

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 September 2022

**Public Authority:** Translink

**Address:** 9<sup>th</sup> Floor  
22 Great Victoria Street  
Belfast  
BT2 7LX

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Translink the working timetables of the railways of Northern Ireland. Translink refused to disclose the requested information, citing section 38(1) (health and safety) as a basis for non-disclosure.
2. The Commissioner's decision is that Translink has correctly applied section 38(1) to the complainant's request.
3. Therefore the Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 31 July 2021 the complainant originally made a request to the Department for Infrastructure ("DfI") for:-  
  
"a copy of the Working Timetables for the railways of Northern Ireland."  
  
This was transferred to Translink and the complainant was informed of this on 3 August 2021.
5. Translink responded on 30 August 2021. It confirmed that it does hold the requested information, however it refused to disclose it, citing section 38(1) of FOIA as a basis for non-disclosure.

6. The complainant requested an internal review of Translink's decision on 30 August 2021. They received an internal review response on 26 October 2021, which upheld the original decision to apply section 38(1) of FOIA to the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 26 October 2021 to complain about the way their request for information had been handled.
8. The Commissioner has considered Translink's application of the exemption as set out in section 38(1) of FOIA to the complainant's request.

### **Reasons for decision**

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#### **Section 38 -health and safety**

9. Section 38(1) of FOIA states: "Information is exempt information if its disclosure under this Act would, or would be likely to-
  - (a) endanger the physical or mental health of any individual, or
  - (b) endanger the safety of any individual".
10. The Commissioner's guidance 'Section 38 - Health and Safety'<sup>1</sup> recognises that section 38(1)(a) focuses on endangerment to any individual's physical or mental health while section 38(1)(b) focuses on endangerment to the safety of any individual. His guidance also states: "The use of the phrase "any individual" in section 38 includes any specific individuals, any member of the public, or groups within society".
11. In order to satisfy the Commissioner that this exemption is engaged, the public authority must demonstrate that there is a causal link between the endangerment and disclosure of the information.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety>

12. The public authority must also show that disclosure would, or would be likely to, have a detrimental effect on the physical or mental health or safety of any individual. The effect cannot be trivial or insignificant. In the context of section 38, even if the risk falls short of being more probable than not, it needs to be such that there may very well be endangerment.

### **Translink's view**

13. In correspondence with the complainant, Translink told them:

"We consider that the requested information is exempt from release under section 38 of the Act, 'health and safety'. This exemption applies where disclosure of the information would be likely to cause endangerment to the safety of individuals. The information requested contains intricate, detailed information on the operation of our trains and schedule of works. Disclosure made under the Act is deemed to be a 'disclosure to the world at large' and therefore by releasing this information, we are leaving our network vulnerable. Whilst we make no suggestion that you would use this information for anything other than your own personal interests, it could be used by individuals who wish to cause harm or disruption to our customers, staff and network."

14. In its submission to the Commissioner, Translink confirmed its view that disclosure would be likely to endanger the physical health and the safety of individuals.
15. In support of that view, Translink informed the Commissioner that it considers there to be an ever-present threat to individuals' health and safety if the railway working timetables were to be released. Translink sought to contextualise its position by outlining the threat posed in relation to Translink itself, including its unique position from the rest of the UK as Northern Ireland's sole public transport provider and its operation within a heavily complex political environment.
16. Translink is the brand name of the Northern Ireland Transport Holding Company (NITHCo) and was established in 1967, under the Transport Act Northern Ireland. Translink provides transport services across the region of Northern Ireland as well as operating both rail and bus services to and from the Republic of Ireland; including the Enterprise Rail service, the only cross border rail service on the island of Ireland, jointly operated by Iarnród Éireann and Northern Ireland Railways (NIR). The cross-border Belfast to Dublin railway line has long suffered disruption from paramilitary violence during the NI conflict known as the "Troubles", including repeated bombing of the cross-border railway line.

17. Most of the violence within Northern Ireland subsided following the 1990s Northern Ireland Peace Process , however a minority of splinter groups and individuals still continue with threats and acts of violence. Translink described a number of incidents and provided the Commissioner with statistics of violent incidents recorded by the Police Service of Northern Ireland ("PSNI") in 2020. It also described several incidents whereby railway workers were threatened, the threats believed to be linked to a paramilitary group.
18. Translink explained that from 2013 onwards, its cross-border Enterprise service has been disrupted on 57 occasions, with more than half these cases as a result of security hoaxes. From 2016, Northern Ireland's rail network was hit by 89 security alerts.
19. The complexity of Northern Ireland's political landscape continues to raise persistent issues around social change and cohesion, such as post-Brexit trading arrangements, the Northern Ireland Protocol and the creation of what has been referred to in the media as an 'Irish sea border'. On numerous occasions, Translink buses and train network have been attacked to make political statements.
20. Translink informed the Commissioner that:

"When societal tensions rise, sectarian violence and riots can erupt quickly within Northern Ireland, and because of its public serving role in connecting communities North and South of the border, it is often Translink's network, its customers and employees that are targeted and caught up in this violence."

### **The applicable interests**

21. Translink stated that its working timetables effectively make up the foundation for safe railway operation and contain detailed, intricate operational information, including:
  - Identification codes for each train.
  - The train's maximum speed.
  - Times at locations other than stations (e.g., junctions).
  - Empty trains.
  - Timings of such trains around the network.

22. It argued that the risk of endangerment of individuals as a result of disclosure in this case is "a significant and weighty chance" as per the Tribunal case of *Lownie v Information Commissioner, the National Archives and the Foreign & Commonwealth Office*.<sup>2</sup>

### **The Commissioner's' view**

23. The Commissioner considers that Translink's arguments relate to endangerment to both physical and mental health of individuals, so he has considered its arguments in relation to both sections 38(1)(a) and 38(1)(b). The Commissioner accepts that the actual harm which Translink alleges would occur if the requested information were to be disclosed relates to the applicable interests which the exemption is designed to protect.

### **The nature of the endangerment**

24. The Commissioner's guidance states: "Endangering mental health... means it must have a greater impact than causing upset and distress." It also states that "endangering physical health...usually means an adverse physical impact..." and that "endangering safety is usually connected to the risk of accident and the protection of individuals."
25. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead to endangerment: there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.
26. In this case, he is satisfied that Translink has demonstrated a causal link between the potential disclosure and the stated endangerment.
27. Translink considers that there is the potential for serious, substantial harm, injury and endangerment to Translink customers, employees, and the wider community; their safety and physical health, if Translink's NIR network was targeted. The NIR network forms part of the Critical National Infrastructure, and as such, Translink as an operator must ensure that information associated with the workings of its network is protected from misuse or sabotage.

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<sup>2</sup> EA/2017/0087

28. Translink considers that, by disclosing the withheld information, the likelihood of its NIR network being targeted by terrorist and/or criminal organisations would significantly jeopardise Translink's ability to deliver safe public transport to those North and South of the border and to ensure the safety of its customers, employees, and the surrounding community in which it operates. Terrorist organisations, corrupt individuals or groups of individuals equipped with specific operational details of Translink's NIR, including when and what trains are going to be empty, what locations they are arriving at and departing from, and the times of each, could utilise this information in the perpetration of a malicious act of sabotage. For example, they could deduce that enforcement at certain depots, trains or locations may be less likely, and this could make it easier to plant explosive devices or better inform any plans to hijack trains.

### **Likelihood of endangerment**

29. In its submission to the Commissioner, Translink confirmed that it considers that the lower threshold of endangerment - 'would be likely to' - applies.

### **Is the exemption engaged?**

30. The Commissioner cannot give an expert opinion on whether disclosure of the information would be likely to endanger the physical or mental health and/or safety of an individual.
31. He recognises that the question of the degree of endangerment is not a straightforward one. However, he accepts that, given the continuing political unrest in Northern Ireland, and the seemingly ever-present threat of incidents occurring relating to the NIR network, disclosure of the withheld information would be likely to result in endangerment to both the physical or mental health and the safety of Translink's railway workers, customers and the wider community.
32. Having considered the submissions provided by Translink and the likely consequences of the disclosure of this information into the public domain, the Commissioner is satisfied that the level and nature of the endangerment identified would constitute an endangerment to both the physical health and safety of individuals as Translink considers that it would be likely to increase the chance of targeted violence and terrorist attacks, which would clearly constitute an adverse physical impact upon the individuals. Also, the Commissioner considers that the fear of such attacks occurring, and the mental health conditions potentially sustained by individuals and the wider community following such incidents of violence would go beyond upset or distress and constitute an endangerment to the mental health of such individuals.

33. Accordingly, he is satisfied that section 38(1)(a) and (b) are engaged on the basis that there is a significant and weighty chance of the endangerment occurring.
34. Having concluded that sections 38(1)(a) and (b) are engaged, and satisfied that the lower level of 'would be likely to endanger' has been demonstrated, the Commissioner has gone on to consider the balance of the public interest.

### **The public interest test**

35. Section 38 is a qualified exemption. This means that, even if the information requested is exempt from disclosure, the public authority must go on to consider whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.

### **Public interest arguments in favour of disclosure**

36. Translink recognises the public interest in accountability and transparency. It specifically acknowledges that disclosing the requested NIR working timetables would show Translink's willingness and proactiveness towards being open and transparent.
37. Translink stated that it takes its public serving role very seriously and where possible always strives to be transparent, especially with regards to information disclosure, only seeking to exempt information when there is an overriding need to do so.
38. Translink also recognises that understanding the workings of its rail network is of great personal interest to many and it would encourage better public understanding of the work undertaken by its operational employees.

### **Public interest arguments in favour of withholding the information**

39. Translink stated that for it to ensure safe travel, all possible scenarios that would endanger public safety must be identified and accounted for earlier on, as well as being reviewed in light of the political climate it exists within and mitigated against. This means reviewing information for disclosure must be done with extreme care and caution.
40. After reviewing the requested information, Translink concluded that its utmost priority is to ensure the continued safety of its customers and employees and it would not be in the public interest to jeopardise that by disclosing the requested information.

### **Balance of the public interest**

41. The Commissioner will invariably place significant weight upon protecting individuals from risk to their physical and mental wellbeing. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision.
42. Clearly in any such situation where disclosure would be likely to lead to endangerment to health and safety, there is a public interest in avoiding that outcome.
43. In this case, the Commissioner considers that the strength of the arguments favouring disclosure is outweighed by the public interest in maintaining the exemption in order to safeguard the health and safety of the individuals involved. Therefore, in all the circumstances, the Commissioner has decided that the balance of the public interest favours maintaining the exemption at sections 38(1)(a) and (b) of FOIA.



## Right of appeal

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44. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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