

James Finnegan

21 August 2023

Dear James Finnegan,

## **Your Freedom of Information Act 2000 (FOIA) Request**

I am writing in response to your email which was received by London North Eastern Railway (LNER) on 24/07/2023 relating to equality impact assessments and the public sector equality duty in relation to proposals to alter train station ticket office opening hours.

### **Duty to Confirm or Deny**

LNER has considered your request and confirms that it does hold information that will meet the first part of your request, and may hold information that may fall into scope for the second part.

### **Communication**

#### First Part of Request

You can find the overarching EQIA at <https://www.lner.co.uk/our-stations-are-changing/>. If you click "Accessible formats" you will find the individual station EQIAs. The EQIAs are available in accessible formats, if you require something different, please let me know and I would be happy to enquire on your behalf or alternatively telephone 03457 225 333 as the Customer Service Centre have access to all accessible formats.

#### Second Part of Request

Your request relates to proposals to alter opening hours at train station ticket offices across the UK rail network. Specifically, you requested all recorded information relating to Equality Impact Assessments (EQIAs) and consideration of the public sector equality duty regarding these proposals, as announced by the Rail Delivery Group (RDG) on 5 July 2023.

I am unable to provide the information you have requested. Based on the scope of your request, I estimate that complying would exceed the appropriate limit set out in section 12 of the Freedom of Information Act 2000 (FOIA).

Following the Information Commissioner's Office (ICO) guidance on determining whether information is held, I have considered what would constitute a reasonable search based on my knowledge of responsible persons and where relevant information is likely to be held.

In my assessment, a reasonable search would comprise:

- Emails within the organisation, sent to or from all employees.
- Searches of all document storage locations, both on-premises and cloud-based
- Consulting relevant individuals as to whether they hold pertinent information in notebooks or other personal storage.
- It would not be reasonable to search physical filing cabinets across LNER due to our hybrid working model, and in the context of our work being digital based.

We are not obliged to create new information if it was not documented at the time. For example, if changes or decisions were not recorded, we do not need to document them retrospectively.

To determine whether applying this exemption was appropriate, I first conducted a limited search of emails that would potentially fall within the scope of your request. This initial search returned approximately 6,418 emails. To elaborate, when I say this was a limited search of emails, I mean that I have not yet extended the search to our other information sources such as on-premises hard drives, cloud storage locations, or consulted relevant parties for any notes, drafts or other related records they may hold.

Because each Freedom of Information (FOI) request is unique, I took a sample of 100 emails from the full results to assess the time required to properly review each one against the criteria relevant to your specific request.

Within this sample of 100, I selected two sets of 50 emails each - one set with no attachments and one set with attachments. Focusing solely on reviewing these sample sets, I timed how long it took to open the email, read the content, establish if it contained information pertinent to your request, and extract any relevant details.

For the 50 emails without attachments, the average review time was 72 seconds per email.

For the 50 emails with attachments, the average review time was 120 seconds per email.

I have considered:

1. Average Size of an Email Without an Attachment: 50 KB
2. Average Size of an Email With an Attachment: 3 MB

If all 6,418 emails had no attachments, the total size would be 320.9MB so I can assume we do have attachments within the entire dataset. Given the above math, it means at least 15.53GB must be attributed to emails with attachments. If the remaining 15.53 GB represents emails with attachments, and each is circa 3 MB, there must be approximately 5,177 emails with attachments.

Out of the total 6,418 emails identified, analysis of the total file size suggests that approximately 5,177 emails (81%) have attachments. The remaining 1,241 emails (19%) do not have attachments based on the above theory.

Based on these proportions, if all 6,418 emails were reviewed in full, the estimated time would be:

- 1,241 emails without attachments at 72 seconds per email = approximately 15.5 hours
- 5,177 emails with attachments at 120 seconds per email = approximately 173 hours

This equates to 188.5 hours to review 6,418 individual emails to determine if they fall into scope. This does not include time required to review other sources of information within scope of your request.

This sampling exercise demonstrated that a full review of all the emails identified would substantially exceed the 18-hour cost limit, even before factoring in time required to search other information sources within the scope of your request.

Using the statutory rate of £25 per person per hour, the cost for reviewing the 6,418 individual emails is calculated as follows:

Description	Hours/Rate	Cost
Total hours required to review 6,418 emails	188.5 hours	
Statutory rate per hour		£25/hour
<b>Total cost for reviewing the emails</b>		<b>£4,712.50</b>
Acceptable limit under the Freedom of Information Act		£450
Excess over the acceptable limit		£4,262.50

Given the acceptable limit of £450, the cost of £4,712.50 far exceeds this threshold. This means that the estimated cost of compliance with your request, based solely on the time required to review the emails, is significantly above the acceptable limit set out under the Freedom of Information Act.

Section 12(1) of the FOIA allows public authorities to refuse information requests if the estimated cost of compliance exceeds the appropriate limit. We are not required to search for or compile the requested information if we anticipate surpassing this limit. Our decision is grounded in solid arguments and evidence that support our cost estimate.

In line with the ICO guidance where the cost of compliance exceeds the appropriate limit, I have considered whether I can confirm we hold the information without exceeding the limit, whether I can provide advice and assistance to bring your request under the limit, and what information I could provide within the cost limit.

As already established earlier in this response, I am confident that we hold information within the scope of your request, including equality impact assessments and records relating to consideration of the public sector equality duty regarding proposals to alter train station ticket office opening hours. However, compiling the full extent of the information held would exceed the cost limit of 18 hours under section 12 of the Freedom of Information Act. While I recognise the public interest in this matter, providing partial documentation risks misrepresenting the full context and allowing for misinterpretation. Given the broad scope, I am unfortunately unable to identify a way to reformulate your request that would provide substantive information within the cost ceiling.

The only option I can reasonably provide, without exceeding the limit, is to confirm that we do hold information within the scope of your request, as I have done.

Section 16 of the FOIA, emphasises that LNER is obligated to offer advice and assistance to individuals submitting information requests. I have taken into account the public interest associated with your request. However, it's important to clarify that this consideration is not in the formal context of conducting an official public interest test. Specifically, the obligation to perform such a test does not pertain when relying on the Section 12 exemption. Nonetheless, I deem it essential to weigh the inherent public interests when deciding what information can feasibly be disclosed without surpassing the cost threshold.

There is always inherent public interest in transparency around public authorities. However, I believe there is an even stronger public interest in this case - allowing for full and proper scrutiny of whether we fulfilled our equality obligations. From the nature of your request, your motivation seems to be analysing if we carried out our duties appropriately in this matter. However, I am concerned that providing partial internal records would risk inadvertently misleading the public and hampering genuine accountability.

In my assessment, there is limited value to transparency for its own sake if it does not paint an accurate picture. I do not believe disclosing snippets of internal discussions would allow for proper public understanding and could potentially undermine confidence in our organisation when taken out of context. As I do not believe I can compile and disclose all relevant information within the cost limit, I unfortunately cannot identify a way to reasonably provide any substantive information without risking unintended consequences.

In conclusion, I am unable to provide the information you requested due to the cost exemption under section 12 of the Freedom of Information Act.

The broad scope of your request would require over 180 hours of work to locate, retrieve and review all relevant records held across multiple sources. This significantly exceeds the limit of 18 hours.

If you are not content with this response, you have the right to ask for an internal review within a reasonable period (which we believe is no more than 40 days from the date of this letter). In the first instance you should contact me again to request this. When making your

request, you should specify which aspects of the response you are challenging. We will deal with your request as soon as possible and aim to respond within 20 working days following receipt.

If you choose to exercise that right, and are not satisfied with the outcome of the review, you have the right to complain to the Information Commissioner by contacting:

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

Yours sincerely,



Abigail Coates  
London North Eastern Railway Limited