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31 October 2019

Dear Ms Sarrington

Information request

Reference number: FOI2019/01091

Thank you for your request of 3 October 2019, in which you requested the following information:

'I'd like to make a freedom of information request for camera footage from Old Ends Level Crossing (Stonehouse, Gloucestershire). Postcode: GL102DG, ELR: BGL2 on the 22/09/2019 between the times of 22:15 and 23:15.'

I have processed your request under the terms of the Freedom of Information Act 2000 (FOIA).

Under section 31(3) of the FOIA, we neither confirm nor deny whether we hold any camera footage for Old Ends Level Crossing, from 22:15 to 23:15 on 22 September 2019. This exemption states that the duty to confirm or deny if information is held by the public authority, does not arise if compliance would or would be likely to prejudice the prevention or detection of crime.

Sections 31(3) of the FOIA

The Information Commissioner's guidance explains *"that there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the Act allows a public authority to respond by refusing to*

*confirm or deny whether it holds the requested information. This is called a 'neither confirm nor deny' (NCND) response."*¹

In this case, any confirmation or denial on whether we hold any CCTV footage for this location, on the specified date and time would in itself provide a piece of information which could be used by those who may wish to cause criminal activity. Put simply, confirming whether there is camera footage would potentially tell criminals if we have recording facilities within this location or not. This in turn, could increase criminal activity such as vandalism, theft and criminal damage, all of which could cause destruction and harm to the railway.

Please be aware, the above should not be read as implying that we do or do not hold the information that you have requested.

Public Interest Test

The section 31(3) exemption is subject to a public interest test; this means that we are required to consider whether the public interest in confirming whether we hold the information outweighs the public interest in maintaining the exemption.

There is a public interest in transparency and therefore in confirming or denying whether we hold information requested. However, in this case we have to balance our commitment to transparency against our considerations of whether confirming or denying in this case would assist those who are planning to commit any crimes at the station and on the rail network.

I am concerned that confirming or denying that we hold the information, would in and of itself have the potential to inform criminals of whether there are security measures in place at this Level Crossing. This in turn would permit them to plan and carry out unlawful activities, which would cause harm to the railway network including staff, those that use our services and member of the public. This is the determining factor in my decision that the greater public interest lies in neither confirming nor denying that we hold the information.

It is worth noting, the only people who could request footage in relation to a crime would be the Police. Individuals can only request to see footage that they appear in and have no rights to request CCTV footage in relation to incidents of crime.

I am sorry that I could not provide the information you requested but I hope the explanation provided is helpful. If you have any enquiries about this response, please

¹ https://ico.org.uk/media/for-organisations/documents/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf

contact me in the first instance at 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

Najea Begum
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. 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

