

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested CCTV footage of a ticket barrier area at Euston Station. Network Rail relied on section 24 of FOIA (national security), section 31 of FOIA (law enforcement) and section 38 of FOIA (health and safety) to withhold the requested information.
2. The Commissioner's decision is that Network Rail is entitled to rely on section 24 of FOIA to withhold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 13 October 2023, the complainant wrote to Network Rail and requested information in the following terms:

"I am writing to request a copy of CCTV footage from Euston station from Saturday 8 July 2023 covering the ticket barriers at platforms 8 through 11 (one camera angle is sufficient) between 2342 and 2344. This timeframe was shortly after (i) the delayed 2106 service from Birmingham New Street had arrived on platform 8 (arriving at 2340, against a scheduled arrival time of 2333) and (i) platform 8 had been publicly announced as the platform for the late running 2353 service to

Northampton (the service from Birmingham reversed at platform 8 to form the service back to Northampton).”

5. Network Rail responded on 10 November 2023. It stated that it was relying on sections 24, 31, and 38 of FOIA to refuse the request.
6. On 11 December 2023, Network Rail provided its internal review to the complainant and stated that it was upholding its position.

Scope of the case

7. The complainant contacted the Commissioner on 18 December 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether Network Rail is entitled to rely on any of the cited exemptions to withhold the requested information.

Reasons for decision

Section 24 – National Security

9. Section 24(1) states that:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security”

10. FOIA does not define the term ‘national security’. However in *Norman Baker v the Information Commissioner and the Cabinet Office*, (EA/2006/0045 4 April 2007), the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords’ observations as follows:
 - ‘national security’ means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;

- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - action against a foreign state may be capable indirectly of affecting the security of the UK; and,
 - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
11. Furthermore, in this context the Commissioner interprets 'required for the purpose of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of the requested information would undermine national security, the impact does not need to be direct or immediate.

Network Rail's position

12. In its response to the request, Network Rail explained that London Euston is one of the UK's busiest stations with around 25 million entrances and exits per year.
13. While Network Rail acknowledged that the complainant's motive for requesting the CCTV footage is not concerned with compromising security, it explained that stations (particularly busy, well known stations like Euston) are targets for terrorism due to the potential for mass casualties and wider disruption and referenced a number of incidents that have been reported in the media in recent years.
14. Network Rail is concerned that placing the requested information into the public domain through FOIA would demonstrate the positioning, scope and quality of its cameras. It considers that this information would clearly be valuable to terrorists looking to carry out an attack or engage in reconnaissance without apprehension or detection and, therefore, it has determined that providing materially valuable information to terrorists represents a threat to national security.
15. The Commissioner is satisfied that the reasoning provided by Network Rail engages section 24 of FOIA, namely that the public release of information about the positioning and capabilities of CCTV cameras could be used by individuals planning to cause disruption and harm. The Commissioner has previously issued a decision upholding the use of section 24 of FOIA regarding a request about CCTV at Edinburgh

Waverly station with the same reasoning¹. He will now go on to consider the public interest test.

Public interest test

Considerations favouring disclosure

16. Network Rail has recognised that there is a public interest in the public being able to either reassure itself that public authorities are acting properly to maintain public safety, or, to challenge the actions of public authorities.
17. In their request, the complainant has explained that they witnessed an incident at Euston station which caused a number of people to be injured due to overcrowding and lack of crowd control.
18. The complainant has explained that they want to view the CCTV footage of this incident as there is a clear public interest in disclosing footage evidencing negligence and poor management of health and safety by organisations like Network Rail.
19. The complainant has explained that the Office for Rail and Road ('the ORR') has recently completed an investigation into Network Rail and they consider that the ORR's decision to issue a public safety warning provides clear evidence that the information they seek is of significant interest to the public at large, and the public interest strongly favours disclosure.

Considerations favouring withholding the information

20. Network Rail has explained that the Office of Rail and Road (ORR) has already issued an improvement notice concerning overcrowding at Euston, and there has also been extensive media coverage describing the issue in some detail. It therefore doesn't consider that "the release of the footage in question would put any information in the public's hands that would allow it to hold Network Rail to account any more thoroughly than the information already available to it."
21. Network Rail has explained that it considers the public interest in disclosure to be limited, in contrast to the significant damage that would be caused by a terrorist attack at one of the UK's busiest stations. It

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2013536/fs50633090.pdf>

stated that the interest in keeping the public safe from any comparable harm substantially outweighs any marginal interest in the release of the footage.

Balancing the Public Interest Test

22. The Commissioner recognises the public interest in ensuring good management and public safety of train stations, and the ability to hold organisations to account. The Commissioner also recognises the obvious need to prevent information being disclosed that could aid in the planning of terrorist attacks. In its responses Network Rail mentioned an incident in Spain, and the Commissioner is also reminded of incidents involving public transport stations and airports in Belgium and the UK itself.
23. The Commissioner notes that both the complainant and National Rail have mentioned that an investigation into the overcrowding incident has already been carried out, and remedial actions instructed as a result. He therefore considers that there would be little to gain from the requested CCTV footage being released to the public.
24. On balance, the Commissioner is satisfied that, in the circumstances of this case, the public interest in maintaining the exemption outweighs that in disclosing the requested information.
25. The Commissioner's decision, therefore, is that Network Rail is entitled to withhold the requested information under section 24 of FOIA.
26. Because the exemption under section 24 is engaged, and the public interest lies in maintaining the exemption, it's not necessary to consider Network Rail's application of sections 31 and 38 of FOIA.

Right of appeal

27. 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

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF