

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 March 2016

Public Authority: Network Rail
Address: The Quadrant
Elder gate
Milton Keynes
MK9 1EN

Decision (including any steps ordered)

1. The complainant made a request to Network Rail for various pieces of information about the Royal Train. Network Rail disclosed some of the requested information and said that some of the information was not held. It also said that other information was being withheld under the exemptions in section 24 (National Security), section 31 (Law enforcement), section 38 (Health and Safety) and section 43 (commercial interests).
2. The Commissioner has considered the complaint and found that the section 24 and section 43 exemptions were correctly applied and that the public interest in maintaining each exemption outweighed the public interest in disclosure. The Commissioner did not consider the application of section 31 or section 38 as he is satisfied that any information withheld under these exemptions is exempt on the basis of section 24. The Commissioner also found that Network Rail breached section 10(1) of FOIA in its handling of the request but requires no steps to be taken.

Request and response

3. On 5 April 2015 the complainant made a request to Network Rail for information about the Royal Train. The request read as follows:

'I would like to request the following information under the Environmental Information Regulations (EIRs). I understand my request will take 20 working days to process but I would be grateful if you could acknowledge receipt. I note that the EIRs carry a presumption in favour of disclosure and are designed to ensure the maximum possible degree of transparency on matters relating to the environment such as transportation.

1...Does Network rail hold documentation and or correspondence (including emails) which relates to the management and or maintenance and or upkeep and or operation of the Royal Train (s)

2...If the answer is yes can you please provide the following information relating to the train. Can you please state how many Royal Trains there are. In the case of each royal train can you please state the purchase price and when it was constructed. In the case of each royal train can you please provide the registration, classification and model details. In the case of each royal train can you please state the number of EACH of the following types of room which are on board: Bedrooms; Toilets and or bathrooms; Dining rooms and or kitchens and or food preparation areas; dressing rooms; offices; reception rooms and sitting rooms. Can you please provide a description of any other rooms. In the case of each royal train can you please state the budget and or annual running costs for the upcoming financial year and or the most recent financial year for which you hold information.

3...During the period 14 April 2013 to the current day has any member of the Royal Family used the Royal train. If the answer is yes can you please provide the following details for each and every journey made. In the case of each journey can you state the date, the starting point of the journey and the eventual destination, the length of the journey and the number of stops on each journey. In the case of each journey can you state which members of the Royal Family were on board. Do you hold documentation which estimates and or details the cost of each journey. If so can you please provide the cost of each journey.

4...Does Network rail hold documentation which details any redesign and or redecoration and or upgrade and or refurbishment and or repair work on any of the train (s)' interiors. If the answer is yes can you please provide the details of each project of work carried out. In the case of each project can you provide the relevant dates as well as a description of the work carried out. In the case of each project of work can you please provide details of any new fixtures and furnishings. In the case of each project of work can you please provide details of the cost. In the case of each project can you please provide relevant locations on board the train.

5...Does Network Rail hold photographs of the current interiors of the Royal Train(s)? If the answer is yes can it please provide copies of those photographs. Please do not provide any photographs which could compromise the safety and security of the train.'

4. Network Rail responded to the request initially on 14 May 2015 when it explained that the section 24 (National Security) exemption applied and it needed further time to consider the public interest test.
5. Network Rail provided a substantive response on 3 August 2015 when it disclosed some of the information falling within the scope of the request. However, it withheld some of the information at part 2 under the exemptions in section 24 (national security), section 31 (law enforcement), section 38 (health and safety) and section 43 (commercial interests). It also said that some of the requested information was not held.
6. For part 3 of the request Network Rail explained that it held some information but that it was also being withheld under sections 24(1), 31(1)(a) and 38. For part 4 Network Rail confirmed that the requested information was not held because it had no dealings with the day to day operations of the Royal Train. It also confirmed that it held no information falling within the scope of part 5 of the request.
7. Sections 24, 31, 38 and 43 are all qualified exemptions and in each case where information was withheld Network Rail concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure.
8. The complainant subsequently asked Network Rail to carry out an internal review of its handling of the request and it presented its findings on 28 August 2015. The review upheld the initial response to the request.

Scope of the case

9. On 14 July 2015 the complainant contacted the Commissioner to complain about Network Rail's decision to withhold some of the information he requested. He also complained about the time taken to respond to his request and that Network Rail ought to have considered the request under the Environmental Information Regulations 2004 (EIR) rather than FOIA.

10. The Commissioner considers that the scope of his investigation is to consider whether Network Rail is entitled to rely on sections 24, 31, 38 and section 43 as a basis for refusing to provide the withheld information. The Commissioner will also consider whether Network Rail dealt with the request in accordance with the statutory timeframe and whether the request ought to have been dealt with under FOIA or the EIR. The Commissioner agreed with the complainant that he would not investigate those elements of his request where Network Rail had said that the requested information was not held. The Commissioner noted that the complainant had not challenged this at the internal review stage and the Commissioner considers that this is not in dispute.
11. During the course of the Commissioner's investigation Network Rail discovered that some of the requested information was already in the public domain having been published on the Royal Household website. The complainant was directed towards this information which included details of all journeys undertaken by the Royal Family for the period of the request, including those involving the Royal Train. In particular the published information provided answers to a number of the questions in Point 3 of the request, specifically:
 - Confirmation that members of the Royal Family have used the train since 14 April 2013
 - Details of the journeys made including the date, the starting point of the journey and eventual destination, and the number of stops on each journey
 - The members of the Royal Family on board
 - The cost of each journey
12. Therefore the Commissioner has only considered whether the exemptions relied on by Network Rail apply to the remaining withheld information.

Reasons for decision

13. The information which continues to be withheld is the length of the journeys made by the Royal Train, the security cost to Network Rail, Serial numbers and descriptions of the carriages of the Royal Train, and the amount paid by the Royal Household to DB Schenker for services in respect of the Royal Train. With the exception of the costs paid by the Royal Household, the information has been withheld under the exemptions in section 24 (National Security), section 31 (Law enforcement) and section 38 (Health and Safety). The costs paid by the Royal Household were withheld under the section 43 (Commercial interests) exemption.

Environmental information?

14. The complainant had argued that his request should have been dealt with under the EIR because he considered that information about the use of transport was more likely to be environmental information, although the Commissioner notes that the complainant chose not to challenge this aspect of Network Rail's response when he asked it to complete an internal review.

15. The relevant parts of regulation 2 of the EIR define environmental information as follows:

““environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

16. In its response to the complainant Network Rail referred to a decision of the Court of Justice of the European Union where it had found that the definition of environmental information (albeit in the previous, but substantially similar, Directive) “was not intended to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal”. It said that in its view the requested information did not have the necessary proximity to the environment to mean that the request should be considered under the EIR. It said that the broad subject of the request was the Royal Train, and although certain measures relating to the Royal Train might possibly affect the elements and factors of the environment, the focus of the request is rather for simple factual information about the train itself, rather than such measures.

17. The only information which could reasonably be said to be environmental information is the length of the journeys – in the Commissioner's view the other remaining pieces of information have no interaction with the environment. The Commissioner has considered whether information on the length of journeys falls within the definition of regulation 2(1)(c), i.e. whether the information can be said to be a measure affecting the elements or factors listed in 2(1)(a) or 2(1)(b).
18. The Commissioner is unclear how the withheld information relates to a measure affecting the environment. The Commissioner is not satisfied that information regarding the length of a particular journey or journeys affects the environment sufficiently to engage the exception. The Commissioner has therefore gone on to consider all of the remaining withheld information under FOIA.

Section 24(1) – National Security

19. The Commissioner has first considered the withheld information (with the exception of the costs paid to DB Schenker) under the section 24 exemption. Disclosure of information which might encourage an attack on the Royal Family clearly raises national security concerns and if this exemption is found to apply it follows that section 38 and 31 are also likely to apply for the same reasons. Therefore it is appropriate to consider this exemption in the first instance.
20. Section 24(1) provides that information is exempt from disclosure if the exemption from the duty to disclose the information is required for the purpose of safeguarding national security. It should be noted that, in order to engage section 24(1), it is the exemption, rather than the 'information' which has to be required for the purpose of safeguarding national security. In the Commissioner's view, the wording in section 24(1) suggests that the focus is on the effect of disclosure rather than the original purpose of the information.
21. Furthermore, in the Commissioner's opinion, the word 'required' in the context of the exemption means 'reasonably necessary' and it is not sufficient that the information sought simply relates to national security. Whilst it is important to demonstrate that there would be a real possibility of harm to national security should the information be disclosed, there is no need to prove that there is in fact a specific, direct or imminent threat to national security. It is sufficient in the Commissioner's opinion that the disclosure is capable of indirectly creating a real possibility of harm to national security.

22. The Commissioner considers that the term 'national security' includes;
 - The security of the United Kingdom and its people, and
 - The protection of the United Kingdom's legal and constitutional systems.
23. Network Rail's arguments for applying the section 24, 31 and 38 exemptions is essentially that the withheld information could be used to encourage the planning of criminal activity targeting the Royal Family or the rail network itself. This could, it argues, have a direct effect on the health and safety of the Royal Family together with those working on the network and the general public. It explained that the network forms part of the UK's critical national infrastructure and its loss or compromise would have a major detrimental impact on the availability or integrity of essential services.
24. The Commissioner finds that the Royal Family is at the heart of the United Kingdom's legal and constitutional system. The Royal Train, details of the Royal Family's movements and the disclosure of information which encourages attacks on the Royal Family all directly relate to safeguarding national security. In the Commissioner's view if it can be shown that disclosure of the information might encourage those with ill intent to target the Royal Train then the exemption will apply.
25. Therefore, in order to engage the exemption Network Rail must be able to show that there is a real possibility that disclosure would have an adverse effect on National security even if this effect is not direct or immediate. There must be a link between disclosure of the information and the alleged harm to national security.
26. For each item of withheld information Network Rail provided detailed arguments about exactly how disclosure could be used to help target the Royal Family and the Royal Train. The Commissioner must be careful in repeating these arguments for fear of assisting those who may be planning an attack and thereby causing the harm the exemption is designed to protect against. However, the Commissioner would say that he is satisfied that disclosure would encourage criminal activity of this kind and would be of value to people with ill-intent such as terrorists. In particular, disclosure would allow terrorists or criminals to better plan an attack on the Royal Train, including being able to identify which carriages contain members of the Royal Family.
27. Network Rail also made the following comments in support of engaging the exemption and emphasised that the withheld information could be used with other information already in the public domain to help plan an attack.

- Disclosure could, if combined with disclosures to requests for other similar information, allow a motivated individual to build up a picture of such security arrangements and of the network itself. This is sometimes referred to as a 'mosaic' or 'jigsaw' effect.
 - Such information could be used to encourage the planning of criminal activity targeting the Royal Family or the rail network itself. This could have a direct effect on the health and safety of the Royal Family together with those working on the network and the general public. The network forms part of the UK's critical national infrastructure and its loss or compromise would have a major detrimental impact on the availability or integrity of essential services.
 - Revealing the details of the coaches themselves may result in them being identified as targets for sabotage.
 - As such, any potential threat to the Royal Family must be considered a threat to the prime institution of the United Kingdom's constitutional arrangements.
28. Disclosure of the withheld information would place the information into the public domain where it can be widely accessed (particularly via media reporting and the internet). The Commissioner accepts that once available via the internet, this information is then easily accessed and can be combined with other public information to provide intelligence to terrorists or those of ill-intent who may wish to target the Royal Family.
29. The Commissioner also recognises that terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding less obviously harmful information on the basis that it may assist terrorists when pieced together with other information they may obtain. The Commissioner is aware that in a number of cases terrorists have made use of 'open source' information to help plan an attack.
30. This line of argument is well understood and has been accepted by the Commissioner and the Information Tribunal in a number of previous cases which raised similar concerns. In particular the Commissioner upheld the application of section 24(1) to a request for the costs of the Metropolitan Police's SO14 Royal Protection Unit where he found that disclosure of the information, combined with information already in the

public domain would assist those with criminal intent.¹ That decision was upheld at the subsequent appeal where the Information Tribunal found that:

*There can be no doubt in the Tribunal's judgment that the mosaic effect...would be enough to raise the level of risk attendant upon the possibility of an attack on the persons and sites protected by SO14.*²

31. A similar case was also considered more recently under the EIR where a request was made for planning applications for the home of the Duke and Duchess of Cambridge on the Sandringham estate. Again the Commissioner found that the information would assist those planning to attack the Royal Family.

"It is clear to the Commissioner that disclosure of the requested information would make it easier for those with a terrorist or criminal intent to research and plan acts against the property and its residents."

*"Disclosure of this information would place into the public domain accurate and authoritative information. This information could be used by itself or in conjunction with other publicly available information to perpetrate terrorist or criminal acts at the property."*³

32. Therefore, having reviewed the withheld information and considered the arguments by Network Rail and the decisions reached in previous cases the Commissioner is satisfied that section 24(1) is engaged because the exemption is necessary for the safeguarding of national security. The Commissioner is mindful that terrorists and others who might seek to target the Royal Family make use of publicly available information to plan an attack, especially information on the internet. The withheld information combined with information already in the public domain would provide useful intelligence and be likely to encourage those with ill intent. The Commissioner also recognises that disclosure would be likely to increase the confidence of any attacker even if that confidence is ultimately misguided or irrational. In making his decision the Commissioner has also taken into account the fact that the threat from

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/632816/fs_50368290.pdf

² William Summers v Information Commissioner (EA/2011/0186)

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560039/fer_0573096.pdf

those who might seek to attack the organs of the British State is very real. Over the years there have also been a number of very high profile attacks on the Royal Family or instances where members of the Royal Family have been threatened. Indeed the Commissioner notes that the official threat level for international terrorism is currently assessed as "severe" meaning that an attack is highly likely. For all these reasons the Commissioner has decided that section 24(1) is engaged and he has now gone on to consider the public interest test, balancing the public interest in maintaining the exemption against the public interest in disclosure.

Public interest test

Public interest arguments in favour of disclosure

33. The complainant has not advanced any arguments in favour of disclosure. However, in its responses to the complainant Network Rail acknowledged that there was a public interest in the Royal Train and its use by members of the Royal Family. It said that increased openness would lead to a deeper public understanding in matters relating to the use of the Royal Train. It also said that disclosure of information relating to the expenditure and costings surrounding the Royal Train and its use by members of the Royal Family in general will improve transparency and accountability.

Public interest arguments in favour of maintaining the exemption

34. As regards the public interest in maintaining the exemption Network Rail explained that disclosure of the information could cause security implications for the operation and safe running of the UK Rail Infrastructure. It emphasised how disclosure of the information could jeopardise the safety and security of the Royal Family. Any potential threat to the Royal Family must be considered a threat to the prime institution of the United Kingdom's constitutional arrangements, and therefore national security and this would not be in the public interest.
35. Network Rail referred to the previous decisions of the Commissioner and the Tribunal, referred to above, where it was found that the public interest favoured withholding information where disclosure would threaten the security of the Royal Family.

Balance of the public interest arguments

36. The Commissioner has first considered the arguments in favour of disclosure and accepts that there is a public interest in how the Royal Family uses the Royal Train and in particular the spending of public

money. However, the Commissioner also considers that this public interest has already been largely met through the disclosure of information about journeys made by the Royal Train which is routinely published by the Royal Household. This information includes the date, the starting point of the journey, the eventual destination and the number of stops on each journey. The Royal Household also disclose the members of the Royal Family on board and the cost of each journey.

37. In the Commissioner's view disclosure of the remaining withheld information would add very little to public understanding above and beyond what has already been disclosed. The Commissioner accepts that the information is likely to be of interest to the public but this is not the same thing as disclosure being in the public interest. In this case the arguments for disclosure of the remaining information amount to, in his view, little more than public curiosity in issues surrounding the Royal Family.
38. On the other hand the Commissioner finds that the arguments for engaging the exemption are compelling. It is clear to the Commissioner that disclosure of the requested information would make it easier for those with a terrorist or criminal intent to research and plan acts against the Royal Train and its passengers.
39. Any threat to members of the Royal Family must be seen as a threat to the UK's constitutional arrangements and therefore to the national security of the UK. This is fundamentally contrary to the public interest and this weighs heavily in favour of maintaining the exemption. In balancing the public interest the Commissioner has also taken in to account the fact that the information is recent and therefore more valuable to those planning an attack.
40. There is an obvious and weighty public interest in safeguarding national security and given the very damaging consequences of disclosure the Commissioner is satisfied that the public interest in maintaining the section 24(1) exemption outweighs the public interest in disclosure.

Section 43(2) – commercial interests

41. In response to that part of the complainant's request which asked for details of the budget or annual running costs of the Royal Train, Network Rail disclosed information relating to its charges for track access and stabling of the Royal Train. As noted above, during the course of the Commissioner's investigation it also directed the complainant to the information published by the Royal Household on the costs for each journey made by the Royal train.

42. However, it also said that "other information held relating to this part of your request" was withheld under the section 43(2) exemption. This information was not specified in the response but Network Rail has now explained that this information was the amount paid by the Royal Household to DB Schenker (DBSR) for specified services in respect of the operation and maintenance of the Royal Train.
43. Section 43(2) provides that information is exempt if disclosure would or would be likely to prejudice the commercial interests of any person. In this case Network Rail has said that disclosure would prejudice the commercial interests of DBSR.
44. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.
45. Furthermore, in relation to the commercial interests of third parties, the Commissioner does not consider it appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary to explicitly consult the relevant third party, the Commissioner expects that arguments which are advanced by a public authority should be based on its prior knowledge of the third party's concerns.
46. The Commissioner's guidance explains that a commercial interest relates to a person's ability to participate competitively in a commercial activity i.e. the purchase and sale of goods or services. In this case, Network Rail has explained that the information relates to the price paid by the

Royal Household for services provided by DBSR. The Commissioner considers that this amounts to a commercial activity and that the information falls within the remit of section 43(2) so that this first part of the prejudice test is met.

47. Network Rail has said that disclosure would prejudice the commercial interests of DBSR because it would put them at a disadvantage in any future re-tendering of the contract for the operation of the Royal Train. It explained that disclosure of information regarding current contractual payments would be likely to substantially prejudice the position of DBSR in any tender process, as competitors will be informed of both the nature and level of revenues generated by DBSR under the contract. This would allow its competitors to frame their bids accordingly so as to gain an advantage in any future retendering. If the tendering process was prejudiced in this way it is also possible that the Royal Household would be adversely affected as the competitiveness of any bids would be reduced because DBSR's competitors would know the price paid by the Royal Household for the previous contract.
48. The Commissioner has considered Network Rail's arguments and is satisfied that disclosure would prejudice the commercial interests of DBSR in the manner suggested. In reaching this view the Commissioner is mindful that DBSR operates in a highly competitive industry. The operation of the Royal Train is also a highly prestigious project for DBSR and would be viewed this way by any of DBSR's competitors who would be very keen to acquire the contract to run this service. The Commissioner is aware that the contract for the operation of the Royal train was awarded to D B Schenker in April 2009, following a competitive tender. Network Rail has told the Commissioner that at the time of the request, the possibility of re-tendering the contract for the operation and maintenance of the Royal Train was one of the options under consideration by the Royal Household. Network Rail also confirmed that in applying the section 43(2) exemption it sought the views of DBSR and that its arguments reflect their concerns about what would happen if the information was disclosed. All of this leads the Commissioner to conclude that a link can be drawn between disclosure of the information and the prejudice envisaged by Network Rail, that the prejudice would be real, actual and of substance, and that there is a real likelihood of the prejudice occurring. Therefore the Commissioner has decided that section 43(2) is engaged and he has gone on to consider the public interest test.

Public interest test

Public interest arguments in favour of disclosure

49. As noted in relation to the section 24 exemption above, the Commissioner accepts that there is a public interest in the travel arrangements of the Royal Family and the price paid for services.

Public interest arguments in favour of maintaining the exemption

50. Network Rail made the following arguments in favour of maintaining the exemption:
- The information requested is subject to a duty of confidentiality to DBSR and the Royal Household. This pricing information is not available to the public or competing businesses and disclosure would result in a breach of the contractual agreement.
 - Disclosure of the information would be likely to have a negative impact for DBSR in any future procurement exercise.
 - Ultimately public disclosure would adversely affect the commercial relationship Network Rail has with DBSR and any other contractors.
51. In particular it emphasised the fact that the information was included within a private agreement between Network Rail, the Royal Household and DB Schenker which was subject to a duty of confidence, although it acknowledged that the section 41 exemption was unlikely to apply because the information was not 'obtained' for the purposes of section 41. Nevertheless it said that the expectation of confidentiality was an important factor particularly as the information was not a cost to Network Rail. Rather, the information relates to two private third parties neither of whom are public authorities.

Balance of the public interest arguments

52. Dealing first with the arguments in favour of disclosure, the Commissioner acknowledges that there is a public interest in the finances of the Royal Family and how public money is spent. However he finds that this public interest has been met to a certain extent by the presentation to parliament of the Royal Household Accounts. These accounts include a detailed travel appendix which lists the costs of travel undertaken by the Royal Family. It is also worth remembering that the request concerns money spent by the Royal Household which is not subject to FOIA rather than money spent by Network Rail.
53. As regards the public interest in maintaining the exemption the Commissioner's view is that there is a strong public interest in

protecting the commercial interests of companies and ensuring that they are able to compete fairly. Companies should not be disadvantaged as a result of doing business with the public sector. In particular, the public interest in protecting the commercial interests of DBSR is especially strong given that the request was made at a time when it is indicated that a future tender process is likely. The Commissioner is also mindful that operating the Royal Train is viewed as a very prestigious project and so any prejudice to DBSR's commercial interests is likely to be significant. Together these factors weigh strongly in favour of maintaining the exemption.

54. The Commissioner has also taken into account the fact that disclosure would impact on the relationship between Network Rail and DBSR and the Royal Household due to the expectation of confidentiality surrounding the contract, the sensitivity of the Royal Train and the prestigious nature of the contract.
55. Whilst not as one-sided as the public interest test for the section 24 exemption, the Commissioner does accept that there is a more compelling case for withholding the information. Consequently, the Commissioner has found that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 10 – time for compliance

56. Section 10(1) of FOIA provides that a public authority must respond to a request promptly and in any event within 20 working days following the date of receipt.
57. Section 10(3) of FOIA also allows a public authority to extend the 20 working day limit "until such a time as is reasonable in the circumstances" in any case where it requires more time to consider the public interest test where a qualified exemption applies. FOIA does not define what might constitute a "reasonable" extension of time but the Commissioner's view is that an authority should normally take no more than an additional 20 working days to consider the public interest. Extensions beyond this should only be in exceptional circumstances.
58. A public authority claiming an extension will still be obliged to issue a refusal notice explaining which exemption applies and why within 20 working days. This notice must explain that it requires more time to consider the public interest test, and provide an estimate of the date on which a final decision is likely to be made.

59. In this case the complainant made his request on 5 April 2015 but Network Rail failed to respond until 14 May when it explained that it needed further time to consider the public interest test. It did not issue a substantive response until 3 August 2015, almost 4 months after the request was received. The Commissioner considers that the time taken by Network Rail to consider the public interest was unreasonable and excessive. Therefore the Commissioner has decided that Network Rail breached section 10 of FOIA in its handling of the request.

Right of appeal

60. 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@hmcts.gsi.gov.uk

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

61. 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.
62. 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

Pam Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF