



R Harris
By Email: request-375998-6a5f6d4c@whatdotheyknow.com

Network Rail
Freedom of Information
The Quadrant
Elder Gate
Milton Keynes
MK9 1EN

11th January 2017

T 01908 782405
E FOI@networkrail.co.uk

Dear R Harris

Information request

Reference number: FOI2016/01365

Thank you for your correspondence of 8th December 2016. You requested the following information:

'It has been widely reported in the press and by statements made by NR that the Contract to design and construct the East West Rail phase 1 project (formally known as Chiltern Railways Evergreen 3 project) was £87. More recently NR have issued press releases claiming that the costs of this project were £320 and that they were on budget.

Under the FOI Act, I request that you provide the following information:

- a. As the costs to design and construct the project (including building stations) was only £87m, please provide a cost breakdown with description of what the remaining £233m costs were spent on?*
- b. Please confirm the exact cost of the project.*
- c. Please provide a copy of the original budget for the project before construction works commenced?*
- d. The estimate for costs submitted to the public inquiry was £185m for which funding had been approved. Please provide details of where the funding has come from for the additional £164m costs?'*

I have processed your request under the Environmental Information Regulations 2004 (EIRs) because the information requested is environmental according to the definition in regulation 2 of the EIRs (section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA, but requires us to consider it under the EIRs).

Regulation 12(4)(c)

EIR regulation 5(1) states that a public authority has a duty to make available environmental information on request, however, regulation 12(4)(c) provides an exception to that duty where the request is too general and the authority has complied with its duty to provide advice and assistance under regulation 9.

I have reviewed your request and made initial enquiries with experts within Network Rail, but I cannot identify the information you require from the details you have provided. I am therefore refusing this request under regulation 12(4)(c) of the EIR¹.

Regulation 9(1) – Advice and assistance

Under regulation 9(1) of the EIRs we have a responsibility to provide advice and assistance to all requestors so far as it is reasonable for us to do so. In this instance perhaps the most useful advice is an explanation of our reasons for believing that your request is too general for us to process and suggestions as to what steps you could take to clarify it:

- The introductory paragraph to your request cites two figures £87 million and £320 million² and part A of your request asks us to provide a cost breakdown of the difference between the figures. Without knowing the source of the two figures it is not possible for us to search for the recorded information you are looking for.
- Similarly part D of your request cites two further figures (£185m and £164m) – I understand from your email that £185m was the figure we submitted to a public enquiry, however I am not sure where the £164m figure derives from. Again it is not possible to conduct searches for information about the difference between two amounts without knowing the provenance of the figures.
- Part B of your request asks for us to provide ‘the exact cost of the project’. I am given to understand that this is information that we are unlikely to hold – the project is ongoing and we do not currently know how much it will cost once complete.
- Part C of your request asks for ‘the original budget for the project’ and this indicates a misapprehension about how we work. Projects do not start with a budget as such but rather with an estimate of costs which is approximate, contingent and within a range (as opposed to being a specific figure). The estimate is reviewed and, where necessary, altered as the project passes

¹ Whilst regulation 12(4)(c) obliges public authorities to carry out a public interest test, the Information Commissioner’s Office acknowledges that “Generally, if an authority is unsure about the meaning of a request, it is highly likely that the public interest in maintaining the regulation 12(4)(c) exception will outweigh the public interest in disclosing what could easily be the wrong information”. This is the case in this instance where we think it would be inappropriate to use public resources searching for and compiling information when we are unsure what information you are seeking.

² In point of fact the figures are “£87” and “£320” although clearly the most reasonable reading would be to presume that you had intended these to refer to millions of pounds.

through the stages of the Governance for Railway Investment Projects (GRIP)³ management process. One key point to bear in mind is that the project was initially put forward by Chiltern Railways rather than Network Rail and so they are likely to be the party that first estimated its potential cost.

- Whilst writing to you I thought it sensible to draw to your attention some potential difficulties in providing this information should you choose to submit a modified request. Much of the information is of a commercially sensitive nature and disclosure at this time might potentially prejudice ongoing negotiations with our contractors and suppliers. We think it likely that the exceptions provided by Regulations 12(4)(d) (material in the course of completion) and 12(5)(e) (commercial confidentiality) would be likely to apply to much of the requested information⁴. This is not to discourage you from submitting a modified request merely to flag up some potential difficulties in providing the information requested.

In accordance with the EIRs the 20 working days we have to respond to a reformulated request will commence when we receive your clarification. I look forward to hearing from you.

Please accept my apologies for delay in coming back to you to seek clarification. Whilst it is important to make sure that we always fully understand requests we do recognise that it is frustrating for applicants to experience delays in receiving substantive responses to their requests and regret any inconvenience which we might have caused 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

Jonathan Mantle
Senior 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 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. Your request must be submitted within 40 working days of receipt of this letter.

³ For more information about the GRIP process please see our website at: <http://www.networkrail.co.uk/asp/4171.aspx>

⁴ Please see www.ico.org.uk for more information.

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.