



Jungwoo Jung

By email: request-578496-d29f808d@whatdotheyknow.com

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Dear Jungwoo Jung

Information request

Reference number: FOI2019/00959

Thank you for your email of 28 August 2019, in which you requested the following information:

Last week, I sent a message to you reminding that I had narrowed my request to business cases of 8 projects, not a business case of the Birmingham New Street Gateway Project which you had already located during your estimate. As I have not heard anything so far, I am concerned if my message went through. Please, confirm that you are proceeding with all 8 business cases. Just in case you intend to proceed with only 1 business case, I request an internal review. I am looking forward to hearing from you soon.

This latest request was received after your previous request, FOI2019/00692, and the request most recently logged on 21 August 2019, FOI2019/00927, which was subsequently closed on receipt of this latest request on 28 August 2019.

To confirm, the eight projects originally listed for request FOI2019/00692 for which you would now like to receive the business cases where held by Network Rail are as follows:

- (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*
- (7) *North Trans Pennine Electrification*
- (8) *North West Electrification (Northern Hub)*

I have applied your previous definition from request FOI2019/00692 of "business case" to this request as being:

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.

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.¹

As with the response to your previous request and 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. It is regrettable that this is again the situation in the case of your most recent request, and I will again explain the legislation and my reasons for reaching this conclusion below. I will also explain how you could consider revising your request to bring it within more reasonable bounds.

Regulation 12(4)(b) of the EIR

As explained in my letter to you of 20 August 2019, 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)²

In your previous correspondence of 21 August 2019, which was originally logged as request FOI2019/00927, you explained your views as follows:

You responded that you estimated 16 hours to locate business cases or any governmental approval documents and 28 hours to retrieve cost information. And you further argued that my Environmental Information Request creates unreasonable burden on Network Rail so that you refused to fulfill my request. If I refine my request and ask only business cases

¹ 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.

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

or any governmental approval documents which require 16 hours of work, will you fulfill my request?

The first point here that assists me to provide the rationale behind this latest refusal relates to my explanation in my letter of 20 August 2019 for request FOI2019/00692, in which I supplied the following calculation related to locating and extracting any business cases Network Rail may hold on these eight projects:

- *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 hours x 8 projects = 16 hours

To give a specific example, in the case of the Birmingham Gateway Project business case aspect of this request, and as explained in my email to you of 22 August 2019, we have already located a business case titled *Birmingham Gateway Business Case – Business Case Report*, dated April 2006 – this was produced by Steer Davies Gleave on behalf of Network Rail. This document consists of four volumes and is in total over 700 pages long. While I confirmed in my email that we do not know if this is the full business case or whether these documents formed part of a final business case, they consist of a significant amount of information that we considered may be of interest to you.

My estimate from response letter FOI2019/00692, from which the extract above was taken, demonstrates that we reasonably estimated that it would take at least 16 hours to locate any information we may hold or understand whether we even hold information that would constitute as “[An] *Application for Full Approval* [or] *Business Case*, [or] *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*”. However, the estimate given above does not include the time it would take to review any documents retrieved in full to understand whether they are appropriate for disclosure.

Using the Birmingham Gateway Project Business Case Report as a reasonable example in this case, we can estimate that it took around two hours for our expert colleagues to locate and extract this full report. However, no one has at this time looked through the document in detail to understand whether some or all information would be suitable for disclosure in response. I asked one of our experts to review a sample of 17 pages, of which 4 only contained drawings or maps with very little text. It took our expert about 15 minutes to initially read all 17 pages in this sample.

Working on the round figure of 700 pages, it is reasonable to estimate that it would take one minute per page for one of our experts to read the entire document, with consideration of any concerns they would have around disclosure. This therefore means that reading this whole document alone would take around 700 minutes/11 hours.

Please note that the time taken to read the document does not take into account the time required by our experts to consider whether the entire document is appropriate for disclosure, or if some or all of it should be withheld from disclosure and for what reason. Though it took our expert 15 minutes to read the full 17 page extract, he then also needed to further review in detail to consider what could or could not be disclosed into the public domain; this task took a further 75 minutes. It is therefore reasonable to assume that each batch of 17 pages would be likely to take 75 minutes to review and consider.

On this basis, it is reasonable to estimate that further review and consideration of this entire 700-page document would take around 3,075 minutes/51 hours (700 pages ÷ 17 pages = 41 sections x 75 minutes = 3,075 minutes ÷ 60 minutes = 51 hours). This does not take into account any time required to consult third parties on their views on the document and on its potential partial or full disclosure.

It is my view therefore that it would take a minimum of 62 hours collectively to read, review and consider the one business case report for just this one project for disclosure. Though you asked us in request FOI2019/00927 *to provide only the business cases or any governmental approval documents that require 16 hours of work*, we cannot make assumptions on which projects you would particularly like us to locate, retrieve, consider and potentially prepare information for disclosure. This means that it is impossible for us, as a public authority, to identify on which projects to focus the requested 16 hours, meaning that we can only deal with your request in full.³

Given that I have estimated that the business case report for the Birmingham Gateway Project would take around 13 hours, and review of what we hold and retrieval for the remaining seven projects is estimated at two hours per project, equalling 14 hours, it would take a minimum of 27 hours to gather the business case information you are seeking as well as to extract and review the business case report for the Birmingham Gateway Project to make decisions on disclosure. This estimate does not take into account the time already spent, as explained in response to request FOI2019/00692, on contacting other members of Network Rail staff to understand what information we may or may not hold, directly linking to the information you are seeking I response to this latest request.

I therefore consider that Regulation 12(4)(b) applies to your request due to the large scope and the amount of information which is being sought in your request, and the

³ On this point you may find it useful to reference the [Information Commissioner's Office guidance](#) on the application of section 12 of the FOIA (cost refusal) to a request for recorded information, where the guidance states that:

32. As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.

disproportionate burden that compliance with the request would place on Network Rail's resources.

The public interest test

As with my response to your earlier request, FOI2019/00692, 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 and workings 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. As explained above and even with your request narrowing to the "business case" element of your previous request, a considerable amount of time would still need to be committed from each of the relevant members of staff who would need to extract and review the information we hold in detail. Diverting our experts' attentions from their usual day to day responsibilities for a considerable period of time to comply with one request going over a longer time period creates a larger burden on the wider organisation.

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

As explained in my response to your previous request, 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 for which you would prefer us to seek, retrieve and consider for disclosure from the original list of eight projects you supplied. In the case of the Birmingham Gateway Project business case report, I have already set out our estimates for this and it would far exceed the time permitted to review this document, however we do have a Birmingham Gateway Business Case Executive Summary, dated May 2006, which is separate to the business case report considered in this response and is only ten pages long.

In terms of the Derby Station Remodelling Project, we do hold a GRIP 4 Appraisal Report and for the Gospel Oak to Barking project, we hold an Investment Appraisal Summary, dated June 2017. For the North West Electrification Programme (NWEF), we also hold

copies of the North of England Programme Strategic Case, Economic Case and Financial, Management and Commercial Cases, within these documents appear to be details related to NWEF. I am not sure if these documents necessarily answer all of the points you have previously requested, but they may be a good starting point for your work.

Please also note that the Borders Railway business case is already published and the link was provided to you in my letter in response to your previous request, FOI2019/00692.

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.

Please remember to quote the reference number at the top of this letter in all future communications.

Yours sincerely

Emma Meadows
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 Head of Freedom of Information 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