



Mr Rupert Moss-Eccardt  
Email: [request-300043-c1d87713@whatdotheyknow.com](mailto:request-300043-c1d87713@whatdotheyknow.com)

Network Rail  
Freedom of Information  
The Quadrant  
Elder Gate  
Milton Keynes  
MK9 1EN

T 01908 782405  
E [FOI@networkrail.co.uk](mailto:FOI@networkrail.co.uk)

24<sup>th</sup> December 2015

Dear Mr Moss-Eccardt

**Information request**

**Reference number:** FOI2015/01105

Thank you for your request of 31st October and clarification of 3rd November 2015 relating to the level crossings at Queen Adelaide. On 31st October 2015, you requested the following information:

*"There has been a lot of coverage for several years about the upgrade of Ely North Junction.  
In the last year there has been mention by local politicians and MPs of challenges around level crossings in the area, particularly those in Queen Adelaide (there are three in the village itself).  
Please could you provide any correspondence, plans and emails that mention these crossings and, particularly, what the problems are and any proposals being considered. Note you do not need to send the 'improving connectivity' paper from last year."*

On 3rd November 2015 you clarified:

*"In terms of time frame, anything from the beginning of this year (2015) will probably suffice.  
The following news articles may be of assistance:  
<http://edp24.co.uk/1.4166910> (where a Network Rail spokesman is said to mention closure) and <http://www.elizabethtruss.com/news/candidates-press-improvements-key-rail-crossing> where SoS for DEFRA says Network Rail told her there were issues with the road crossing.  
The Ely North upgrade is still in CP5 so the paperwork for that should mention the crossings.  
The three road/rail crossings in question are the three on the B1382 in Queen Adelaide. The middle one has featured in your safety campaign for university students and all three have enforcement cameras as they are in the top 20 most*

*dangerous crossings, apparently. They are the three called 'Queen Adelaide' as a result of this search:*

*<http://www.networkrail.co.uk/transparency/level-crossings/> with postcode CB7 4UQ and a radius of one mile.*

*I think they are  
Crossing 2529  
Crossing 2530 and  
Crossing 2531”*

I have processed your request under the Environmental Information Regulations 2004 (EIR) as the information requested is environmental according to the definition in regulation 2 of the EIR (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).

I can confirm that we hold some information that falls within the scope of your request.

EIR regulation 5(1) states that a public authority has a duty to make available environmental information on request. However, some of the requested information is exempt under the following EIR exceptions:

1. EIR Regulation 12(4)(e) provides an exception to the regulation 5(1) duty where the requested information is classed as ‘internal communications’ where the purpose of the regulation exemption is to afford public authorities a ‘safe space’ in which to deliberate.

You requested “*please could you provide any correspondence, plans and emails that mention these crossings*”. After careful consideration, we consider that some of the information requested constitutes internal communications, which require a ‘safe space’ for Network Rail, as a public authority, to deliberate.

2. EIR Regulation 12(5)(e) also provides an exception to the regulation 5(1) duty where the information is considered confidential in nature and protecting a legitimate economic interest, the disclosure of which would adversely affect confidentiality.

The requested information relating to the three level crossings immediately north of Ely North Junction is at an early optioneering, early conceptual pre-feasibility and pre-funding stage. After careful consideration, we consider that if Network Rail were to disclose some of the requested information, it would likely prejudice and adversely affect:

- a) Network Rail's commercial interests, and
- b) the legitimate economic interests of Network Rail and other third parties.

EIR regulations 12(4)(e) and 12(5)(e) are qualified exceptions. This means that we are required to consider whether the public interest in disclosure outweighs the public interest in maintaining the exemptions.

## **Public Interest Test**

### **➤ Arguments in favour of disclosure:**

Firstly, in favour of disclosure is the fact that there is always a general presumption in favour of openness, since this facilitates the accountability and transparency of public authorities for decisions taken by them and in the spending of public money.

Secondly, there is no blanket policy of non-disclosure for internal communications under 12(4)(e).

Thirdly, there is a general public interest in the Ely North Junction scheme, particularly regarding the possible options proposed by Network Rail to resolve the issues relating to the three level crossings immediately north of the Junction.

### **➤ Arguments against disclosure:**

#### **12(4)(e) – ‘internal communications’:**

However, there are also strong public interest arguments against disclosure.

It is in the public interest that the internal deliberation and decision making processes of public authorities are protected in appropriate circumstances.

The European Directive which the EIR are intended to implement recognises a public authority's need for a 'private thinking space'. Furthermore, this principle of a 'safe space' in respect of 'internal communications' is supported by case law, for instance, *Friends of the Earth v Information Commissioner and Export Credits Guarantee Department* [2008] EWHC 638 (Admin).

Whilst, as mentioned above, there is not a blanket policy of withholding information under 12(4)(e), the circumstances of this request are that the information in question is very sensitive.

It is a matter of public record, following publication of the review by Sir Peter Hendy on the planning of Network Rail's Investment Programme that safety critical works at the level crossings described in this request, are to be incorporated into the Ely North Junction scheme, which has been postponed from control period 5 to control period 6.

Any potential work on the level crossings in question would be considered at pre-development and pre-funding stages, therefore, by disclosing any sensitive related information at this very early stage would be likely to cause harm in terms of unnecessary and unhelpful added pressure to Network Rail and a variety of stakeholders including the Department for Transport.

As with lots of other development work, there is a legitimate and valid order of events regarding the important process of community engagement and public consultation. Furthermore, in this case, following discussions with colleagues, I understand that there would be public consultation carried out in due course as appropriate.

#### **12(5)(e) – ‘commercially confidential’:**

A disclosure under the EIRs is considered disclosure 'to the world at large'. Early disclosure of Network Rail's correspondence, plans and emails relating to the level crossings in question at such an early stage, is likely to undermine any potential future tendering processes by giving an unfair advantage to other third parties and reducing Network Rail's commercial negotiation capabilities and ability to obtain value for money for the public purse.

Furthermore, disclosure of the requested information could prejudice our commercial interests, specifically undermining our trading position, and reveal information about our own position in a commercial environment.

It is in the public interest to ensure that Network Rail is able to participate unhindered and without prejudice in commercial activities in a competitive environment, such that we can operate effectively and ultimately obtain value for money for the public purse.

Additionally, there is another strong public interest argument against disclosure due to the engagement of EIR regulation 12(5)(e). This is because the disclosure of the requested information would be likely to adversely affect the confidentiality of this commercial information and prejudice the legitimate economic interests of both Network Rail and third parties, which is not in the public interest.

If Network Rail were to disclose the requested information it could cause prejudice to third parties in terms of perceived "planning blight", before such a time that there is any certainty over any given option or, even that once a given option is chosen, a

decision has been reached as to how any given option might be funded. Consequently, Network Rail could then experience prejudice to their economic interests in the form of compensatory payments to the aforementioned third parties.

Furthermore, disclosure of the information described in the request, at such an early stage would be likely to mislead the public into thinking that decisions have been made, regarding potential options for work on the three level crossings immediately north of Ely North Junction, before any such conclusions have been made.

### **Decision:**

In this case, the key factor in favour of disclosure is the promotion of accountability and transparency in spending by Network Rail, while the key factors against are the likelihood and severity of potential harm to Network Rail's 'safe space' for deliberation and otherwise protected commercial and legitimate economic interests of Network Rail and other third parties.

Whilst we understand that disclosure can promote accountability and transparency of decisions in relation to the work being carried out, we must balance this against the harmful and adverse effects that would result from the release of this information.

After careful consideration of the public interest, on this occasion, we believe that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure and for this reason we have withheld some of the information requested.

Notwithstanding the above, I can confirm that we are able to release some of the information requested. Please find attached the following documents in answer to your request:

- Letter from Network Rail to DfT dated 31<sup>st</sup> August 2015 re: improvements to Cambridge – Kings Lynn Services
- Letter from Network Rail to DfT dated 22<sup>nd</sup> September 2015 re: improvements to Cambridge – Kings Lynn service

Please note that Network Rail has withheld a small amount of information relating to living individuals under EIR regulation 13(1) as this constitutes their personal data. The information that has been withheld includes the names of junior Network Rail employees and the names of third party employees.

Under EIR regulation 13(1) personal data is exempt if disclosure to a third party would breach one or more principles in the Data Protection Act 1998. The individuals concerned would not expect their personal data to be disclosed to a third party. To do

so would be unfair; therefore, disclosure would breach the First Data Protection Principle (fair and lawful processing).

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,

Catherine Leach  
Information Officer

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can also be used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder. Please contact me if you wish to re-use the information and need to seek the permission of the copyright holder.

### **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 FOI Compliance and Appeals Manager 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