

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations (EIR)**

Decision notice

Date: 7 February 2023

Public Authority: National Highways
Address: National Traffic Operations Centre
3 Ridgeway
Quinton Business Park
Birmingham
B32 1AF

Decision (including any steps ordered)

1. The complainant has requested information from National Highways (NH) on the structure of Rudgate Bridge and Great Musgrave Bridge; parts of the Historical Railways Estate (HRE). NH refused to comply with these requests citing regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that NH is entitled to refuse to comply with the request on the basis that regulation 12(4)(b) of the EIR applies.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 9 May 2022, the complainant wrote to NH and requested information in the following terms:

"In relation to Great Musgrave bridge (EDE/25) – a structure forming part of the Historical Railways Estate – please provide me with –

- the visual inspection/detailed examination reports produced in 2011, 2012, 2013, 2018 and 2019
 - the Strengthening and Options Report, produced by Capita Symonds for Cumbria County Council in 2009
 - detailed design drawings for the 2011 infill scheme.”
5. On 23 May 2022 the complainant also requested:
- “In relation to structure CFH1/12 Rudgate [Road] bridge, part of the Historical Railways Estate, please provide me with:
- the most recent detailed examination report
 - visual inspection reports for 2017-2021
 - the most recent structural assessment
 - completion reports for any repairs carried out since 2010
 - detailed design drawing for the 2021 infill scheme.”
6. NH responded on 7 June 2022, refusing to the comply with the requests under regulation 12(4)(b) of the EIR.
7. The complainant requested an internal review. The internal review was completed on 5 July 2022. This upheld the application of regulation 12(4)(b) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 6 July 2022 to complain about the way their request for information had been handled. They strongly disagree that the requests are manifestly unreasonable and believe NH should comply with them.
9. The Commissioner has received additional submissions from NH and he is satisfied that regulation 12(4)(b) of the EIR does apply. The following section will explain why. The responses the complainant received from NH are comprehensive so they are aware of the grounds put forward by NH.

Reasons for decision

10. Regulation 12(4)(b) of the EIR states that a public authority can refuse to comply with a request if it considers the request is manifestly unreasonable. It can be refused on cost, time and resources and it can also be used where a public authority considers the request is vexatious.
11. It is subject to the public interest test, so the public authority must also demonstrate that the public interest rests in maintaining the exemption.
12. At the time of the internal review NH had logged a total of 47 information requests from the complainant over a three year period concerning work of its HRE team. It said that this did not include the large number of requests for information sent directly to HRE and dealt with as business as usual. It commented that the subject matter of these requests, and the volume of information it has provided in response, spans across a number of different bridges and tunnels in the HRE and covers many years of examinations, inspections, works, plans and correspondence.
13. It considers the majority of requests are onerous for the HRE staff responsible for processing them. On many occasions they have spent over 18 hours processing requests and preparing responses for the complainant. It argued that it represents a significant diversion of valuable resources from public tasks.
14. It feels it has become quite clear that the complainant's requests are not made for the purposes of being "informed" about a process, or reasons, for decisions it makes. They are part of a campaign to endlessly fish for anything which they can use to present NH in a negative light. They present pieces of information it has provided, out of its proper context, in such a way as to misinform the public, the complainant's readers and corroborate their views.
15. It refers to a list of structures under consideration for infilling works, which it provided to the complainant in late 2020. It provided a list of 128 structures and the table included a column indicating the structures for which infilling was confirmed as required and those where work was not confirmed but merely a potential solution. When the complainant published their version of the table the aforementioned column had been removed so that it misleadingly appeared that all 128 structures were confirmed for infilling work. This generated unnecessary public concern.
16. It said that NH staff have suffered distress as a result of the complainant's endless interrogation and investigation of the information it holds. They have felt harassed by the continual mis-use of the information provided to the complainant, which it considers the

complainant has distorted to mislead and misinform. NH provided a statement from one member of staff to highlight this point.

17. NH notes that government paused its infilling and demolition programme for ten months as a result of concerns expressed by the complainant's campaign and acknowledges how the complainant would see this as justification for their concerns. However, NH said that the pause was implemented in order to review the concerns raised. It did not mean that the concerns raised were correct and it maintains that many were potentially based on misleading information posted online and in social media.
18. Works did recommence. But as part of the review process NH set up a Stakeholder Advisory Forum and provided the complainant with a space on that forum so that they can be involved in discussions and decisions around HRE. It said that this is represented by various individuals across the sector but the complainant is the only member of the public. Despite this position and involvement, the complainant continues to persistently submit information requests about NH's past and future major works.
19. NH stated that this position provided the complainant with access to privileged information and discussions around its work. It allowed the complainant to hear about information and documents being produced by or for the NRE Team or which may have been shared with them. They have then used this privileged knowledge to make requests for information to try and get that information into the public domain.
20. Requests have been frequent and overlapping at times. Further requests are made before NH has had time to process earlier ones and the complainant has sent requests for the same information directly to the NH staff member who was made their special contact on the forum.
21. The complainant was put on restricted contact in 2021 as a result of their continuing requests and correspondence. They have also provided a written statement to the Commissioner.
22. The complainant has raised issues directly with the Commissioner which state that NH is not following the correct processes and procedures. For example, infilling based on permitted development rights instead of getting planning permission.
23. These concerns have been put to NH and it strongly disagrees. It said that all works that entail substantial modification of an existing structure, such as infilling, demolition, partial demolition and so on are subject to Local Planning Authority (LPA) agreement. Historically LPAs have tended to have an inconsistent view of works, with some asking for a planning application and other stating that it is permitted

development. It commented that one of the problems that it traditionally faced with many (but not all) LPAs is in getting a timely response or, as in many cases, any response at all. Even when it has had a response, it has often taken well over a year to establish the preferred route and begin the process, often holding up urgent safety works and placing the public at unnecessary risk.

24. As a result of this experience, in 2020, it decided to write formally to each LPA, where the weak bridges sat, and advise them that it had interests in infilling/demolishing these structures as permitted development. This was undertaken well enough in advance that it would have all planning and ecology in place to be able to proceed as quickly as needed. Most of the LPAs agreed with the permitted development approach, some advised that they would need to go through the full planning permission route, and many did not respond, despite numerous follow-up emails. The responses it did receive then informed which planning routes it would take with each LPA and confirmed whether they had plans for the structures if/when NH were looking to infill/demolish.
25. NH confirmed that the complainant has made claims that NH is "abusing Emergency powers", "declaring an emergency" and making use of "permitted Development powers which circumvent the need for planning permission" and are "undermining democratic process". This is despite the complainant being fully aware of exactly which legislation was being used and why, the rationale as to why it was/is appropriate to use, the fact that the majority of the LPAs confirmed their acceptance for NH's use of it (and that those that did not, it proceeded in line with its stated requirements) and that NH never undertakes any works without the LPAs explicit agreement.
26. It said that the complainant's repeated statements are in "stark contrast" with the evidence supplied to them by way of FOIA, including that supplied by numerous LPAs that were also subject to FOIA requests on the issue. This is just another example of the complainant presenting a misleading interpretation of the data within FOIA responses to intentionally generate outrage.
27. NH has confirmed that the complainant has also manipulated the data provided via their information requests to create, and very effectively circulate a story where its budget had been quadrupled (even though it had not) and that NH were demolishing or infilling 250% as many structures as it had actually stated it was. They have also stated that NH were "declaring emergencies" and "bypassing democratic processes" for bridges that had no structural capacity problems, despite the FOIA data showing that to be the opposite situation.

28. NH considers the complainant is misusing the legislation to gain access to information which they can then manipulate to support their campaign against the works of NH.
29. The Commissioner is satisfied that regulation 12(4)(b) of the EIR applies. It is apparent that the complainant has made numerous requests to NH and collectively these have been a considerable drain on NH's time and resources. Regardless of the information supplied or whether NH has had time to respond to requests already submitted, the complainant has continued to submit more. There is evidence submitted by NH of the information that has been provided being misrepresented and projected to the public in such a way as to undermine NH's work and to try and suggest that it is not following due process. It is not for the Commissioner to decide if it is or it is not. The complainant feels strongly one way and NH has provided equally as strong counter arguments to support the work they are doing and have done. But the Commissioner assumes that there are other statutory processes available to anyone concerned, apart from FOIA and the EIR, to challenge that.
30. NH has also provided statements from members of staff who have been affected by the complainant's requests and campaign. These highlight the distress these have caused and the level of burden it is placing on the public authority. NH has given the complainant a privileged position on its forum, where various key members discuss HRE and up and coming works. This was done to aid the complainant with their concerns and actively involve them in the discussions that do take place. Despite this the requests continue and NH has said that they have almost abused this position by submitting requests for information that is discussed in these closed sessions with a view to publicising it and bringing it in to the public domain. There is evidence to demonstrate that what is disclosed is not always what is portrayed and such incidences can only add to the work and burden placed on NH.
31. For these reasons the Commissioner is satisfied that there is sufficient evidence to warrant the application of regulation 12(4)(b) of the EIR.
32. In terms of the public interest, the Commissioner recognises the significant public interest in HRE works and ensuring that the most beneficial and cost effective solution is found for each structure. It is understandable that if members of the public are concerned that NH is not following due process and going ahead with works without potentially following it, that they will want to see information relating to that and potentially challenge it.
33. But the Commissioner considers there must be a balance, between seeking and obtaining information and the burden this places on a public

authority in terms of resources. As stated above, it is not for the Commissioner to decide or indeed comment on NH's processes and practices so far. This is not his remit. However, it is evident that the complainant has made a substantial number of requests for information over the last three years and despite the information supplied they do not appear satisfied. Public resources must be protected to ensure that a public authority is capable of carrying out its statutory functions efficiently and effectively.

34. It is evident that regardless of the information provided and the position on the stakeholder forum that this situation will continue and the Commissioner agrees with NH that the point has now been reached whereby information requests of this nature can be deemed manifestly unreasonable. It is not in the wider interests of the public to allow this to continue.
35. For these reasons the Commissioner is satisfied that the public interest rests in maintaining the exception.

Right of appeal

36. 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

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

37. 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.
38. 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

Samantha Coward
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