



Mr John Rigg, Guildford Vision Group  
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27<sup>th</sup> March 2019

Dear Mr Rigg

**Information request**  
**Reference number: FOI2019/00131**

Thank you for your email of 29<sup>th</sup> January 2019, in which you requested the following information:

*Taking account of your response of 24 December 2108 to our previous request above, and after taking advice, we should be grateful if you would provide the following information as a new request. As the matter relates to land use, we make this request under the Environmental Information Regulations:*

- 1. Please provide a copy of any application that has been made to ORR to dispose of land at Guildford Station and any decision of the ORR and reports supporting the ORR decision*
- 2. Please provide copies of any reports or advice relating to the decision to include Platform 0 at Guildford Station in the Wessex Route Study 2015*
- 3. Please provide copies of any reports or advice relating to the location of platform 0 at Guildford Station including the principle of locating platform 0 on the east side of the station and/or within development proposed by Solum Regeneration.*
- 4. Please provide copies of any reports or analysis which evaluate how best to accommodate Platform 0 at Guildford Station and in particular the respective benefits of Platform 0 on the eastern side versus an alternative platform 0 on the west side of the station*
- 5. Please provide copies of the most recent reports or assessments detailing the forecast number of trains on the Woking line that are assumed to be terminating in Guildford in peak hours and/or more generally the projected capacity of Guildford Station for accommodating future rail services*

*6. Please provide copies of any reports or correspondence which detail the time horizon adopted by Network rail for planning the future capacity of Guildford Station and the justification for selecting that time horizon*

I have processed your request under the Environmental Information Regulations 2004 (EIR) as this type of information would be environmental according to the definition in regulation 2(c) of the EIRs; this is because the information concerns a measure affecting the environment.<sup>1</sup>

I can confirm that we hold some of the information you requested. I will address each of your questions in turn.

*1. Please provide a copy of any application that has been made to ORR to dispose of land at Guildford Station and any decision of the ORR and reports supporting the ORR decision*

At the time of your request, 29<sup>th</sup> January 2019, we had previously submitted an application to the ORR regarding a proposed land disposal at Guildford Station on 16<sup>th</sup> July 2015. This application was later withdrawn by Network Rail on 4<sup>th</sup> September 2015.

The full application, including the consultation report, evaluation form and plans, is already publicly available on the ORR website and can be located using the following website link:

<https://orr.gov.uk/rail/economic-regulation/regulation-of-network-rail/network-licence/consents-issued-to-network-rail/land-disposal-cases>

It may be useful for you to know that, subsequent to receipt of your request, we lodged a new land disposal application form with the ORR for their consideration on 20<sup>th</sup> February 2019. This application did not exist and had not been submitted to the ORR prior to the time of your request but you are welcome to make a request it should you wish to do so.

Often in circumstances like these we would look to provide the information on a discretionary basis even though strictly speaking it was not held at the time of the request. In this instance, we have not considered whether any of the exceptions of the EIR apply to the information nor have we consulted with relevant stakeholders regarding its disclosure. It would not be appropriate for us to make any disclosure,

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<sup>1</sup> Section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA and requires us to consider it under the EIR.

discretionary or otherwise, without consideration of these issues. Nonetheless, as explained above, there is no reason why you should not make a further request for information, at which point we can look into whether we ought to disclose the documents in question.

*2. Please provide copies of any reports or advice relating to the decision to include Platform 0 at Guildford Station in the Wessex Route Study 2015;*

*3. Please provide copies of any reports or advice relating to the location of platform 0 at Guildford Station including the principle of locating platform 0 on the east side of the station and/or within development proposed by Solum Regeneration;*

*4. Please provide copies of any reports or analysis which evaluate how best to accommodate Platform 0 at Guildford Station and in particular the respective benefits of Platform 0 on the eastern side versus an alternative platform 0 on the west side of the station.*

In response to these three questions, please find attached the following documents, which were completed as part of the Wessex route study:

- Guildford red line drawings v01\_Redacted – this document contains drawings of some of the proposed options for changes to the layout at Guildford Station;
- Platform 0 report – 2016 Addendum\_Redacted – this document sets out the feasibility and options for constructing additional platforms and increasing capacity at Guildford Station;
- Guildford Station Capacity – Grip 0 Report\_Redacted

Please note that some information has been withheld from the Platform 0 Addendum and Guildford Station Capacity Grip 0 report under regulations 12(5)(a) and 12(5)(e) of the EIR. I will explain what information has been withheld and why below.

### **Regulation 12(5)(a) of the EIRs**

I have withheld station layout plans that demonstrate signal locations from both documents and proposed future layout plans for Guildford Station in the Platform 0 Addendum Appendices A -C because it is considered that disclosure of this information could compromise public safety, as well as detailed signalling information provided in the GRIP 0 report. The withheld information is marked with light grey box markings.

Regulation 12(5)(a) of the EIRs states that:

*'For the purposes of paragraph (1)(a) a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.'*<sup>2</sup>

In other words, there are circumstances where public authorities can refuse a request on the basis that providing the information requested would have an adverse effect on public safety.

### **The Information Commissioner's interpretation of Regulation 12(5)(a)**

Whilst noting that the Regulations do not specify the meaning of 'public safety' the Information Commissioner's Office (ICO) makes it clear that the term is to be understood as having broad implications: *'...to protect the public as a whole, a specific group, or one individual who would be exposed to some danger as a result of the disclosure.'*<sup>3</sup>

When information is disclosed under the EIRs, it is effectively a disclosure to 'the world' without any restriction on how the information can be used or shared with third parties; this means that, if information is suitable for disclosure to one party, it is also suitable for disclosure to anyone else who asks for it. In this case, we are aware that publicly releasing this information would make it available not only to the requestor, but also to those who may wish to use this information to disrupt or damage the rail infrastructure.

I have withheld from disclosure these layout plans as a large part of the infrastructure is still currently installed in this location, as well as details of the signalling and proposed signalling plans in this area. This information, if obtained for malicious purposes, could be used by individuals with nefarious intentions to disrupt the network and compromise the safety and security of our passengers travelling on the railway.

The application of regulation 12(5)(a) is subject to consideration of the public interest. This means that we are required to consider whether the public interest in disclosure outweighs the public interest in maintaining this exception. In this case, due to the technical and specific nature of this information, we consider that disclosure would

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<sup>2</sup>For more information, please see: <http://www.legislation.gov.uk/uksi/2004/3391/regulation/12/made>

<sup>3</sup> Para 49 [https://ico.org.uk/media/for-organisations/documents/1633/eir\\_international\\_relations\\_defence\\_national\\_security\\_public\\_safety.pdf](https://ico.org.uk/media/for-organisations/documents/1633/eir_international_relations_defence_national_security_public_safety.pdf)

only contribute to increasing knowledge of the workings of these specific aspects of the rail infrastructure.

While this can be said to increase transparency and to demonstrate openness, we consider that there are strong arguments in favour of maintaining the exception in this case. These arguments are based on assessment of the risks associated with disclosure of this type of information and on the likelihood and severity of potential harm to the security of the rail network and wider public safety if this information is made publicly available.

Having considered all the circumstances relevant to this case, we consider that these factors outweigh all others at this time. We therefore consider that the greatest public interest lies in preventing harm to the security of the infrastructure, and in ensuring the safety of those individuals who work and travel on the network. On this basis, our decision is that the public interest favours withholding the information on this occasion and we are therefore refusing to provide the requested information on this occasion.

### **Regulation 12(5)(e) of the EIRs**

Please note that some information has also been redacted from these two documents under regulation 12(5)(e) of the EIRs. The information withheld under this exception is marked with dark grey box markings.

Regulation 12(5)(e) of the Environmental Information Regulations 2004 (EIRs) states:

*'a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.'*<sup>4</sup>

### **The Information Commissioner's Office's interpretation of the regulations**

The Information Commissioner's Office (ICO) sets out four requirements necessary to exempt information from disclosure under regulation 12(5)(e)<sup>5</sup>, these are:

- The information is commercial or industrial in nature.
- Confidentiality is provided by law.

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<sup>4</sup> See [http://www.legislation.gov.uk/uksi/2004/3391/pdfs/uksi\\_20043391\\_en.pdf](http://www.legislation.gov.uk/uksi/2004/3391/pdfs/uksi_20043391_en.pdf) for more information.

<sup>5</sup> These factors come from the decision in *Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association (EA/2010/0012, 24 May 2010)*. You can read the full judgment at: [http://www.informationtribunal.gov.uk/DBFiles/Decision/i392/Bristol\\_CC\\_v\\_IC\\_&\\_PBSA\\_\(0012\)\\_Decision\\_24-05-2010\\_\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i392/Bristol_CC_v_IC_&_PBSA_(0012)_Decision_24-05-2010_(w).pdf)

- The confidentiality is protecting a legitimate economic interest.
- The confidentiality would be adversely affected by disclosure.

In this instance we are of the view that all four requirements are met because:

1. The withheld information relates to detailed costing estimates for each of the options for the consideration of Network Rail.
2. The information is confidential in common law, it was provided to Network Rail in circumstances of confidence and it is not trivial in nature, it relates to estimates for a potential future project for which Network Rail is giving serious consideration. The information has not been made public prior to the receipt of this request and was not intended to be published for wider dissemination.
3. Disclosure of this confidential information would on the balance of probabilities affect the economic interests of Network Rail. Disclosure of the information would provide commercially advantageous information of our commercial processes and business model to competitors, and would weaken our bargaining position when we attempt to enter into future contracts of a similar nature.
4. On consideration of the above comments I have concluded that disclosure of the withheld information would adversely affect the confidential nature of the documents. The ICO guidance provides that: *'Although this is a necessary element of the exception, once the first three elements are established the Commissioner considers it is inevitable that this element will be satisfied.'*<sup>6</sup>

### **The public interest test**

Whilst we believe that we have demonstrated that regulation 12(5)(e) is engaged (i.e. we have shown that disclosure would have an adverse effect on the confidentiality of commercial relations) this is not sufficient for us to withhold the information, we must also establish that the public interest lies in maintaining the exception. Our findings are set out below.

#### Public interest factors in favour of disclosure

- As with any request for information there is a general presumption in favour of openness and transparency since this allows for greater scrutiny and accountability of public authority activities.

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<sup>6</sup> [https://ico.org.uk/media/for-organisations/documents/1624/eir\\_confidentiality\\_of\\_commercial\\_or\\_industrial\\_information.pdf](https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf)

- It is in the public interest that as much information in relation to our use of taxpayers' money is available for public scrutiny so as to foster public confidence in our processes, procedures and decisions.

#### Public interest factors against disclosure

- Providing the information would compromise our ability to carry out any potential future tendering processes should we decide to proceed with one of these options at a competitive rate. Disclosure of this costing information would be likely to negatively impact on the interests of Network Rail in any future consultation process, with other companies, by providing an unfair advantage to competitors.
- At this time, whilst we are still formulating our findings and preparing, it would be inappropriate to disclose how much we estimate these options to cost the taxpayer. Furthermore, as the infrastructure manager we are the authority best placed to carry out this work and our negotiating position may be undermined in future should we disclose the potential costing information for each of the options listed for this project.

#### **Conclusion**

Having considered the public interest, our decision is to withhold some of this information. Whilst we recognise the force of the arguments in favour of increased transparency and accountability, we are ultimately of the view that the public interest is best served by protecting our revenues (and taxpayers' money) and ensuring that we and our partners can operate commercial enterprises within the standard bounds of commercial confidentiality.

*5. Please provide copies of the most recent reports or assessments detailing the forecast number of trains on the Woking line that are assumed to be terminating in Guildford in peak hours and/or more generally the projected capacity of Guildford Station for accommodating future rail services*

Please find attached a document titled *Guildford Land Strategy Timetable Analysis Report\_Final\_V1.0\_Redacted*. This report demonstrates the options available to Network Rail in meeting the aspiration for additional services over the next three Control Periods, and the impact these options would have on the ability to run additional services.

Please note that a small amount of information has been withheld from disclosure in this and the other three documents under regulation 13(1) of the EIR (personal

information). The withheld information under this exemption is denoted by black box markings.<sup>7</sup>

*6. Please provide copies of any reports or correspondence which detail the time horizon adopted by Network rail for planning the future capacity of Guildford Station and the justification for selecting that time horizon*

I can confirm that we do not hold any reports or correspondence specifically related to the time horizon for planning the future capacity of Guildford Station<sup>8</sup>. To explain, Network Rail's long-term planning process as set out on our website, states that:

*"The LTPP (long term planning process) looks at the long-term capability of the network up to 30 years into the future so that we can promote efficient use of network capability and capacity"<sup>9</sup>.*

This 30-year horizon is standard across Network Rail; assessing demand and growth above that timeframe begins to be much less precise.

You may also find it helpful to be aware that in respect of Guildford Station, any growth above that implemented so far would impact heavily on London Waterloo Station and its approaches. It is therefore more likely that capacity at London Waterloo Station is going to be the driving constraint to any future growth above what we have already considered through the long-term planning process.

If you have any enquiries about this response, please contact me in the first instance at [FOI@networkrail.co.uk](mailto:FOI@networkrail.co.uk) or on 01908 782405. Details of your appeal rights are below.

Please remember to quote the reference number at the top of this letter in all future communications.

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<sup>7</sup> Regulation 13(1) of the EIR allows us to withhold information in circumstances where its disclosure would breach the data protection principles set out at s.35 of the Data Protection Act 2018 and Article 5 of the General Data Protection Regulations. In this instance, disclosure of the names of Network Rail employees, their initials, their job titles and their signatures would breach the first principle which mandates that data must be processed fairly and lawfully. The individuals in question would have had no reasonable expectation that their personal information would be disseminated to the world at large through the EIR process.

<sup>8</sup> Strictly speaking, regulation 12(4)(a) of the EIRs requires that we carry out a public interest test to determine whether the requested information should be disclosed. However, as is recognised by the Information Commissioner's Office, it is obviously not possible to conduct a public interest test on disclosure when the information that has been requested is not held.

<sup>9</sup> <https://www.networkrail.co.uk/running-the-railway/long-term-planning/>

Yours sincerely

**Emma Meadows**  
**Information Officer**

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### **Appeal Rights**

If you are unhappy with the way your request has been handled and wish to make a complaint or request a review of our decision, please write to the Head of Freedom of Information at Network Rail, Freedom of Information, The Quadrant, Elder Gate, Milton Keynes, MK9 1EN, or by email at [FOI@networkrail.co.uk](mailto:FOI@networkrail.co.uk). Your request must be submitted within 40 working days of receipt of this letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF