



To: Duncan Lewis

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

29<sup>th</sup> July 2022

Dear Duncan

## Freedom of Information Request ref FOI275

We write in connection with your request for an internal review to our response to your FOI request received 23/06/22. 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 whether the original decision given to you was correct. It will generally not address any wider issues which may have been raised outside of those parameters.

We are upholding our decision not to release some of the emails you requested between Northern and WhatDoTheyKnow (WDTK) and some of Northern's internal emails as this information is exempt from disclosure under Section 42(1) of the FOIA – Legal Professional Privilege.

With regards to the public interest test required when section 42 is engaged: as outlined in our original response to you, Northern recognises the need for transparency in relation to decision making, accountability and the allocation of public funds. However, we do not consider that the public interest in favour of disclosure outweighs the need for Northern to be able to receive confidential and legally privileged advice and therefore we will not be disclosing any information which is legally privileged.

With regards to the redactions applied to the emails we have disclosed: the identity of senders and recipients of emails is considered under GDPR and ICO guidance to be personal data. ICO guidance states that information may be exempt from release if disclosure would a) contravene any of the General Data Protection Principles and b) would be likely to cause damage or distress, and that public authorities should not publish third-party personal data or release it in response to a request if doing so would breach one of the data protection principles. We consider that although these individuals are directors of Northern, there still exists under GDPR a reasonable expectation that personal data will not be disclosed into the public domain without consent, and to do so would be unfair and represent a breach of data

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protection legislation. For this reason, and pursuant to section 40 of the FOIA we are upholding the redactions applied to the emails we have released.

In reviewing your request for any internal correspondence, we have identified 2 additional email responses and two text messages relating to your request, which we have redacted in line with GDPR principles as detailed above and which we have attached separately.

In reviewing your request for details of who was referenced by the term “director group”, we acknowledge your clarification of the information you were requesting and that our initial response did not provide the required level of detail. The “director group” means the following individuals:

|                                |  |
|--------------------------------|--|
| Managing Director              | Nick Donovan                             |
| Chief Operating Officer        | Tricia Williams                          |
| Finance Director               | Matt Williams                            |
| Commercial & Customer Director | Mark Powles                              |
| Strategic Development Director | Rob Warnes                               |
| Engineering Director           | Jack Commandeur                          |
| People Director                | Brian Currie                             |
| Regional Director (s)          | Chris Jackson, Kerry Peters, Tony Baxter |
| Programme Director             | Emma Yates                               |

Yours faithfully

**Freedom of Information  
Northern Trains**

## **Appeal Rights**

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

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### **Original request received 23/06/22**

It has been alleged that correspondence was received by "Whatdotheyknow" from and on behalf of Northern Trains Limited, as described below:

"On 31 May 2022, WhatDoTheyKnow received a request from Northern Trains Limited (NTL), asking us to cease publishing the job titles and salaries of the top ten earners at the company. The salary data had been released by the Department for Transport in response to this request."

I therefore require you, under the FOI, to provide copies of all correspondence (emails, letters, transcripts of calls etc) between Northern Trains Limited and WhatDoTheyKnow that relate to this matter.

Furthermore, I require you to furnish me with internal emails/correspondence etc within Northern, and any emails/correspondence etc between Northern and DfT where this particular issue is discussed, particularly, emails that explain how this correspondence came to be sent to WhatDoTheyKnow in the first place.

"The request for removal was not only made on behalf of the company, but also was represented as being a request on behalf of the "director group", which we have interpreted to mean those senior staff at the company whose salary data has been disclosed."

Finally, please also provide details of who the "director group" referenced actually relates to. As they are likely to be directors (naturally) or senior managers, there can be no expectation of privacy and their names should be disclosable.

This is an abhorrent position for Northern to have taken, potentially unlawful as a public authority, and in any event, seeks to circumvent the intention of the Freedom of Information Act values and purpose.

### **Northern response sent 12/07/22**

Under Section 1 (1)(a) of the FOI Act we can confirm that we hold this information and we have attached some of the information you have requested which we have redacted according to GDPR. However, we will not be providing all the information you have requested as we consider it to be exempt from disclosure.

Some of the emails you have requested between Northern, WDTK and Northern's internal emails have been withheld as this information is exempt under Section 42(1) of the FOIA - Legal Professional Privilege (LPP). The information cannot be disclosed as it has been provided under the legally protected condition of confidentiality between legal advisor and the client, in this case, Northern Trains. We also consider it to be confidential under the LPP

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principle of Litigation Privilege, applied to communications between a client or their lawyer and a third party, created for the purpose of reasonably contemplated litigation at the time of communication.

As Section 42 is a qualified exemption, we are required to carry out a public interest test. We recognise the need for transparency within public authorities in relation to decision making, accountability and the allocation of public funds. However, Section 42 outlines a strong public interest in public authorities being able to communicate frankly and freely with their legal advisors, and with external bodies, to provide and receive comprehensive and confidential advice. Without such legal advice the ability of Northern to make fully informed decisions would be compromised. On this basis we do not consider that the public interest in favour of disclosure outweighs the need for Northern to be able to receive confidential and legally privileged advice under Section 42 of the FOIA.

Regarding your request for details of our director group, we consider this exempt from disclosure under Section 21 of the FOIA as this information is reasonably accessible to you by other means, in this case via the 'Leadership Team' page of our website:

<https://www.northernrailway.co.uk/about-us/stakeholder-hub/leadership>

**Review request received 13/07/22:**

I am writing to request an internal review of Northern Trains Limited's handling of my FOI request 'Correspondence seeking to suppress FOI outcome'.

You are, quite frankly, taking liberties at this point, and it is clear from the heavily redacted emails you have sent over that this is a rather sore point. There is absolutely no way that you can legally redact the email chain in this way and the Information Commissioner will take you apart if you persist.

Firstly, you have redacted the names of where/who emails are going to and from. These are senior managers and/or directors. They do not have any reasonable expectation of privacy in this matter, nor are the names (alone) legally able to be redacted in these circumstances, although you may redact their contact information, e.g. email addresses, unless they too are already in the public domain. Are you claiming that ALL of the names have been redacted for legal privilege under Section 42? If so, you are on a hiding to nothing with that, and have left yourself wide open to enforcement action. A name of a director, or senior manager, in the public sector, cannot ordinarily be, and is not in this case, privileged to any extent. If you are not relying on Section 42, you have failed to specify in your letter on what basis it is redacted.

Secondly, you have failed to respond to my request in full. I did not ask for details of who the "director group" was. I asked a subtle, but very significantly different question, of who the "director group referenced" in your correspondence was. That information is NOT in the

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public domain. You have merely sent me a link to some director profiles on your website without any explanation as to whether these are the people who, in your correspondence, claimed to make up the "director group" responsible for sending the communications to WhatDoTheyKnow. I wish to know explicitly, which directors and/or senior managers make up the "director group" referenced in that letter, not simply who your directors are. Is your position that the email correspondence to WhatDoTheyKnow was authorised by, and subsequently sent on behalf of ALL of those directors listed on the weblink you provided - i.e. they all had full knowledge of what was being asked? Do you also claim that no other senior manager or director (not listed at that weblink) participated in the "director group" referenced?

You have ALSO failed to provide the information outlined in my original request that relates to disclosure of the communications between Northern and WhatDoTheyKnow.

Thirdly, you have failed to perform a sufficient search of your records and disclose all information that exists in relation to this request, either through error or dishonesty. There are clearly further (both internal and external) emails and company issued mobile phone-based messages, (SMS, WhatsApp etc), relating to this matter which you have not disclosed. There are numerous other emails which you must release to me immediately. If you have not provided them because you believe they should be redacted, you should provide the relevant communication to me in a redacted format, with your justification, not simply pretend they do not exist.

I have never known such an incompetent approach to a FOI request, and one which is now likely to become protracted and require the involvement of the Information Commissioners office. It is also highly alarming that some of your directors are completely unaware of how working for a public sector company significantly differs in terms of transparency and I will be making further investigations into that.

I would draw your attention to the latest media reporting on ScotRail where a similar issue arose. ScotRail, subject to the same FOI requirements, have happily disclosed the salary information in full, and on a far more personal basis.

<https://inews.co.uk/news/scotland/scotrail-spends-salaries-top-executives-1718982>

A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/correspondence\\_seeking\\_to\\_suppre](https://www.whatdotheyknow.com/request/correspondence_seeking_to_suppre)

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