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Mr Allan Richards
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Our ref: RFI 9639
17 May 2018

Dear Mr Richards,

INTERNAL REVIEW: Canal & River Trust Proposal for Transfer of EA Navigations

Thank you for your email of 8 March 2017 requesting an internal review of Defra's handling of your request for information, which we received on 10 January 2018, requesting a copy of the Canal & River Trust's proposal of 17 October 2017 for the transfer of EA navigations and related correspondence. Thank you for your patience in awaiting a response; we apologise for the delay in replying to you.

We have handled your request for an internal review under the Freedom of Information Act 2000 (FOIA) and, in accordance with Defra's internal review procedures, your case has been reviewed by the Information Rights Team.

Summary

After consideration we have concluded that the exemption at section 43 of the FOIA, which relates to commercial interests, does not apply to the information requested. However, we also consider that the decision to apply the exemptions at sections 35(1)(a) of the FOIA, relating to the formulation or development of Government policy, and section 41 of the FOIA, relating to information provided to Defra in confidence, is correct.

I set out below a fuller explanation of our decision.

FOIA or EIRs

As it constitutes details about the Canal & River Trust's proposal for the terms of the transfer of EA navigations and related correspondence, the information you have requested is not 'environmental information' as defined in regulation 2(1) of the EIRs. Therefore, your request falls under the FOIA.



Timeliness

In addition to the points you have raised in your request for internal review, we have considered whether Defra complied with the requirement in section 10 of the FOIA to respond to a requester no later than 20 working days after the date of receipt of the request for information, and the request for internal review, except where the legislation provides extensions to the deadline.

Defra received your request for information on 10 January 2018. We sent you an extension letter on 7 February 2018, stating that we needed further time to consider whether the public interest in maintaining the exemption at section 43 of the FOIA, which relates to commercial interests, outweighs the public interest in disclosing the information. We stated that we would respond to you by 7 March 2018.

After consideration, we determined that the exemption at section 43 of the FOI does not apply to the information requested. However, we also determined that the exemptions at sections 35(1)(a) and section 41 of the FOIA are both engaged with respect to the information requested, and that the public interest in maintaining both these exemptions outweighs the public interest in disclosing the information. We responded to you to this effect on 7 March 2018, which was in full compliance with the timeliness requirements stated in the legislation.

Defra received your request for internal review on 8 March 2017 and so we did not respond to this request in a timely manner. We apologise for the delay in replying to this request.

Consideration of the internal review and conclusion

The starting point for the consideration of internal reviews is to determine whether the exemptions cited in refusal letters are engaged and, if so, whether the public interest test has been applied correctly. Section 35(1)(a) states that information is exempt from release if it relates to the formulation or development of government policy, and is engaged in this instance as it relates to the terms of the transfer of ownership of waterways. Section 41 of the FOIA states that information is exempt from release if it was obtained from any other person and its disclosure would constitute an actionable breach of confidence. It applies to the information requested insofar as it was obtained from another person who attached explicit conditions of confidentiality.

We recognise that there is a public interest in disclosure of information concerning the possible transfer of EA navigations to the Canal & River Trust and any associated correspondence as it relates to the transference of waterways that are currently under public ownership to a charitable trust. We also recognise that release of the information would further public understanding of the issue and facilitate accountability and transparency in the spending of public money.

On the other hand, there is a strong public interest in withholding the information under section 35(1)(a) of the FOIA. The terms set out in the proposal from the Canal & River Trust are subject to ongoing negotiation and we consider that disclosure of these terms and any related correspondence, where the specifics of these terms are discussed, could prejudice the policy outcomes and implementation of any transfer. Government has a duty to ensure the best outcome for the public purse and for those who live and work on the

waterways currently managed by the EA. To achieve such an outcome, careful negotiation will be needed with all parties involved. Preservation of a safe space free from external interference and distraction where internal discussions can freely take place is paramount to achieving a successful negotiation.

In addition, as the information requested was obtained from another person who attached explicit conditions of confidentiality and the information is not otherwise accessible, we consider that disclosure would constitute an actionable breach of confidence. There is therefore a strong public interest in withholding the information under the exemption at section 41 of the FOIA. The organisations concerned, and other organisations in similar circumstances, may be discouraged from confiding in public authorities in future if they don't have a degree of certainty that this confidentiality will be respected. The result may be to diminish government's ability to achieve successful outcomes in this matter or in other similar matters in the future.

Therefore, we have concluded that in all the circumstances of the case, the information should be withheld.

I hope that this letter answers your complaint satisfactorily. However, if you remain dissatisfied, you have the right to apply directly to the Information Commissioner for a decision. Please see - <http://www.ico.gov.uk/complaints.aspx>

Yours sincerely,

Nick Teall

Head of Information Rights Team

Email: informationrequests@defra.gsi.gov.uk

Annex A – Chronology

- 10 January 2018 Defra received your request for information, which asked for a) copy of Canal & River Trust's proposal to Minister Therese Coffey (i.e. its letter of 17 October 2017) setting out the terms of the transfer of EA navigations, and b) a copy of any correspondence related to that proposal.
- 7 March 2018 Defra responded to your request for information. It stated that the exemptions at sections 35(1)(a) and section 41 of the FOIA are both engaged with respect to the information requested, and that the public interest in maintaining both these exemptions outweighs the public interest in disclosing the information.
- 8 March 2018 Defra received your request for internal review, which asked us to a) confirm that the refusal notice provided on 7 February relates to section 43, b) confirm that the refusal notice provided on 7 February does not relate to section 35(1)(a), c) confirm that the refusal notice provided on 7 February does not relate to section 41 and d) in the absence of the second refusal notice dated 6 March making any mention of section 43, to provide you with the information requested.