

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 November 2022

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

### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding the number of injuries and deaths at private level crossings in the past five years in Scotland. Network Rail disclosed some information regarding injuries but relied on section 38(2) of FOIA to Neither Confirm nor Deny that information with regard to fatalities was held.
2. The Commissioner's decision is that:
  - The information being withheld under section 38(2) of FOIA engages that exception and the public interest in maintaining the exception outweighs the public interest in disclosure.
3. The Commissioner does not require Network Rail to take any steps as a result of this decision.

## Request and response

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4. On 17 February 2022, the complainant wrote to the public authority and requested information in the following terms:

“Please can you provide me with the total number of 1) injuries and 2) deaths of pedestrians and other non-motorised users at 'private' level crossings in Scotland in the last five years that WERE NOT attributed by Network Rail to suicide or suspected suicide in your reported statistics on suicide and suicide prevention. Since Network Rail already publishes statistics on suicides on the railway, there is clearly no legitimate public safety reason for refusing to provide this information.”

5. On 18 March 2022 Network Rail provided information regarding injuries and relied on section 38(2) of FOIA Neither Confirm nor Deny for any information with regard to fatalities. The public authority upheld its original position at internal review.

## Reasons for decision

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6. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 38(2) of FOIA in this particular case.
7. Section 38(1) states information is exempt if it is likely to endanger the physical or mental health or endanger the safety of an individual.
8. Section 38(2) removes the duty to confirm or deny if compliance with subsection would endanger the physical or mental health of any individual or their safety.
9. The Commissioner's guidance on section 38<sup>1</sup> defines 'endanger' and states that it must have a greater impact than simply causing distress or upset.
10. In its correspondence to the complainant, Network Rail states that:

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

"The reason that we apply this approach to all fatalities rather than just suicides is that public perception often links railway fatalities with suicide, and because of this perception, there is a risk in publishing details of fatalities which may draw vulnerable individuals to the railway in 'copycat' incidents. This was considered by the First Tier Tribunal in [EA/2018/0234](#) in which Transport for London were asked for the number of 'Person under Train' incidents broken down by station and date.

The studies conducted by experts in this matter and the guidance given by recognised and respected public bodies and charities demonstrate a very real possibility that, regardless of the cause of death at a location, the simple fact that a death took place and is recorded as being at a specified location would lead minded individuals to choose to end their life at the same place. In his evidence to the Tribunal, Network Rail's expert in suicide prevention at that time, Mr Ian Stevens MBE, stressed the public perception that fatalities occurring on the railway are also suicides.

On consideration of these expert opinions, we believe that, regardless of the cause of the fatality at a specified location, providing details of that location, or a limited set of locations, would be likely to draw vulnerable individuals to the location listed."

11. When considering whether the public interest test favours maintaining the exemption of confirming or denying the requested information is held, the Commissioner has taken into account that there is a public interest in Network Rail being transparent and open in its approach. However, if it were to confirm or deny that the information is held, it would weaken Network Rail's stance on protecting the health and safety of vulnerable people.
12. As such, the Commissioner is satisfied that, in this case, the public interest test favours maintaining the exemption.
13. The Commissioner acknowledges the complainant's concerns, they dispute that the copycat effect could or would be likely to occur in the circumstances of a release of statistical figures, disclosure of the information requested would, or would be likely to endanger the safety of any individual and the Respondent has a blanket policy of refusing information of the type which was requested by the Complainant. As a result of the application of that blanket policy, it was not possible for the Respondent to correctly apply the public interest test. However, given that the locations are relatively small in number in comparison to the network as a whole, if Network Rail were to confirm or deny that the

information was held, that in itself would disclose information which could be used to identify locations of potential suicides.

14. After careful consideration of the information presented to the Commissioner during the course of his investigation, the Commissioner's decision in this case is that Network Rail was entitled to rely on section 38(2) of FOIA to neither confirm nor deny it held the requested information.

## Right of appeal

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15. 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)

16. 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.
17. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**