



Kate Breed
By Email: Kate request-473889-cc170270@whatdotheyknow.com

Network Rail
Freedom of Information
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26th April 2018

Dear Ms Breed

Information request
Reference number: FOI2018/00378

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

Please would you state the number of discrimination claims brought against you in UK courts and/or tribunals, split out by "protected characteristic".

Please do this for each year since the Equality Act 2010 came into force.

Please say what happened to each case i.e. whether it was lost, won or settled by you.

Please say how much, if anything, you paid in order to settle.

If you do not have data for each and every year, please disclose what data you do have.

Please also say how much you have spent on administration and/or defence of these claims, showing clearly what has been paid to the supply chain, including but not limited to solicitors and other advisors.

I have processed your request under the terms of the Freedom of Information Act 2000 (FOIA) and I can confirm we hold the information you requested.

The total number of claims brought against Network Rail

The first part of your request asks us to "state the number of discrimination claims brought against [Network Rail] in UK courts and/or tribunals...since the Equality Act 2010 came into force." Please see the table below which sets out these numbers:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018
No. of cases	40	36	29	11	10	7	15	22	7

The detailed breakdown of claims by protected characteristic, outcome and amount paid to settle the claim

The next three parts of your request ask for much more detailed information about individual claims, namely for each claim the relevant protected characteristic, the outcome of the claim and, where applicable, the amount paid to settle the claim. I am of the view that this information is exempt from disclosure by s.40(2) of the FOIA which is intended to protect third parties' personal data from disclosure to the world at large through the FOI process.

Before explaining my reasons for reaching this view, I thought it might be helpful to briefly outline the key points and requirements of this part of the FOIA. According to s.40(2) of the FOIA information is exempt from disclosure if it meets two conditions¹: (1) it constitutes personal data; and (2) its disclosure would breach one or more of the data protection principles (although for Network Rail's purposes the only relevant data protection principle is the first which states that data must be processed fairly and lawfully).

Personal data, in simple terms, is data from which a living individual might be identified². In this case the individual claimants might be identified from the disclosure of detailed information about their claims. There has been press coverage of a number of claims brought against Network Rail, matching an individual claim to an individual featuring in a press story would clearly allow individuals to be identified. Even in those cases where there has been no media coverage, it is likely that there has been discussion of and speculation about individual cases within Network Rail. Providing information about discrimination claims at the level of detail you are requesting would, in some circumstances, permit speculation of this type to be confirmed and thus permit individual claimants to be identified.

While this demonstrates that the first condition of s.40(2) of the FOIA is satisfied, in order to exempt the information from disclosure, it is also necessary to show that disclosure would be unfair to the individuals in question. The information you are requesting relating to individual claims demonstrates how an individual feels they have been discriminated against at work; explains whether or not their claim was

¹ See: <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

² See: https://ico.org.uk/media/for-organisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf for more information.

upheld; and provides information about individuals' financial settlements and circumstances. Individuals would not, in the ordinary run of events, expect their employer to disclose this kind of information to the world at large and, as a result, it would be unfair to breach this reasonable expectation.

I acknowledge that where people have brought claims to court against their employer this is not quite "the ordinary run of events", since employment tribunals are in the majority of cases public hearings and employment tribunal decisions are published on the government's website. This type of openness, however, would be expected by any reasonably informed applicant. It is unlikely that any applicant would have had an expectation that their employer would subsequently provide details of their case to the world at large through the FOI process. Moreover the details you have requested are not available in their entirety from the information published on the government's website.

I am satisfied that disclosure of the information in question at the level of detail you have requested would allow individuals to be identified and that to do so would be unfair and in breach of the data protection principles. I am consequently of the view that this information is exempt from disclosure by virtue of s.40(2) of the FOIA.

The cost of defending these claims

The final part of your request asks us how much we have spent on administration and/or defence of these claims. I am of the view that providing this information would undermine our capacity to negotiate effectively when purchasing legal services in the future.

Section 43(2) of the FOIA provides an exemption for information if the disclosure would or would be likely to prejudice the commercial interests of any person. Preventing us from negotiating effectively would clearly prejudice our commercial interests since it would in effect benchmark what we are happy to spend on the administration of claims and mean that it would be more difficult to get a substantially better price than this benchmark in any future negotiation.

Section 43(2) is a qualified exemption. This means that we are required to consider whether the public interest in disclosure outweighs the public interest in maintaining the exemption.

In this instance, I recognise that there is a public interest in transparency and that disclosure of the information in question promotes openness and accountability around the spending of public money. Set against this, however, is the inherent public interest in ensuring that public authorities are able to negotiate effectively – in direct terms, reducing our capacity to negotiate robustly means we will spend more public money and place greater demands on the tax payer.

I am not convinced that disclosing the information in question makes us significantly more accountable to the public. The figures by themselves do not detail the work involved in or the complexity of the individual case so it is difficult to see how the public would be able to hold us to account using this information. In light of this and the fact that it is important that we do all we reasonably can to protect public money, I am of the view that the public interest lies in withholding this information.

Advice and assistance

The Government publishes the outcome of tribunal cases from February 2017 onwards and you are able to access the page [here](#).

For tribunal decisions made before February 2017, you can contact Bury St Edmunds County Court.

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I realise that this is not the response you wished to receive but I hope the explanation I have provided is useful to you. If you have any enquiries about this response, please contact me in the first instance at FOI@networkrail.co.uk or on 01908 782405. Details of your appeal rights are below.

Yours sincerely

Claire Duncan
Information Officer

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. 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

Please remember to quote the reference number at the top of this letter in all future communications.