



Rail Accident Investigation Branch

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Re: Request for incidents not reported to the RAIB in 2010 - Ref FOI F0008937

I am writing to advise you that the Department for Transport (DfT) does hold information that is relevant to your Freedom of Information Act (FOIA) request dated 20 May 2012. The list and summary of the 12 events that were identified by the RAIB from a review of the industry's operational control logs is attached.

It may be helpful if I provide some background on our role. The Rail Accident Investigation Branch (RAIB) is the UK's independent body for investigating accidents and incidents occurring on the railways of Great Britain and Northern Ireland. It was established by the Railways and Transport Safety Act 2003 (the Act) and operates under the Railways (Accident Investigation and Reporting) Regulations 2005 (the Regulations). The Schedules to the regulations define the types of accidents and incidents that the railway industry is required to notify us about. We investigate the most serious accidents involving the collision or derailment of trains resulting in: the death of at least one person; serious injuries to five or more persons; or extensive damage to rolling stock, infrastructure or the environment. We also have discretion to investigate the less serious accidents and incidents where we believe that there may be safety lessons to be learnt which could improve the safety of railways and prevent future accidents or incidents.

Following notification of an event the RAIB checks that it is within the scope of the regulations before deciding upon any action. Where appropriate the RAIB then gathers sufficient details and evidence to enable the RAIB to make an informed decision about the accident or incident and whether or not to conduct a full investigation. In deciding whether to investigate or not, the RAIB takes into account the actual or potential seriousness of the accident or incident, the potential for recurrence, and whether an investigation by the RAIB would be likely to meet the aim of improving the safety of railways. Consequently, the majority of the events which are notified to the RAIB do not result in the publication of an investigation report and are used for statistical information.

The schedules to the Regulations provide a description of the types of accident and incident which must be notified to the RAIB, and for the more serious type of accident the criteria are clear cut, for example accidents resulting in a death, serious injury, collision or derailment. However, others are more subjective and many notifications fall within the Schedule 1(9) category, which covers an accident or incident which under slightly different circumstances may have led to a death, serious injury or extensive

damage to rolling stock, the infrastructure or the environment. To assist in this the RAIB has published further guidance to the schedules on its website, and occasional meetings are held between the RAIB and staff from Network Rail and London Underground's control centres to discuss the notification process.

The industry is very good at correctly notifying events to the RAIB, but to provide a backup, the RAIB has been given access to Network Rail's and London Underground's operational control logs. The RAIB's Duty Co-ordinator (DC) reviews these on a daily basis to identify if there are any events that have not been notified but where the DC considers it worth gathering some further information.

The low number of such non-notified events, compared to the 428 that were notified, demonstrates the high level of reporting integrity over the year and the twelve referred to are shown in the attached table. In each case the RAIB obtained further information from industry staff, from witness interviews or from the provision by the industry of other evidence such as the train's Forward Facing CCTV, data downloads from the On Train Data Recorder, or the signal box voice tapes and records.

Having reviewed the evidence, the RAIB concluded, in each of the 12 cases, that a full investigation by the RAIB would be unlikely to result in formal recommendations for the improvement of safety, and no further work was undertaken.

In your request you asked for copies of the correspondence between the RAIB and the parties that should have reported the incident for each of the 12 incidents, as well as any briefings/reprimands issued by the RAIB as a result of the 12 incidents.

In none of the 12 cases did the RAIB consider it necessary to issue any briefings or reprimands to the industry. Consequently, the RAIB does not hold any information that is directly relevant to this last part of your request.

The RAIB does hold some information obtained from industry staff, from witness interviews and from the provision by the industry of other evidence such as the train's Forward Facing CCTV, data downloads from the On Train Data Recorder, or the signal box voice tapes and records. All such information was obtained as part of the process of gathering evidence to inform the RAIB's decision about whether to conduct a full investigation or not and was obtained using the RAIB's powers under the Act. It is also covered by the regulation 10 - Disclosure of evidence of the Regulations and is therefore to be withheld under the following FOIA exemptions.

Sections 44 and 41 are absolute exemptions and the arguments against disclosure are discussed in more detail below with reference to the relevant exemptions.

Section 44(1)(a) of FOIA provides that information is exempt if its disclosure (otherwise than under FOIA) is prohibited under any enactment. It is an absolute exemption and therefore not subject to a public interest test. The relevant legislation is regulation 10 of the Regulations.

For the RAIB to be effective in delivering its aims, the industry and public need to believe that in carrying out its functions the RAIB does not consider blame or liability for the purposes of any investigation. This obligation is expressly set out in section 7(5) of the Act. Anything that undermines this ability to obtain truthful information would be detrimental to public safety and so contrary to the wider public interest. This is

underpinned by regulation 10(2) of the Regulations, which prohibits the disclosure of certain types of information unless a relevant court is satisfied that release of certain categories of evidence would be in the public interest, having regard in particular to any adverse impact such disclosure may have on the investigation by the Branch to which the evidence or information relates, upon any future investigation and upon public safety.

In this respect Section 44 is applicable to:

- all details relating to RAIB's witnesses, including recordings, notes and records relating to such statements;
- personal information relating to persons involved in the accident, opinions of RAIB inspectors, notes made by RAIB inspectors, trade secrets or other information which would be likely to prejudice the commercial interests of the person holding it, and working documents of the Branch.

Section 41 of FOIA provides an absolute exemption where information was provided to the public authority in confidence and release of that information would constitute an actionable breach of confidence. This exemption covers evidence such as the train's Forward Facing CCTV, data downloads from the On Train Data Recorder, or the signal box voice tapes and records.

Effective investigation of accidents requires full and frank co-operation on the part of all those able to assist the investigation. Since it began operations in 2005, the RAIB has built a reputation for impartiality, independence and confidentiality throughout the railway community. It is this reputation that has consistently enabled it to successfully carry out its work and to be viewed and regarded as a leader in the investigation of rail accidents.

The RAIB considers that disclosure of evidence, which has been freely provided by the industry in the expectation that it would not be made public, would place RAIB in breach of the common law obligation of confidentiality. Such release would also damage the RAIB's reputation for confidentiality and independence and have a negative impact on industry confidence and co-operation and future investigations and the potential to improve safety, which would obstruct the RAIB in delivering its general aims contained in section 4 of the Act.

The remaining exemption that we are applying is qualified, and we have therefore had to consider whether or not the public interest in releasing the information is outweighed by the public interest in withholding it. The public interest arguments taken into consideration are listed below.

- The public interest arguments in favour of disclosure are that it would:
 - Be consistent with the more open policy making and may lead to increased trust and engagement between citizens and government.
 - Make public the frank provision of evidence and information, provided to the RAIB by the railway industry.
 - Confirm no wrong doing on the part of the RAIB. There is no information that identifies any malfeasance.

- The public interest arguments against disclosure are that it would:
 - Prejudice the ability of the RAIB to communicate fully, frankly and in confidence with stakeholders.
 - Impede the general willingness of individuals and organisations to supply information to the RAIB and damage the existing spirit of co-operation and free flow of information.
 - Prejudice, or would be likely to prejudice, the effective conduct of public affairs.

These arguments against disclosure are discussed in more detail below with reference to the relevant exemption.

Section 31 – Law enforcement. Section 31(1)(g) provides a qualified exemption from disclosure of information, where disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). Section 31(2)(e) specifies "the purpose of ascertaining the cause of an accident" as one such function. This exemption applies to emails in which evidence was sought from or provided by the industry and inspector's notes of telephone calls so far as they fall within the scope of your request and includes but is not limited to information which is also exempt under Sections 44 and/or 41.

A perception by the industry that the RAIB would not treat documents and information given to it in confidence would have a material effect on future investigations, and would obstruct the RAIB in delivering its general aims, contained in section 4 of the Act, for future railway accidents and incidents.

In terms of the evidence received from the industry, regulation 10(1) of the Regulations provides the RAIB with the ability to not make evidence it holds available if it believes that such disclosure would obstruct its general aims as defined by the Act. The effective investigation of rail accidents and incidents is fundamentally operated around and dependent on the mechanism of confidential reporting and collection of information and data necessary to ascertain the cause of an accident or incident investigated by the RAIB. RAIB relies to a great extent on the voluntary provision of information from the parties involved who, in providing such information, do so in the knowledge and confidence that the RAIB will afford it protection from disclosure and use it solely for rail safety purposes.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's Information Rights Unit at:

Zone D/01
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-Dxx@xxx.xxx.xxx.xx

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

In conclusion, we are only able to provide the list and summary of the 12 events.

I am sorry that I could not be of more assistance.

Yours sincerely

Carolyn Griffiths
Chief Inspector
Rail Accident Investigation Branch

Your right to complain to DfT and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

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

RAIB Annual Report 2010

12 incidents identified by the RAIB through review of the industry's operational logs for gathering some further information

Network	Event	Summary	Date
LUL	Route closure of more than 6 hours due to signal failure	Failure of a track circuit caused the Hanger Lane Junction signal to remain at danger for the Piccadilly line train.	17.1.2010
Network Rail	Signal L1162 - incident with trackworkers near Bishops Stortford	Signal L1162 reverted from green to red as the train approached. The driver was unable to stop and passed the signal at red and passed signal by approximately three metres.	15.3.2010
Network Rail	Incident at Brickyard Lane Automatic Barrier level crossing locally monitored	The Brickyard Lane Automatic crossing operates for both trains on Network Rails infrastructure, and trams on Nottingham Express Transit. A member of the public reported that a tram had traversed the crossing while the barriers were raised.	14.4.2010
Northern Ireland	Incident at Botanic station (Northern Ireland)	A train, with slam doors, departed the station with one door open.	15.5.2010
Network Rail	Trolley irregularity affecting axle counter at Appleby	Track workers placed a trolley on the railway beyond the limits of the protection in place. This activated an axle counter which provided a warning to the signaller.	18.8.2010
Network Rail	Incident at York	Train driver reported a near miss with a member of staff who was exiting from the cab of another train.	24.9.1010
Network Rail	Derailment at Masborough Sorting Sidings	Freight train became partially derailed in Masborough Sorting Sidings whilst propelling out of the siding.	25.9.2010
Network Rail	Power pillar failure at Sevenoaks	A power pillar had failed due to a cable fault which affected signalling, track circuits and points on the up and down main lines from Sevenoaks Junction.	3.10.2010
Network Rail	Incident at Kingsknowe Automatic Half Barrier level crossing	A road vehicle user had driven through Kingsknowe Automatic Half Barrier level crossing in front of approaching train.	25.10.2010
Network Rail	Incident with track worker at Blatchbridge junction	Train driver reported a near miss with a trackworker who was slow in moving to a position of safety.	28.10.2010
Network Rail	Incident at Foxtan (Manually Controlled Barriers)	A near miss with a person who was on the crossing as the train passed through Foxtan level crossing (nobody was struck).	24.11.2010
Network Rail	Track circuit problem in the vicinity of Bradbury	Track circuit failed showing occupied when clear.	19.12.2010