement in regulation 5(2) of the EIRs to respond to a requester no later than 20 working days after the date of receipt of the request for information, except where the legislation provides extensions to the deadline. As your request was received on 25 July 2020 and the response was sent on 24 August 2020, this deadline was met.

Where it appears to the requester that the public authority has not complied properly with the requirements of the EIRs, regulation 11(4) requires the public authority to review its original decision within a maximum period of 40 working days. Your request for a review was received on 28 August, and the 40th working day is 26 October 2020, and so the EIRs have not been breached.

Whether the information is held

As explained above, the policy team has confirmed that the information is not held by Defra. In your internal review complaint, you asked us to confirm that CRT is a public authority under the EIRs; state if Defra checked if CRT held the information; and, if CRT did hold this information, explain why this request was not forwarded as required rather than claiming that it was not held by a public authority.

The CRT is listed in Schedule 1 of the FOIA as a public authority 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. The CRT's website acknowledges that it is a public authority for the purposes of the EIRs.

CRT is independent of government and therefore does not have a parent government department and it is not a Defra arms-length body. It is a private sector limited company charity that was formed in 2012 to take over all British Waterways' assets and functions and maintain them for the public benefit in perpetuity. Government (Defra) gives the CRT a grant in the region of £50m each year to be used for that purpose while it develops its own revenue streams as a private sector company with a view to correspondingly reducing dependence on the government financial assistance. This requires us to manage the grant allocations accordingly, which means working closely with CRT to that end, but not dictating how CRT should operate.

The Defra policy team have confirmed that they made CRT aware that we had received a request for this information, although as it is a separate body to Defra we did not identify you as the requestor. However, the Defra policy team did not ask CRT for any information it might hold since an information request can only be for information held by the public body in receipt of that request. We are not required to gather the information from external bodies. CRT did not confirm whether they held the information so we were not in a position to advise you as the requester to approach the CRT for it.

Rights of appeal

We hope that the above answers your complaint satisfactorily. However, if you remain dissatisfied, you have the right to apply directly to the Information Commissioner for a decision. <http://www.ico.org.uk/complaints.aspx>

The ICO's offices are currently closed so please visit their website on how to contact them during this period, here:

<https://ico.org.uk>