

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 28 July 2023

**Public Authority:** Network Rail  
The Quadrant  
Elder Gate  
Milton Keynes  
MK9 1EN

**Decision (including any steps ordered)**

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1. The complainant has requested signalling diagrams. Network Rail ('NR') withheld the requested information, citing regulation 12(5)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that to comply with the request would impose a grossly oppressive burden on NR and it's entitled to refuse the request under regulation 12(5)(b).
3. The Commissioner does not require further steps.

**Request and response**

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4. On 13 March 2023 the complainant requested:  
"Could you please provide signalling diagrams like the ones of a former request (<https://eur02.safelinks.protection.outlo...>) for the following routes?"

- SO110 - Victoria to Ramsgate via Herne Hill and Chatham
  - SO130 - CHX to Dover/Eurotunnel via Tonbridge
  - SO140 - Swanley to Ashford
  - SO150 - Sittingbourne Western Jn to Sheerness-on-Sea
  - SO160 - Faversham to Dover Priory
  - SO180 - Paddock Wood to Strood
  - SO220 - Ashford to Ramsgate via Canterbury West
  - SO240 - Buckland Jn to Minster East Jn
  - SO310 - Hither Green to Rochester Bridge Jn via Sidcup
  - SO600 - Willingdon Jn to Ashford"
5. NR responded on 28 March 2023 and refused to disclose the requested information under regulation 12(5)(a) (public safety) of the EIR, a position it upheld at internal review.
  6. During this investigation, NR explained, whilst regulation 12(5)(a) applied to large parts of the withheld information, some could be disclosed. However, 'the dangerous material is so intertwined with the innocuous material that making the documents safe to release would place a disproportionate burden on our resources.' It therefore changed its position to rely upon regulation 12(4)(b) (manifestly unreasonable).

## **Reasons for decision**

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### **Is the requested information environmental?**

7. Regulation 2(1)(a) of the EIR defines environmental information as information relating to:
  - '(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.'
8. Landscape, as referred to above, is an area of land whose character and appearance has resulted from the interaction of natural or human factors, or both.

9. NR has explained that 'The information in question is a series of diagrams showing the interaction between the railway infrastructure and the land on which it is situated. It describes natural features like topography in the "track gradients" as well as manmade features like the track, stations, etc.' The Commissioner is satisfied that the requested information is environmental and therefore falls to be dealt with under the EIR.

**Regulation 12(4)(b) – manifestly unreasonable**

10. Regulation 12(4)(b) of the EIR states:

'A public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable;'

11. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if the request is vexatious and secondly where compliance with the request would incur an unreasonable burden on the public authority both in terms of costs and the diversion of resources. NR is relying on the latter.
12. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is no difference between a request that is vexatious under section 14(1) of FOIA and one which is manifestly unreasonable under the EIR. If a request would be found to be vexatious under section 14, then it will also be manifestly unreasonable and hence 12(4)(b) of the EIR will be engaged. The singular practicable difference is that a public authority must consider the balance of public interest when refusing a request under the EIR whereas it doesn't have to under FOIA.
13. A public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.
14. The Commissioner considers the threshold for such a refusal to be high and he considers it appropriate where:
- The requester has asked for a substantial volume of information and
  - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO and

- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
15. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to FOIA under which a public authority can refuse to comply with a request if it estimates that doing so would exceed the 'appropriate limit'. This appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') as £600 for central government departments and £450 for all other public authorities. This limit is calculated at a rate of £25 per hour per person, or 24 and 18 hours respectively.
  16. Although the Regulations are not directly applicable to the EIR, in the Commissioner's view<sup>1</sup> they can provide a useful point of reference for a public authority that is considering the application of 12(4)(b) of the EIR. The costs of considering if information is covered by an exemption can be taken into account under both section 14(1) and regulation 12(4)(b).
  17. NR has explained to the Commissioner: 'The applicant has asked us to 'provide signalling diagrams like the ones of a former request.' The diagrams provided in response to this previous request are what are known as TAP diagrams (see Annex A), they are predominantly used in Scotland and offer a much more basic description of the railway than the signalling diagrams for the southeast of England (predominantly Kent) which the applicant is looking for us to provide in this instance.'
  18. It has gone on to say that 'One of our senior engineers has explained that most of the diagrams for this region of the country, including all of those covered by this request, are the product of evolution whereby the needs of various maintenance and engineering teams has led to ever greater amounts of information and levels of detail about almost every conceivable element of the permanent railway infrastructure being included in the diagrams. As they now stand, they are an entirely distinct category of document from the TAP diagrams.'
  19. The Commissioner has compared the withheld information to these TAP diagrams (which have previously been disclosed to the complainant) and can verify they are much more detailed.

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<sup>1</sup> [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

20. There are 88 diagrams that fall within the scope of the request. NR has explained that these diagrams include 'information about Train Protection & Warning System locations (essentially the system in place to automatically slow or stop trains which are moving too fast or have passed a signal at danger); information on electrical substations used to power the railway; the technical relationships between assets (tunnels, culverts, cables, gantries, cabling, etc.); the positions of critical cable routes; and details of concealed safety and/or security overlay detection systems which are used to determine whether a train is permitted to enter a section of the track.'
21. NR has explained 'The only alternative means of accessing this information would be via direct reconnaissance which would carry with it an increased risk of apprehension before any crime could be committed...The ways in which this information could be used to commit acts of terrorism are many and various ranging from a simple destruction of property (thereby causing substantial disruption on lines in and out of London) to, in the worst-case scenario, planting explosive devices or purposefully causing derailments. The fundamental issue is that the diagrams provide detailed information about the location and nature of elements of the railway infrastructure which could be used to better plan attacks.'
22. The Commissioner needs no further convincing that at least some of the withheld information engages regulation 12(5)(a) of the EIR which states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect defence, national security or public safety.
23. However, just because some of the information that falls within the scope of a request is exempt, it doesn't mean compliance with the request would represent a grossly oppressive burden and therefore engage regulation 12(4)(b).
24. NR has explored the possibility of redacting the information that engages regulation 12(5)(a), with a view to disclosing the remainder, but has met two difficulties:
  - i) 'The first is that the documents are large and unwieldy, the simple, technical process of examining and redacting them is time consuming.
  - ii) Decisions about what information is exempt can only be taken by engineering experts and the FOI team working in conjunction, since these decisions rely on a knowledge of the EIR and an understanding of railway infrastructure/the signalling diagrams. While it is possible for the experts to create some broad rules for

the FOI team to follow, the result would lack nuance and would result in either harmless information being withheld, or dangerous information being released.'

25. As previously stated, engaging regulation 12(4)(b) is a high bar and the Commissioner expects public authorities to provide both a detailed explanation and quantifiable evidence to justify the cost of complying with a request both in monetary terms and resourcing. In circumstances where it is claiming compliance would impose a grossly oppressive burden, specifically in relation to any redactions that would need to be made, public authorities must be mindful of the criteria as outlined in paragraph 16.
26. NR did carry out the exercise described in paragraph 24 ii) and 'while it was possible to redact the smallest of the documents in approximately 40 minutes, the largest of them took four hours to redact. At the most conservative estimate we think it would take the FOI team 2.5 hours per document to carry out the redactions – this works out at 220 hours in total (88 documents multiplied by 2.5 hours)... In addition to this one of our signalling engineers would need to set aside a minimum of 88 hours to review the documents and propose amendments.'
27. Clearly compliance grossly exceeds the limit outlined in paragraph 15 and so regulation 12(4)(b) is engaged. However, the public interest must still be considered. NR considers the public interest in disclosure is limited. It acknowledges that 'Although the information interests a small section of the public (most notably railway enthusiasts and people wishing to create online train simulators) this is not the same as there being a public interest in disclosure.'
28. The complainant hasn't advanced any specific public interest arguments in disclosure; though there are always the general principles of accountability and transparency under the EIR. There is also a presumption in favour of disclosure when it comes to environmental information.
29. NR has directed the Commissioner to information that it already publishes<sup>2</sup> about the layout of the network that doesn't adversely affect public safety. Ultimately, the Commissioner agrees with NR when it says 'the key public interest question is not whether the public interest in providing information about the layout of the network outweighs the public interest in avoiding a disproportionate burden being placed on our limited resources, but rather whether the public interest in providing

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<sup>2</sup> [National Electronic Sectional Appendix - Network Rail](#)

heavily redacted documents that offer only marginally more information than NESA (the publicly available information), justifies the disproportionate burden that would be placed on our limited resources.'

30. The Commissioner concurs that the burden doesn't justify disclosure in this instance and therefore regulation 12(4)(b) is engaged and NR is not obliged to comply with the request.

### **Regulation 9 – advice and assistance**

31. When refusing a request for environmental information under regulation 12(4)(b) solely because of cost or burden, a public authority should provide the requester with appropriate advice and assistance in accordance with regulation 9 of the EIR.
32. The Commissioner acknowledges that no such advice and assistance was offered to the complainant during NR's initial handling of the request because it was relying solely on regulation 12(5)(a), not regulation 12(4)(b).
33. NR has explained to the Commissioner that 'We think that it might be possible to provide two or three redacted documents to the applicant without triggering Regulation 12(4)(b) if they were to submit a new request letting us know which of the diagrams they wanted us to provide. We have attempted to get in touch with them to make this proposal and discuss means of moving forwards but have not heard back from them. Our offer, naturally, remains open.' With this in mind, the Commissioner is satisfied that there is no regulation 9 breach in this instance.

## Right of appeal

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34. 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)

35. 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.
36. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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