

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

Date: 20 July 2016

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

Decision (including any steps ordered)

1. The complainant requested information about costs associated with works undertaken on particular train stations and on the wider West Coast Main Line. Network Rail initially applied regulation 12(4)(b) to the request (manifestly unreasonable request). Network Rail subsequently identified information that it holds that it was able to release and which the complainant confirmed would satisfy his request. Network Rail withdrew its reliance on regulation 12(4)(b).
2. The Commissioner has decided that Network Rail breached regulation 5(2) of the EIR as it did not provide the complainant with the relevant information that it holds within 20 working days. He does not require Network Rail to take any steps.

Request and response

3. On 20 October 2015 the complainant wrote to Network Rail and requested information in the following terms:

"[1] *RUGBY STATION*

I wish to know the costs of the upgrades at Rugby station most specifically between 2006-2008 and in particular the following:

(a) The new canopy and facelift to the central platform, containing the original red brick station building.

(b) The new platform and stairways and rail line on the west side of the station to accommodate stopping trains.

(c) The other new platform referred to in your letter, believed to be at the north end of the station towards the Coventry direction.

(d) The new additional line between that platform and the middle platform.

(e) The new lines by-passing the station on the east side for trains from Birmingham over the flyover.

(f) New track layout from and in the vicinity of the Birmingham direction flyover across the line to Stafford.

I cannot comment on the public interest test until there is a specific refusal after this application has been clarified as to the exact information that is requested.

[2] MILTON KEYNES STATION

I wish to know the costs of the upgrade at Milton Keynes Station regarding the cost of the new platform 6 and associated earth works behind it regarding the cutting by the side of the station, and also the removal of the road bridge further outside the station towards Rugby?

[3] UPGRADES OF THE WEST COAST MAIN LINE IN GENERAL

I wish to know the total spent on improvements and upgrades on the West Coast mainline in the last 15 years from Carlisle to Euston?

[4] In particular, I wish to know the costs of any other major improvement works and their location in addition to Milton Keynes and Rugby stations."

4. Network Rail responded on 13 November 2015. It said that it did not hold information with regard to parts 1, 2 and 3 of the request. Network Rail said it was not obliged to comply with part 4 of the request because the resources needed to comply with this part made it manifestly unreasonable under regulation 12(4)(b) of the EIR.
5. Following an internal review Network Rail wrote to the complainant on 21 December 2015. It revised its position and said that all four parts of the request were manifestly unreasonable because of the cost and time involved in complying with them. It said that consequently it was not obliged to comply with the request and that the public interest favoured

maintaining the exception. Network Rail provided the complainant with a detailed explanation as to why it had reached this decision.

6. During the Commissioner's investigation Network Rail identified information that it holds that it considered fell within the scope of the request – a document entitled '*West Coast Route Modernisation Programme Historical Cost Report*'. Having described the report to him, the complainant considered that it would satisfy his request and Network Rail released it to him on 29 June 2016.
7. On 5 July 2016 Network Rail confirmed to the Commissioner that it had withdrawn its reliance on regulation 12(4)(b).

Scope of the case

8. The complainant contacted the Commissioner 4 January 2016 to complain about the way his request for information had been handled. Specifically, the complainant was not satisfied with Network Rail's application of regulation 12(4)(b).
9. On 29 June 2016 the complainant confirmed to the Commissioner that, while satisfied with the information he had now received, he required a decision notice as he remained dissatisfied with Network Rail's original categorization of the request as 'manifestly unreasonable' under regulation 12(4)(b).
10. Since Network Rail has now withdrawn its reliance on this regulation, the Commissioner has not included it in the scope of his investigation. However, the definition of regulation 12(4)(b) is briefly discussed in 'Other matters'.
11. The Commissioner has focussed his investigation on whether Network Rail complied with regulation 5(2) (time for compliance).

Reasons for decision

12. Regulation 5(1) of the EIR says that a public authority that holds environmental information shall make it available on request.
13. Regulation 5(2) says that information shall be made available as soon as possible and no later than 20 working days after the date it receives the request.
14. In this case, the complainant submitted his request on 20 October 2015 and was not provided with information that would satisfy the request

until 29 June 2016, which is a clear breach of regulation 5(2). The Commissioner has noted that Network Rail apologised to the complainant for the delay and resulting inconvenience.

Other matters

15. Regulation 12(4)(b) can be used when a request is vexatious or when the cost of complying with a request would be too great. The Commissioner's guidance on this regulation, where this is explained in more detail, is available on his website¹.
16. In its correspondence to the Commissioner dated 5 July 2016, Network Rail has explained that in applying this exception during the earlier processing of the request it had not intended to imply that the request was 'vexatious'. Rather, it applied regulation 12(4)(b) purely on the grounds that it considered that a disproportionate amount of time and resource would be needed to locate and retrieve the requested information.
17. Although Network Rail had also communicated this to the complainant, the complainant appears to be of the view that regulation 12(4)(b) equates only to a request being vexatious and is synonymous with section 14 of the FOIA (vexatious requests).
18. The complainant has drawn the Commissioner's attention to a separate *Dransfield v Information Commissioner* decision that discusses vexatious requests. The Commissioner does not consider this to be relevant here. This is because in both its response to the complainant of 13 November 2015 and its internal review of 21 December 2015 Network Rail made it clear that it was applying regulation 12(4)(b) because of the costs and time associated with complying with the request. No reference is made to the request being 'vexatious'. As explained above and in the published guidance, regulation 12(4)(b) can be used when a request is vexatious OR when the cost of complying with a request would be too great (equivalent to section 12 of the FOIA). It is clear to the Commissioner that it is the second application that Network Rail originally considered was the case with this particular request.

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF