



NORTHERN

*Go do your thing*

To: Helen Cross

Freedom of Information  
Northern House  
9 Rougier Street  
York  
YO1 6HZ  
FOI@northernrailway.co.uk

26<sup>th</sup> October 2022

Dear Helen

## Freedom of Information Request ref FOI264

We write in connection with your request for an internal review to our response to your request for information relating to our audit & risk committee minutes and remuneration committee minutes received on 1<sup>st</sup> June 2022. Your original request, our response and your review request are appended to the bottom of this letter.

### Review outcome

Before setting out our response it is important to define the parameters within which reviews are carried out. The scope of an internal review is to determine whether Northern has complied with its obligations to the requestor under the FOIA and will generally not address any wider issues which may have been raised outside of those parameters.

Firstly, with regards to the audit and risk committee minutes we can confirm that any personal data has been redacted under section 40 (2) of the FOIA. Having considered your comments, we are releasing the names of the attendees who are directors or senior staff. Any attendees without this level of seniority remain redacted according to GDPR principles regarding the disclosure of personal data. The heading at Item 4 of the minutes held on 17 January 2022 related to a job title. We have reviewed our assessment and will release this.

Regarding the remaining minutes, having reviewed the material we are of the view that these can be released with a much smaller number of redactions. The remaining redacted information relates to workforce planning, staff remuneration and the negative commercial impact on Northern of strike action. We consider that the remaining redactions apply only under section 43(2) of the FOIA, which provides an exemption from disclosure when release of the information would be likely to prejudice the commercial interests of any entity, in this case, Northern. We consider that disclosure would be likely to harm Northern's ability to carry out its functions including its commercial activities.

Section 43(2) is a qualified exemption meaning we are required to consider whether the public interest in disclosure outweighs the public interest in applying the exemption.

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We acknowledge that there is an inherent public interest in transparency and openness on the part of public bodies such as Northern, and there is a public interest in providing information which informs our passengers and the public and enables them to scrutinise proposals which will ultimately affect their lives. Set against this is the strong public interest in maintaining our ability to plan, develop and implement significant proposals to the best of our ability, and in the most efficient and effective way. This strongly supports maintaining the exemption here.

There is a public interest in our delivery of the safe and efficient running of our network, without speculation or distraction which could decrease productivity and negatively affecting the fulfilment of our daily functions, including the ability to carry out our commercial activities without disruption. In our view, this outweighs the public interest in disclosure of the information you have requested, and the public interest therefore falls in favour of applying the section 43(2) exemption to withhold this information.

The same approach to publication of names has been taken as that for the audit and risk minutes, with redactions according to GDPR principles under Section 40 (2) of the FOIA.

We hope the information we have been able to provide is of use to you.

Yours faithfully

**Freedom of Information  
Northern Trains**

## **Appeal Rights**

You have the right to apply directly to the Information Commissioner for a decision if you are not satisfied with the outcome of the internal review. The Information Commissioner can be contacted at [www.ico.org.uk](http://www.ico.org.uk)

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### **FOI request received 01/06/22**

*"Dear Northern Trains Limited,*

*Please provide me with a copy of the following information:*

- 1) The minutes of any meetings of the Remuneration Committee that were held during the 2021/22 financial year.*
- 2) The minutes of any meetings of the Audit and Risk committee that were held during the 2021/22 financial year.*

*For clarity, the committees that I am referring to are referenced in Appendix A of the NTL Annual Governance Statement for the 2021/22 financial year"*

### **Northern response sent 30/06/22**

*"Under Section 1 (1)(a) of the FOI act we can confirm that we hold the information you have requested. The minutes from the Audit and Risk Committee are attached, with redactions applied to protect Personal Data.*

*We consider that the minutes from the Remuneration Committee are exempt from disclosure pursuant to sections 36(2)(b)(i), 36(2)(b)(ii) (disclosure would inhibit the free and frank provision of advice and exchange of views) and 36(2)(c) (prejudice to effective conduct of public affairs) of the Act.*

*We consider that disclosure of the information you have requested would potentially be prejudicial to any financial decisions that are currently under discussion and would inhibit staff from engaging in such discussions as candidly in the future which could ultimately lead to poorer decision making that is not in the best interests of the public.*

*There is a need for Northern to have a safe space, away from public or media involvement, in which to develop ideas or make decisions relating to significant policies affecting the financial affairs of the organisation. This includes by providing a safe space in which Northern can make decisions about its remuneration, free from public scrutiny. We consider that disclosure of this information would significantly erode Northern's ability to maintain that space.*

*In applying section 36 of the Act, we are required to consider the public interest test to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosure.*

*We consider that any public interest in the information you have requested is outweighed by the need for preserving a safe space in which Northern is able to seek advice about, plan and candidly discuss issues and proposals affecting its future. We consider that there is a strong public interest in ensuring Northern is able to candidly assess options and carry out statutory processes, in an orderly and timely manner and free from public scrutiny, in order to ensure that all proposals are thoroughly reviewed, and that fully informed decisions are drawn which*

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*will best benefit Northern and the travelling public. It would not be in the public interest to hinder this process as we consider it would result in less well formulated decisions.*

*On the basis of the above, Northern considers the public interest in maintaining the exemption in sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the Act outweighs that in disclosing the information”.*

**Internal review request received 03/07/22**

*“Dear Northern Trains Limited,*

*Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review into the handling of my recent FOI request, your ref FOI264.*

*A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/committee\\_minutes\\_4](https://www.whatdotheyknow.com/request/committee_minutes_4)*

*Northern Trains Limited (NTL) has declined to provide me with a copy of the minutes of the Remuneration Committee, stating that NTL believes that these are exempt from disclosure pursuant to sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the Freedom of Information Act 2000.*

*The exemptions in section 36 are qualified exemptions, meaning that an authority is required to carry out a public interest test when seeking to withhold information. NTL's response fails to demonstrate that NTL has given sufficient weight to any arguments in favour of disclosure, and it only mentions arguments in favour of withholding the information*

*I am asking NTL to reconsider the balancing of the public interest test, as the public interest in maintaining the exemption does not outweigh the interest in disclosure in all circumstances. When considering the public interest in favour of disclosure, NTL should pay due regard to the public interest in the work of public bodies being transparent and open to scrutiny. Transparency promotes accountability and good decision making by public bodies. Publication of the remuneration committee minutes would enable to the public to be confident that NTL is working to secure the best use of public resources. The public would be able to understand the impact that performance has upon executive pay and would enhance public understanding of the kind of scrutiny and oversight that takes place at NTL when deciding pay and compensation. Transparency in this area would provide reassurance that NTL is working to ensure the fair and equitable distribution of public money, and good value for the taxpayer*

*NTL is wholly publicly owned, and minutes of this type are routinely published by other public authorities under the Freedom of Information Act, including those in the transport sector. As such, attendees would have had no expectation that such minutes would remain private*

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*Further, NTL's blanket application of the exemption to cover all of the information is excessive. It would be unreasonable to maintain that the s36 exemption would be engaged with regards to the following:*

- *The time and date of the meeting.*
- *Whether the meetings took place in person or remotely.*
- *The membership of the committee.*
- *A list of attendees.*
- *Page numbers.*
- *Agenda Item numbering.*
- *Agenda items subheadings.*
- *Any purely factual information contained within the minutes (in most cases).*
- *Minuted actions.*

*I would also ask NTL to reconsider the amount of redaction that has been made to the minutes that have been released. NTL's letter does not reference which exemption this information has been withheld under, but I am going to assume that it is s40(2). – audit and risk minutes*

*Disclosure of the names and job titles of members of the Audit and Risk Committee, and information about attendees at the meetings would not contravene any of the data protection principles. This information would not constitute special category data as defined in article 9 of UK GDPR. This information could not be considered criminal offence data as defined in section 11(2) of the Data Protection Act. Disclosure of the information would be lawful as the processing would be necessary for NTL's legitimate interests or the legitimate interests of a third party*

*NTL's legitimate interests in the disclosure of the information include the general requirement for transparency in public life and increased accountability for decision making when performing an oversight and scrutiny role*

*Individual attendees and senior staff would have had no expectation of privacy –. As stated above, minutes of this nature are routinely proactively published or released under the Freedom of Information Act without the names of directors or other senior staff needing to be redacted*

*Examples of this include:*

*Minutes of the Remuneration Committee of NTL's parent company, DfT OLD Holdings Ltd, <https://www.whatdotheyknow.com/request/867105/response/2071411/attach/8/DOHL%20Remuneration%20Committee%20Minutes%2015%20June%202021.pdf>*

*Minutes of the Board of Network Rail, <https://www.networkrail.co.uk/wp-content/uploads/2022/02/Board-Minutes-December-2021.pdf>*

*Minutes of the Board of Ubico Ltd: [https://www.ubico.co.uk/documents/832\\_bodminutes20211103pub.pdf](https://www.ubico.co.uk/documents/832_bodminutes20211103pub.pdf)*

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*In addition, the heading at item 4 of the minutes of the Audit & Risk committee meeting held on 17 January 2022 has been redacted. NTL has also redacted a monetary amount under the same heading. It is not clear from NTLs response what exemption these redactions have been made under.”*