



D Sharland

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27 February 2020

Dear D Sharland

**Information request**  
**Reference number: FOI2020/00028**

Thank you for your email of 7 January 2020, in which you requested the following information:

*'Please can you provide me with your conclusions on the type of landslips your proposals are designed to prevent.  
Either local slips as experienced in recent years or are there calculations which demonstrate rotational slips could occur.  
I would also like to have one or two typical borehole logs of the cliff strata.'*

I have processed your request under the Environmental Information Regulations (EIR). These are a set of European regulations which, like the Freedom of Information Act 2000 (FOIA) in the UK, are intended to give people access to information held by public authorities like Network Rail.<sup>1</sup>

Having consulted expert colleagues in our Capital Delivery team, I can confirm that we do hold some information that meets your request. Please see my answers to the points you raised below.

***Please can you provide me with your conclusions on the type of landslips your proposals are designed to prevent.***

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<sup>1</sup> When people make requests for "environmental information" then this information is exempt under the FOIA but we need to look at it under the EIR. In this case, since the information you are looking for is about infrastructure measures which are likely to affect the environment, it meets the definition of environmental information at regulation 2(c) of the EIR. The full text of the EIR is available at: <http://www.legislation.gov.uk/ukxi/2004/3391>

***Either local slips as experienced in recent years or are there calculations which demonstrate rotational slips could occur.***

We do hold recorded information relating to the possibility of different types of cliff failure at this location. However, this information forms part of documents that are in draft stage and we therefore consider that it is exempt from disclosure under Regulation 12(4)(d) of the EIR. I will go on to explain this regulation further below, together with the public interest factors we have considered in reaching our decision.

### **Regulation 12(4)(d) – Material in the course of completion**

Regulation 12(4)(d) of the EIR states:

*‘a public authority may refuse to disclose information to the extent that (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data’<sup>2</sup>*

The Information Commissioner’s Office (ICO), has provided the following guidance on the application of Regulation 12(4)(d):

*‘Regulation 12(4)(d) is engaged when the request relates to material that is still in the course of completion, unfinished documents or incomplete data... [M]aterial which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete...’<sup>3</sup>*

We are currently working with third party consultants to produce a detailed report outlining the findings of our investigations in the Teignmouth area. While we do hold a draft version of this report, this is still a work in progress and requires a significant number of updates and additions to ensure it is complete and accurate enough for publication.

As the information we currently hold is intended to inform a report that will be published in the future, we consider our work on identifying potential types of cliff failure between Parsons Tunnel and Teignmouth to constitute material in the course of completion.

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<sup>2</sup> 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) for the full text of the EIR.

<sup>3</sup> Paragraph 4 of the ICO’s guidance on Regulation 12(4)(d) of the EIRs. See [https://ico.org.uk/media/for-organisations/documents/1637/eir\\_material\\_in\\_the\\_course\\_of\\_completion.pdf](https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf) for the full text.

## **The public interest test**

Although we are content that we have demonstrated that this exception is engaged, in order to withhold the information requested we must also show that the public interest lies in doing so.

There is a general presumption in favour of increased transparency, openness and accountability in relation to public spending and the management of the infrastructure. This is of understandable relevance in South Devon and Cornwall, where the regional economy has in the past been affected by damage to the railway infrastructure at Dawlish and Teignmouth.

Additionally, one of the key purposes of the EIR is that people should have access to information to allow informed public debate about environmental decisions. We recognise that providing information in response to the enquiries you have made in this request would support the public's capacity to engage in environmental decision making in Teignmouth. However, it should be noted that while this is an important issue, it is nonetheless a subject of local rather than national interest.

Set against this, is the fact that to ensure we reach the right decision and deliver the necessary infrastructure upgrades to the best of our abilities we need a safe space in which to work (in this case, to analyse the findings of our technical investigations and develop appropriate options for addressing risks). It is very much in the public interest to allow our experts the space to carry out their work without external pressure, as this will lead to better results overall for the community in Teignmouth as well as for rail passengers. It is therefore important for the outcome of our investigations to be based on knowledge, experience and the best available evidence and analysis, rather than any undue external influence or premature decision-making. We believe that disclosure of the information you have requested at this stage would have the potential to jeopardise this safe space for both us and our consultants.

Further to this, publishing draft information at this stage would serve to potentially mislead the public. It is unlikely that the information, if it were disclosed prior to us completing our expert analysis, would provide clear insight on the options we will be taking forward. It is clearly in the public interest for us not to provide any inaccurate or incomplete information.

## **Conclusion**

There is a further factor which strongly favours maintaining the exception at this particular time. This is that we intend to publish a clear and detailed report on the findings

of our assessments of potential cliff failure, once analysis of these has been finalised. We do understand that there would be some local interest in our findings at this stage; however, we believe that disclosure of incomplete information would ultimately be detrimental. We therefore think that the public interest lies in withholding the information until we have a complete report that can be made available.

***I would also like to have one or two typical borehole logs of the cliff strata.***

All of the borehole logs we hold for this project are published on our website at <https://www.networkrail.co.uk/running-the-railway/our-routes/western/south-west-rail-resilience-programme/>.

To view the first of these logs, you will need to scroll down to the heading 'Exeter-Newton Abbot Resilience Strategy', under which there is a report called 'Exeter to Newton Abbot Resilience Study Phase 1-Ground Investigation Report'. The other two reports containing detailed borehole information are available under the heading 'Parsons Tunnel to Teignmouth' on the same webpage. These are titled 'Cliff Toe Ground Investigation Report A02' and 'Cliff Top Ground Investigation Report A01'.

As a general point, I mentioned above that we recognise the strong local interest in our work at Teignmouth, and we have received a number of requests about this, both through the Freedom of Information process and other channels. It is in response to this interest that we have published a great deal of information on our website to date, and we are committed to publishing further information.

I therefore wanted to make you aware of Regulation 12(4)(b) of the EIR, which allows a public authority to refuse a request when the burden created by complying with the response would be too great; this is becoming relevant to requests about Teignmouth, as the teams working on the project are the same people who must locate and review information in response to the EIR requests. In these circumstances, multiple requests on the same subject, and from the same requestor or group of requestors, mean that our staff have to be frequently diverted from their core work in order to respond, and this is a key factor in assessing when requests may be creating an 'unreasonable' or 'disproportionate' burden. A further factor would be that this project is accompanied by the proactive publication of relevant information. We therefore wanted to make you aware that we may consider the use of this exception for future requests in the circumstances where our project work is still ongoing.

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**

### **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