

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 January 2023

Public Authority: East West Railway Company
Address: 1 Grafton Gate
Midsummer Boulevard
Milton Keynes
MK9 1FB

Decision (including any steps ordered)

1. The complainant requested information from East West Railway Company ("EWR") about the recruitment process for a particular project and the resignation date of a particular individual involved in the project.
2. The Commissioner's decision is that EWR breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days. No steps are required.

Request and response

3. On 1 July 2022, the complainant made the following request for information:

"Please share details of the recruitment process, how many other candidates were interviewed and where the role was publicly advertised?"

It is understood that [xxx] resigned from the EWR project when he stood as a Conservative parliamentary candidate, to avoid any conflicts of interest. Please confirm the dates that he left the EWR project and when he returned."

4. EWR responded to the request for information as follows on 2 August 2022:

"The recruitment campaign was run by Fission, a professional recruitment firm, and the role was also published on our main job boards and it rail magazines. There were multiple candidates for the role, and the recruitment process involved multiple interviews and tests.

[xxx] was a contractor during the time that you have specified, and therefore we do not hold this information on our HR systems. We can confirm that [xxx] was a contractor between 2017 and 2020 and became permanent in the role in August 2020. He wrote to the Interim Chairman to step down did step down as soon as he was a nominated as a parliamentary candidate in the 2017 election, and resumed his role after the election had concluded."

5. On 3 August 2022, the complainant requested an internal review and asked additional questions as follows:

" I am not satisfied with the response to the request or the apology for the FOI breach. EWR has an awful reputation in delaying FOI Requests and obscuring basic information. The response below comes across as disturbingly vague and is unsatisfactory.

You claim you don't hold the information on the dates [xxx] worked on the EWR project as a contractor. Surely these are on his application form/CV/background checks for a permanent role at the company?

On what date did he write to the interim Chairman to step down?

Who was the interim Chairman?

Is it usual for contractors to resign to the Chairman directly rather than executive management?

On what date did he step down?

On what date did he return?

Surely someone at EWR holds this information - does [xxx] still work at EWR?

Has [xxx] met with Tory donors such as Thakeham, Redrow, Bridgemere during his time working on the project?

Which magazines did you advertise the role in?

How many candidates were interviewed?

6. On 26 September 2022, EWR responded as follows:

"Following your previous request on 01.07.2022, you requested an internal review. You then notified the Information Commissioners Office that we had not responded to your internal review in time.

Firstly, I would like to apologise for the delay in this response.

Secondly, I would like to note that we have dealt with this as a fresh request for information, rather than an internal review. This is because rather than simply requesting that the previous response be reviewed, you asked a range of new questions compared to your original request. As such, I acknowledge that we have failed in our obligations under Section 10(1) of the Freedom of Information Act and would like to again apologise sincerely.

In your follow-up request you asked us for information below. I can confirm that the search for the information you requested has been completed and I can advise you of the following:

- You claim you don't hold the information on the dates [xxx] worked on the EWR project as a contractor. Surely these are on his application form/CV/background checks for a permanent role at the company?
- We explained that we did not hold the specific dates that [xxx] stepped down when running as a Parliamentary candidates, as this is not recorded on our HR system. We can confirm that [xxx] worked as a contractor from 13th April 2017 to 27th August 2020.
- On what date did he write to the interim Chairman to step down? Who was the interim Chairman?
- The Interim Chairman was Rob Brighouse, the founding Chair of EWR. [xxx] wrote to him in the early morning on 11th May 2017, following his nomination as a candidate on the 10th of May 2017 and preceding the public notice of his nomination.
- Is it usual for contractors to resign to the Chairman directly rather than executive management?
- Given that [xxx] was in a senior management position, it is not unusual that the Chairman was spoken to directly.
- On what date did he step down?
- Please see the response to question 1.

- On what date did he return?
- [xxx] returned on the week of 12th June 2017, following the election on 8th June 2017.
- Has [xxx] met with Tory donors such as Thakeham, Redrow, Bridgemere during his time working on the project?
- EWR Co have engaged with a range of landowners and promoters across the route. This is a standard approach for all large infrastructure projects for a variety of reasons, including ensuring they had a chance to respond to the non-statutory consultation, to discuss how different schemes interface, and to arrange access for environmental survey work.
- Which magazines did you advertise the role in?
- The magazine advertised in was Railway Magazine. This was consistent with the approach taken for all Executives, through the recruitment process run by the third party specified in our previous response to you.
- How many candidates were interviewed?
- 5 candidates were interviewed for the role.

Scope of the case

7. The complainant contacted the Commissioner on 6 September 2022 to complain about EWR's failure to respond to their request within the statutory time frame of FOIA. The complainant also complained about EWR's failure to provide an internal review response.
8. The Commissioner has considered whether EWR has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

10. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

11. From the evidence provided to the Commissioner in this case, it is clear that EWR did not deal with the request for information dated 3 August 2022 in accordance with FOIA. The Commissioner finds that EWR has breached section 10(1) by failing to respond to the request within 20 working days.

Right of appeal

12. 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

13. 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.
14. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF