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28<sup>th</sup> March 2018

Dear Mr Fox,

**Information request**  
**Reference number: FOI2018/00261**

Thank you for your request of 27th February 2018, in which you requested the following information:

***“Please could you tell me:***

- 1) The cost to date of the CSAMS programme***
- 2) The projected delivery date of the CSAMS programme***
- 3) A copy of the latest plan for the CSAMS programme”***

I have processed your request under the Environmental Information Regulations 2004 (EIR). This is because the information requested is environmental according to the definition in regulation 2(c) of the EIR. Section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA and requires us to consider it under the EIR instead.

We do hold the information you have requested, however this is withheld from disclosure by virtue of regulation 12(4)(d) of the Environmental Information Regulations. I will explain the reasons for this exception below, and set out the public interest factors considered.

*Regulation 12(4)(d) (material in the course of completion)*

Regulation 12(4)(d) can be applied when the request relates to material that is in the course of completion, unfinished documents or incomplete data. The Information Commissioner's guidance explains that:

Material 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.

I consider that Regulation 12(4)(d) applies in this case because the withheld information is material in the course of completion, as it relates to an ongoing process (delivery of the programme of works described) which has not yet reached a conclusion. The information remains in draft form and is still subject to discussion - in this case the completion of this part of the process will lead to further consultation and discussion both within Network Rail and between Network Rail and third parties. Disclosure of the provisional information held at a time, prior to it being formally agreed, would be likely to be misleading to the general public and – most importantly – negatively impact on the robustness of the ongoing process that is necessary for the development of this significant infrastructure project.

This exception is subject to a public interest test to determine whether the public interest favours disclosure of the information or maintaining the exception.

#### *Public Interest Test*

I consider that the factors favouring disclosure are that there is a general presumption in favour of disclosure, and I agree that disclosure in this case would demonstrate accountability and transparency in respect of considerations related to the CSAMS project.

In considering the public interest factors favouring maintaining the exception, I have referred to the Information Commissioner's guidance, which highlights that the public interest arguments in respect of regulation 12(4)(d) should be focused on the protection of internal deliberation and decision making processes, and that these arguments relate to protecting the need for a 'private thinking space' and preserving a 'safe space' to develop thinking away from external scrutiny.

49. The Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. This may carry significant weight in some cases.

50. The need for a safe space will be strongest when the issue is still live... The timing of the request will therefore be an important factor. This was confirmed by the Information Tribunal in *DBERR v Information Commissioner and Friends of the Earth* (EA/2007/0072, 29 April 2008): "This public interest is strongest at the early stages of policy formulation and development. The weight of this interest will diminish over time as policy becomes more certain and a decision as to policy is made public."<sup>2</sup>

The timing of your request is a relevant factor here due to the 'live' nature of the CSAMS Programme and ongoing considerations. The Information Commissioner's guidance advises that the timing of the request is particularly important. If the

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<sup>1</sup> More information on this exception can be accessed at the following link: [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)

<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1634/eir\\_internal\\_communications.pdf](https://ico.org.uk/media/for-organisations/documents/1634/eir_internal_communications.pdf)

particular process is still going on when the request is received, it may be that disclosing information at a preliminary stage would make it difficult to bring the process to a proper conclusion. This increases the public interest in protecting the safe space for planning and discussion to take place, particularly when it is appropriate to protect the integrity of the consideration and development process prior to any final decisions being made.

On this basis, I consider that the public interest favours maintaining the exception, and that the requested information should be withheld at this time.

I am sorry we could not be more helpful in this instance but I hope the explanation provided proves useful. 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

**Senior Information  
Officer**

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**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