



Jungwoo Jung

By email: [request-578496-d29f808d@whatdotheyknow.com](mailto:request-578496-d29f808d@whatdotheyknow.com)

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

T 01908 782405

E [FOI@networkrail.co.uk](mailto:FOI@networkrail.co.uk)

20 August 2019

Dear Jungwoo Jung

**Information request**

**Reference number: FOI2019/00692**

I write in response to your requests for information and correspondence regarding information about a number of Network Rail projects.

On 20 June 2019 we wrote to you to ask for further clarification regarding your previous request FOI2019/00569. This request had originally asked:

*I am writing to you under the Environmental Information Regulations 2004 and the Freedom of Information 2000 to request the following information of (1) Birmingham New Street Station Renovation, (2) Border Railway Project, (3) Derby Station Area Remodelling, (4) Dr Days Junction to Filton Abbey Wood Capacity Improvements, (5) Gospel Oak to Barking Electrification, (6) Kings Cross Station Improvements, (7) North Trans Pennine Electrification, and (8) North West Electrification (Northern Hub) from Network Rail:*

- 1. Application for Full Approval. If Application for Full Approval is not available, please provide Full Business Case.*
- 2. Information on (1) date in service, (2) completed construction costs, (3) completed land related costs, (4) completed finance costs (if any), and (5) completed other significant costs.*

On 21 June you submitted the following clarification in response:

- 1. Birmingham New Street and Kings Cross Birmingham New Street Gateway Project (New Station) is the one I am interested in. Regarding Kings Cross Station Improvements, I had in mind the following (I think both of them refer the same project):*  
<https://www.networkrailconsulting.com/assets/Uploads/Kings-Cross-Station.pdf>

<https://www.theguardian.com/business/2012/mar/14/five-year-redevelopment-kings-cross-station>

## *2. Significant Costs*

*Significant Costs = Total Cost - Construction Cost - Land Cost - Finance Cost*

*3. Refusing Request as Manifestly Unreasonable Since you suggested my request is likely to be refused on cost grounds unless I narrow my request to one or two specific completed projects where you have already identified information from previous FOI requests, please explain how my request places an unreasonable burden on your resources by providing (if it does not add up to the cost grounds for refusal) :*

*(1) your search strategy, for example:*

- whether it has carried out any searches for the requested information;*
- whether it has based its estimate on a random or representative sampling exercise;*
- which departments or members of staff have been contacted;*
- the search terms used when querying electronic records;*

*(2) why it needs to search the files/records it has referred to;*

*(3) how the information is stored, for example, whether the information is held in paper or electronic files;*

*(4) how many files, boxes, documents, records or emails need to be reviewed and;*

*(5) how long it would take to determine whether the requested information is held or to locate, retrieve and extract it. For example, it is useful to detail the size of the relevant files; the average length of time it would take to review each file and the number of staff required.*

On the same date, you submitted a further email shortly after:

*Correction as follows.*

## *2. "Other" Significant Costs*

*"Other" Significant Costs = Total Cost - Construction Cost - Land Cost - Finance Cost*

On 25 June 2019, we acknowledged your request and provided you with the reference number FOI2019/00692. The acknowledge set out the wording of your request as we understood it:

*I understand your request to be the following:*

*I am writing to you under the Environmental Information Regulations 2004 and the Freedom of Information 2000 to request the following information of:*

- (1) Birmingham New Street Station Renovation - Birmingham New Street gateway project (new station).*
- (2) Border Railway Project*
- (3) Derby Station Area Remodelling*

- (4) *Dr Days Junction to Filton Abbey Wood Capacity Improvements*
- (5) *Gospel Oak to Barking Electrification*
- (6) *Kings Cross Station Improvements – I had in mind the following (I think both of them refer the same project):*  
<https://www.networkrailconsulting.com/assets/Uploads/Kings-Cross-Station.pdf>  
<https://www.theguardian.com/business/2012/mar/14/five-year-redevelopment-kings-cross-station>
- (7) *North Trans Pennine Electrification*
- (8) *North West Electrification (Northern Hub)*

*From Network Rail:*

1. *Application for Full Approval. If Application for Full Approval is not available, please provide Full Business Case.*
2. *Information on:*
  - a) *date in service*
  - b) *completed construction costs*
  - c) *completed land related costs*
  - d) *completed finance costs (if any)*
  - e) *completed other significant costs. By other" Significant Costs I mean the total cost minus construction cost, minus land cost, minus finance cost*

You also confirmed in a further email of 26 June 2019 that:

*Just in case you can locate neither Application for Full Approval nor Business Case, any government approval documents to go ahead with a project are acceptable as long as they provide estimated schedule and cost information before the start of construction. Thank you.*

I have processed your request under the Environmental Information Regulations 2004 (EIR) as this type of information is environmental according to the definition in regulation 2(c) of the EIRs; this is because the information concerns a measure affecting the environment.<sup>1</sup>

Under the regulation 12(4)(b) of the EIR, we are not obliged to disclose information if to do so would create too great a burden. That is the situation in this case, and I will explain the legislation and my reasons for reaching this conclusion below. I will also explain how you could consider revising your request to make bring it within reasonable bounds.

---

<sup>1</sup> Section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA and requires us to consider it under the EIR.

## Regulation 12(4)(b) of the EIR

The first point to note in responding to your request is that there are some circumstances in which a public authority might refuse a request for information because the time spent complying with the request would be so great that it would create a 'disproportionate burden' of work for the organisation. The Information Commissioner recognises this and provides the following example:

*This position was confirmed, again in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC).*

*"Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as "manifestly unreasonable", purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable." (paragraph 25)<sup>2</sup>*

To explain, you have listed eight of Network Rail's infrastructure projects for which you are seeking information. Compliance with this request requires location and retrieval of the information and then review to determine whether it may be disclosed or whether an exemption applies.

To determine if all the information is held and to retrieve any information held, I have first needed to engage the resources of over 40 different Network Rail employees, spread across a minimum of eight project sponsorship teams and at least eight other commercial, financial, communications and support functions. The information requested for each of these projects as sought in your request is not held by a central team but is held within project teams and with employees who were directly involved with the projects on the relevant Network Rail routes. This means engaging the relevant route-based staff separately for each of the eight projects for which you are seeking this information.

I have made enquiries of a number of these colleagues to understand the time they have committed to extracting and retrieving the information for the particular project area in which they hold the relevant information. For example, to extract relevant details for the cost breakdown as sought for the Kings Cross Redevelopment Project, which completed in September 2012, it took our expert 3.5 hours to retrieve all of the costing information and to provide it to me in the format sought in your request wording.

---

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf> - Para 18

Further examples in this sample include locating the business cases for Dr Days Junction to Filton Abbey Wood and North West Electrification. The first took 30 minutes to locate and retrieve the business case, but it took a further two hours for other employees to identify the correct individual to provide the business case. The second took almost four hours to locate the information, due to the number of individuals who had to be approached and subsequent searches. On the basis of this sample, it is therefore reasonable to assume that for all eight projects it would take the following timescales to locate and retrieve all the information you have requested:

- Business case/application for full approval/any government approval documents  
(On a conservative estimate of 2 hours to locate and extract, based on the explanations provided above)  
 $2 \text{ hours} \times 8 \text{ projects} = 16 \text{ hours}$
- Costs, breakdown as specified in your request  
 $3.5 \text{ hours} \times 8 \text{ projects} = 28 \text{ hours}$

I therefore estimate that it has already taken these staff members at least 44 hours in total to locate, extract and retrieve the information sought for this request. This is already a considerable burden, however, it is not the only factor that can be considered when assessing the burden of the request under EIR. In identifying the relevant experts to assist me with this request, around 100 emails have been sent to different employees within Network Rail. When working on the basis that it takes five minutes to write an email, it is reasonable to estimate that 500 minutes of the FOI team's time has been taken up preparing emails to our experts to determine and locate what information for these eight projects ( $5 \text{ minutes} \times 100 \text{ emails} = 500 \text{ minutes}/8 \text{ hours}$ ).

To further assess the burden, I have also made enquiries of our experts regarding the length of time it would take for them to review the information held to consider whether there would be any harm in disclosure. On the basis of these enquiries and on a conservative estimate, a further half a working day, or 3.5 hours, for each project is required as a minimum to review the information held for relevance and determine whether any exceptions apply to it. On this basis, as a reasonable estimate, it would take a minimum 28 further hours to consider the information ( $8 \text{ projects} \times 3.5 \text{ hours} = 28 \text{ hours}$ ). I would add that this is a conservative estimate; I am aware that the business case information contains highly technical details in some cases which will require significant liaison with our business experts. I can also advise that the business case documentation totals around 900 pages; certain business cases will require substantially longer to review than the average estimate given above.

On the basis of the above, I consider that Regulation 12(4)(d) applies to your request due to the large scope and the amount of information which is being sought in your request, and the disproportionate burden that compliance with the request would place on Network Rail's resources.

### The public interest test

I have considered the public interest factors for and against disclosure and set out my findings below.

There is a presumption in favour of public authorities providing information in response to requests, to promote greater transparency and accountability. In this instance we understand that there is a public interest in understanding the cost to the taxpayer of our large infrastructure projects, and in giving the public the opportunity to scrutinise our decisions and spending.

Set against this, however, is the fact that complying with this request would place significant demands on our resources. It is important to remember that Network Rail is funded by the taxpayer and that this creates an obligation for us to use our resources efficiently. Each part of your request will require a considerable amount of time from each the relevant members of staff who would need to review the information further. Network Rail operates a central FOI team as a dedicated FOI resource – we work in conjunction with operational and technical colleagues who provide expert guidance on the nature and context of the information itself; this would divert them further from their normal duties and divert us from being able to deliver mainstream services or answering other requests.

Having considered the arguments above, I have concluded that the strongest public interest lies in favour of ensuring that we are able to continue delivering public services without disruption. In consequence I have concluded that the reasons for maintaining the exception outweigh the public interest in complying with the request. This represents a formal refusal of your request under regulation 12(4)(b) of the EIR.

### **Next steps – refining your request and published information**

In order to reduce the time required to be able to consider complying with your request, I advise that you identify one or two projects which are of greatest importance to you from the list you supplied.

Please note that a report on electrification costs in the railway is already publicly available and can be accessed at the following link:

<https://www.nsar.co.uk/wp-content/uploads/2019/03/RIAECC.pdf> - Railway Industry Association Electrification Cost Challenge, March 2019

You may also find it of interest to know that the Borders Railway Final Business Case is already publicly available on the Scottish Government's website:

[https://www.transport.gov.scot/media/10321/ts\\_borders\\_fbc\\_final\\_version\\_issued.pdf](https://www.transport.gov.scot/media/10321/ts_borders_fbc_final_version_issued.pdf)

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

**Emma Meadows**  
**Information Officer**

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can also be used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder. Please contact me if you wish to re-use the information and need to seek the permission of the copyright holder.

### **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 FOI 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