



Sam Al-Hamdani

By email: [request-624254-f413cd48@whatdotheyknow.com](mailto:request-624254-f413cd48@whatdotheyknow.com)

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30 December 2019

Dear Sam Al-Hamdani

**Information request**

**Reference number:** FOI2019/01412

Thank you for your email of 28 November 2019, in which you requested the following information:

*'I would like to request a copy of the T9 and T10 maps with reference to the railway at Den Lane Uppermill.'*

Thank you also for your email of 17 December, responding to my request for further clarification. You advised:

*'A survey was carried out by Whitcher Wildlife Ltd. Ecological Consultants. The Survey was the Extended Phase I Habitat Survey. The Survey Reference is 160562/MVL3. The date of the survey report is 14 January 2017.'*

*As part of the Survey, Whitcher Wildlife Ltd produced some annotated maps marked up with the varying habitats identified. On the maps there were some target notes marked, which covered the Trans Pennine project. The target notes relating to Bats are:*

- T9 for a tree with bat roost potential.*
- T10 for a structure with bat roost potential.*

*I would like to see the annotated maps created as part of this survey, which are marked with target notes T9 and T10, including (but not limited to) the area around Den Lane, Uppermill/Uppermill viaduct.'*

I have processed your request under the Environmental Information Regulations

2004 (EIR). This is because the information requested is environmental according to the definition in regulation 2(c)<sup>1</sup> of the EIR (which refers to measures and activities affecting or likely to affect elements of the environment).

I can confirm that we hold some information that meets your request. Please find attached a copy of the Extended Phase I Habitat Survey completed by Whitcher Wildlife Ltd, dated 14 January 2017. The Phase I maps referred to in this as Appendix VIII are also attached, as a separate file. Additionally, I have attached a copy of the bat survey for Uppermill Viaduct, carried out by Waterman Infrastructure & Environment Ltd in December 2018.

In the Whitcher Wildlife Ltd survey of the Den Lane/Uppermill/Uppermill Viaduct area there were no target notes marked for bats in trees or structures. A follow-up bat survey was carried out for the Uppermill Viaduct itself, which identified potential for bats. The vegetation management and fencing works in this area were found not to impact bats and any future work in the area will take account of the report's findings.

You will see that we have removed a small amount of information from these surveys (specifically, names and job titles) under Regulation 13(1) of the EIR. This regulation allows us to withhold personal data in circumstances where its disclosure would breach the principles set out at section 35 of the Data Protection Act 2018 and article 5 of the General Data Protection Regulations.

In this instance, releasing this information to the general public would breach the first data protection principle, which states that data must be processed fairly and lawfully. The individuals in question would not have expected their personal information to be shared with the world at large. It would therefore not be fair processing of their data to release this through the FOI process.

We have also removed some information relating to badger locations from the Whitcher Wildlife survey under Regulation 12(5)(g) of the EIR. I will explain this in further detail below.

### **Regulation 12(5)(g)**

We have withheld information relating to badgers under Regulation 12(5)(g) - protection of the environment<sup>2</sup>.

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

<sup>2</sup> For the full wording of the legislation, please see:

[http://www.legislation.gov.uk/ukxi/2004/3391/pdfs/ukxi\\_20043391\\_en.pdf](http://www.legislation.gov.uk/ukxi/2004/3391/pdfs/ukxi_20043391_en.pdf)

A public authority may refuse to disclose information under Regulation 12(5)(g) ‘to the extent that its disclosure would adversely affect the protection of the environment to which the information relates’.

The Information Commissioner’s Office (ICO) guidance on this exception explains that:

*To refuse a request for environmental information under the exception in regulation 12(5)(g), public authorities will need to establish:*

- *that the information in question relates to the aspect of the environment that is being protected;*
- *how and to what extent the protection of the environment would be affected; and*
- *that the information is not on emissions<sup>3</sup>*

In this instance we believe that the information in question meets each of these criteria because this type of information discusses the presence or absence of badgers within a particular area. Badgers are protected by law in England and Wales under the Protection of Badgers Act 1992<sup>4</sup>, however, regardless of this legislation, there have been many instances of people illegally hunting badgers. Confirming the presence or absence of badgers would provide those wishing to mistreat these animals with information that would allow them to locate and map badger territory. It is important to bear in mind that any disclosure under the EIR would be a disclosure to the wider public and not just to the individual making the request.

This exception is subject to a public interest test and I have set the arguments for and against disclosure below.

There is a general presumption in favour of disclosure as it promotes transparency and accountability of public authorities. Disclosure would also raise public awareness of environmental matters and provide an understanding of the process Network Rail follows when reviewing the results of an ecological survey.

However, it is in the public interest to avoid harming or causing any adverse effect to the environment. In this instance, it is our view that providing information on the presence or absence of badgers would put the species at an increased risk.

Disclosure of this information could assist individuals to commit crimes by mistreating a protected species. It is clearly in the public interest for us to avoid providing information that could aid criminal activity.

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<sup>3</sup> For more information on the ICO’s interpretation of the request, please see:

[https://ico.org.uk/media/1630/eir\\_guidance\\_protection\\_of\\_the\\_environment\\_regulation.pdf](https://ico.org.uk/media/1630/eir_guidance_protection_of_the_environment_regulation.pdf)

<sup>4</sup> For full wording of the legislation, please see: <http://www.legislation.gov.uk/ukpga/1992/51/contents>

To conclude, information relating to the presence or absence of a protected species has a specific sensitivity. In our view, disclosure would be likely to lead to an increased risk of disturbance and potential harm, therefore we have decided that the public interest lies in withholding references to badgers from this document.

I hope this helps to explain. 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.

Yours sincerely

Angharad Morgan  
Information Officer

### **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