

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

Decision notice

Date: 21 October 2022

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision

1. The Commissioner's decision is that the Department for Transport should have considered the request in this case under the EIR rather than FOIA.
2. The Commissioner requires the Department for Transport to take the following step to ensure compliance with the legislation:
 - Issue the complainant with a fresh response to their request that complies with the EIR.
3. The Department for Transport must take this step 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

4. The complainant made the following information request to the Department for Transport (DfT) on 27 November 2021:

"In the recent 'Integrated Rail Plan for the North and Midlands', reference is made to Benefit-Cost-Ratio (BCR) calculations developed for three 'Options' proposed by Transport for the North for Northern Powerhouse Rail (options outlined at 3.52; reference to BCR calculations at 3.59).

Please provide the latest version of the IRP BCR calculations for each of the three identified TfN Options, together with those for any other major Options developed and considered in parallel as alternative NPR proposals by DfT as part of the IRP.

If there have been substantial changes to the modelling assumptions made for these Options over the development of the IRP since its initiation in February 2020, please also provide the final versions of the corresponding files prior to each substantial change.

I would consider a change 'substantial' if it led to a change in the calculated BCR of any NPR Option of 0.2 or greater."

5. DfT's final position was that the requested information was exempt from disclosure under section 35(1)(a) of FOIA, which concerns the development and formulation of government policy.

Reasons for decision

6. This reasoning covers why the requested information is environmental information that DfT should have considered under the EIR.
7. Regulation 2(1) of the EIR describes environmental information as being information 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..."

...(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)...as well as measures or activities designed to protect those elements..."

and

"...(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c)..."

8. The requested information in this case concerns Benefit-Cost-Ratio calculations and modelling assumptions associated with the options that Transport for the North proposed for Northern Powerhouse Rail.
9. The Commissioner is satisfied that this information falls within scope of the above three subsections of regulation 2(1) of the EIR and is environmental information. DfT should therefore have handled the request under the EIR and not FOIA.

Right of appeal

10. 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

11. 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.
12. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF