

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 August 2023

Public Authority: Rail Accident Investigation Branch
(Department for Transport)

Address: The Wharf
Stores Road
Derby
DE21 4BA

Decision (including any steps ordered)

1. The complainant has requested information about two accident reports. The above public authority ("the public authority") refused the request as vexatious.
2. The Commissioner's decision is that the public authority was entitled to rely on section 14(1) of FOIA to refuse the request as it was vexatious.
3. The Commissioner does not require further steps to be taken.

Jurisdiction and nomenclature

4. The Rail Accident Investigation Branch is not a public authority in its own right. The Commissioner notes that its founding legislation (the Railways and Transport Safety Act 2003) refers to it:

"being a branch of the department of the Secretary of State [for Transport]"
5. Whilst the complainant corresponded with "the Rail Accident Investigation Board" during the course of his request, the public authority in this case is, ultimately, the Department for Transport.

Request and response

6. On 4 July 2023, the complainant wrote to the public authority and, referring to two specific accident reports, requested information in the following terms:

“Edinburgh 05/2020: 1. What is the maximum braking performance of the dynamic brake in percent g, on a level gradient with μ above 0.13; regarding the class 92 locomotive running light. (I suspect it is 11 percent g?) 2. What is the mass of the consist: class 92 locomotive and 8 mk 4 coaches, with 120 Pax, in metric tonnes. (I suspect it is 480 tonnes?)

Loughborough 10/2020 1. Was the rear locomotive running. 2. 20 mph past the signal for 200 m is a retardation of 0.2 m/s/s, this does not comply with your field test of 0.45 m/s/s, please explain. 3. How do you know the consist was set up properly for single pipe operation. (I suggest the rear loco exhausted the internal tanks as they are not charging).”

7. The public authority responded on 7 July 2023. It refused the request as vexatious – a stance it upheld following an internal review.

Reasons for decision

8. Section 14(1) of FOIA allows a public authority to refuse requests which are vexatious. A vexatious request is one that has no reasonable foundation or which is a manifestly unjustified or inappropriate use of a formal procedure.
9. The public authority explained in its internal review that it was satisfied that the request was vexatious because:
- “RAIB has provided detailed responses to earlier correspondence regarding these investigations.
 - Both investigation reports are publicly available, include RAIB’s conclusion on the causes of the events, and set out the information used to reach those conclusions and the published safety recommendations.
 - You have made numerous similar information requests regarding the Edinburgh and Loughborough investigation reports since 2020. These requests were made from late 2020 to mid-2023 and in total consist of around 30 to 40 e-mails (containing enquires,

comments, and FOI requests) covering one or both of these investigations. This correspondence is part of over 100 enquiries, comments, complaints, and FOI requests you have sent RAIB over the same period. This quantity of correspondence is far in excess of that from any other individual or third-party body outside of those industry stakeholders and public bodies directly involved in our work.

- Your information request of 4th July is in the format of a series of questions, rather than for documents or datasets. This format is common in your requests. If the answers are not in the published accident report, this format of request requires an RAIB inspector to review numerous records to ascertain if the information is held; if further calculations are required; and if that information is protected or otherwise prohibited from release under the Railways (Accident Investigation and Reporting) Regulations 2005 (the 2005 Regulations). This is a time-consuming process, which diverts resources away from the ongoing work of the branch.
 - You have previously sent correspondence, including information requests that are concurrent or overlapping.
 - You have made a number of complaints to the RAIB or Department for Transport about the conduct of the RAIB. This includes a complaint that was referred to an Independent Complaints Assessor (ICA) where you withdrew from the process before the ICA considered the complaint. It also includes a complaint concerning RAIB's response to your questions about the Dalwhinnie Derailment, which was not upheld."
10. The complainant has not challenged any of these assertions in his grounds of complaint. He merely reiterated that the public authority's reports are flawed and that he had been compelled to keep sending correspondence because the public authority would not answer "straight forward" questions that he had posed.

The Commissioner's view

11. The Commissioner considers that the public authority's reasons for applying the exemption, the factual basis for which the complainant has not challenged, provides adequate grounds for engaging section 14.
12. The request has, on the face of it, a public value. However, the value of a request is not a trump card and will be outweighed if the request has no serious purpose or if it would be burdensome.
13. The public authority has set out a considerable burden of correspondence from the complainant. Some of this correspondence

appears to be related directly to the accidents in question, other correspondence appears to have related to the underlying assumptions used in these and other reports the public authority has produced. The complainant has not challenged the extent of the correspondence sent, but he has argued that it was justified in the circumstances.

14. The Commissioner also considers that the request, viewed objectively, lacked a serious purpose.
15. The Commissioner notes that the public authority has drawn attention to the lack of any decision, by an independent body, upholding the substance of the complainant's concerns. This request has been made because the complainant once again disagrees with the findings of the public authority's reports and the methodology used. It is his right to disagree if he wishes to do so, but using FOIA to make additional requests – especially where a considerable amount of information is already in the public domain – is not an appropriate means of addressing any concerns. Using the legislation as a means of browbeating the public authority into supporting a particular stance is not an appropriate use of the procedure.
16. The Commissioner considers it is evident from the correspondence that, all other things being equal, the complainant is highly likely to continue to send correspondence and further information requests on this matter. The public authority appears to have gone as far as it can in addressing the complainant's concerns and it is not clear why, given the entrenched positions of the parties, further correspondence is likely to lead to any form of resolution or shed any further light on the matter.
17. In addition, the Commissioner notes that several elements of the request do not seek information in recorded form – further reducing the value of complying with the request.
18. The Commissioner is therefore satisfied that the request was vexatious and the public authority was not obliged to respond to it.

Right of appeal

19. 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

20. 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.
21. 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

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