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11th September 2017

Dear Mr Bradshaw

**Information request**

**Reference number:** FOI2017/00968

Thank you for your email of 11th August 2017, in which you requested the following information:

*'Please would you provide me with an excel based list of all travel-related expenses incurred by each of the Directors of Network Rail Consulting from 11th August 2015 to as close to the present as possible. Expense information for Non-Executive Directors is not required.*

*I would require line by line detail of all expenses relating to meals and journeys made by rail, taxi, air, London Underground and bus.*

*I would like the meal expense details to include date, cost of meal and the reason and business justification for the expense or trip.*

*I would like the journey details to include start and destination points, date of travel, cost of each of the journeys and the reason and business justification for travel. Please also state whether they were visiting Network Rail locations or 3rd -party locations.*

*Additionally, please would you provide me with a table containing the annual salary uplift (expressed in percentage points) and annual bonus payments for each of the Directors of Network Rail Consulting for each year since joining Network Rail Consulting through to 2017.'*

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

Before addressing each of your questions, I thought it would be useful to explain a little about the nature of Network Rail Consulting's (NRC) work and how it benefits the wider organisation and travelling public.

NRC is a wholly owned subsidiary of Network Rail Infrastructure Limited. In 2012 NRC and Network Rail agreed a five year business plan which meant that, after establishing itself as a profitable business, NRC would provide a dividend flow of 20% of its profit after tax back to Network Rail to be invested the wider rail network. NRC's results to date are consistent with this plan.

The importance of NRC to the national economy has also been recognised by the government which has given support to NRC as a business that is going to add increasing value to UK exports in the post-Brexit economy.

### **Expenses information**

Please find attached a spreadsheet labelled 'FOI2017/00968' which contains the details of the two directors of Network Rail Consulting's (NRC) travel related expenses for the period of your request.

Mike Prager's information has been provided in full. I have withheld a proportion of Nigel Ash's information from disclosure, since putting it into the public domain through the FOIA would be prejudicial to NRC's commercial interests. Section 43(2) of the FOIA exempts information from disclosure where

- (a) Disclosure of the information in question would be likely to prejudice the commercial interests of any person; and
- (b) The public interest favours withholding the information.

### **Overall harm**

NRC is a wholly owned subsidiary of Network Rail and is, in consequence, subject to the FOIA. It is also a company operating in a highly competitive, international market. The unrestricted disclosure of the directors' expenses would provide a clear indication of whom they had met, where and when. From this competitors would gain an unfair insight into the specific work NRC is engaged in.

Perhaps more importantly, our business partners have a firm and long established expectation of confidentiality in their commercial dealings. Undermining this

expectation by providing the information in full would erode trust in NRC as a reliable partner and have a harmful impact on its capacity to continue to its work in the future.

#### Factors in favour of disclosure

There is always an interest in transparency and accountability. The money spent by all branches of Network Rail is public money and the public has the right to information which allows it to make sure we are acting in a prudent and responsible manner.

There is a particular interest in providing expenses information. As was demonstrated by the information published in connection with MPs' expenses, putting this information into the public domain not only allows the public to see how its money is being spent, it also sheds light on whether the culture of an institution meets the standards to which the public holds it.

#### Factors against disclosure

It is in the public interest that the concept of confidentiality around commercially sensitive matters is maintained and its integrity upheld. In this instance the full dataset would disclose detailed information (location, date, even likely participants and subject matter) about the meetings Nigel Ash held and this would undermine the commercial confidentiality which all parties expected.

The argument in favour of commercial confidentiality is particularly pertinent when it concerns a public authority, like Network Rail/NRC. It is important to maintain our reputation as a trustworthy commercial partner in order to keep costs down and get maximum value for the public purse.

The importance of maintaining NRC's reputation for commercial integrity is particularly important when one considers the extremely competitive market in which it operates. NRC competes with firms from across the globe and one of the key advantages it has in terms of attracting business is its standing as a reliable partner. Stripped of this standing its capacity to acquire new business would be severely impaired.

#### Balance test

Taking all of the above into consideration, I have reached the conclusion that the public interest lies in favour of withholding the information in question. The total amount of expenses claimed by Nigel Ash (including the amount disclosed in the attached spreadsheet) is only £1,803.29 over the course of two years – providing this

information in full would not make us any more accountable than we already are<sup>1</sup>. Set against this is the fact that providing this information would be likely to undermine trust and harm NRC's capacity to do business.

### **Salary and bonus information**

While I can confirm that we hold this information, I am of the view that it is exempt from disclosure by virtue of s.40(2) of the FOIA.

#### Protecting personal data

Section 40(2) of the FOIA<sup>2</sup> provides an exemption to the duty to disclose information where:

- a) The information constitutes the personal information of identifiable individuals and
- b) Its disclosure would contravene one or more of the data protection principles of the Data Protection Act 1998<sup>3</sup>.

#### Personal information

The Information Commissioner's Office's (ICO) guidance explains that: *'for data to constitute personal data, it must relate to a living individual, and that individual must be identifiable.'*

In this case the individuals would clearly be identifiable since there are only two of them.

#### Contravention of the data protection principles

The first data protection principle states that personal information must be handled fairly and lawfully. In our view the disclosure of the information that you have requested would be unfair to NRC's directors since disclosure of information about any bonuses or salary increases they might have received would amount to an

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<sup>1</sup> See our website for details of senior staff salaries and executive expenses.

<sup>2</sup> See the Information Commissioner's website for further details regarding the legislation and what is meant by 'personal information of identifiable individuals': <https://ico.org.uk/media/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

<sup>3</sup> For more details of the data protection principles please see: <https://www.gov.uk/data-protection/the-data-protection-act>

unwarranted interference with their private financial affairs and would breach a legitimate expectation of privacy regarding these affairs.

Moreover by their very nature salary increases and bonuses are indicative of performance – the higher the remuneration the better the performance. There are instances where disclosure of this type of information about our employees would indicate poor performance. In those cases disclosure would be unfair to the individuals in question. The corollary of this is that disclosing information which is favourable to the individuals concerned would mean that unfavourable conclusions could be drawn about the individuals in question each time a request was refused. The only way around this difficulty is for us to not provide the bonus/salary increase information about any individual member of staff.

We do recognise the legitimate interest in being accountable to the public and that releasing this information creates opportunities for greater accountability. On balance, however, we think that this interest does not override the importance of maintaining the data protection principles.

One point to note is that we publish the salaries of all of our most senior staff (including Nigel Ash) on [our website](#) (see link attached).

I hope the information that we have been able to provide is useful to you. 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

**Jonathan Mantle**  
**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