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Freedom of Information
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John Ruddy
By email: request-417879-106499f2@whatdotheyknow.com

7th September 2017

Dear Mr Ruddy

Information request

Reference number: FOI2017/00842

Thank you for your request of 12th July 2017. You requested the following information:

Please supply details of any correspondence, meetings, plans and consultations regarding the upgrade of the Railway line to Aberdeen between Usan and Montrose following the First Minister's announcement of Scottish Government funding for this project as part of the Aberdeen City Deal on 28th January 2016.

The relevant legislation

I have processed your request under the Environmental Information Regulations 2004 (EIR) as the information requested is environmental according to the definition in regulation 2 of the EIR (section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA, but requires us to consider it under the EIR).

Upgrade of railway line between Usan and Montrose

I can confirm that we hold the information you requested. However, some of the information held within scope of this request is either already available online or it is except from disclosure under [Regulation 12\(4\)\(d\)](#) of the EIRs. I will explain more about these exceptions in the paragraphs below.

The table below details the documents in scope of this request which we have provided

Document title	Notes
Aberdeen City Regional Deal - Enquiry_Redacted	
Parliamentary Alert PQs (Montrose)_Redacted	

RE Network Rail Scotland Route Study_Redacted	All consultation responses were published on our old website last year however this has not been transferred over to our new website.
Regional Working Group 5 North v2.0	
Regional Working Group 5 South v3.0	
Scotland Route Study Consultation Aspirations v1	All consultation responses were published on our old website last year however this has not been transferred over to our new website.
Scotland Route Study Regional Working Group 4 Nestrans 26-02-16 - Notes_Redacted	
Scotland Route Study Working Group 10 Draft Minutes v2_Redacted	
Usan - Montrose etc._Redacted	
Working Group 9a presentation as issued_Redacted	Slide seven has been redacted under Regulation 12(4)(d).

Regulation 13(1) – Personal information

Please note that we have redacted a small amount of personal information under [Regulation 13\(1\)](#) of the EIRs as the documents attached contain the names and email addresses of individuals who are not in a public facing role.

The first data protection principle states that personal information must be handled fairly and lawfully. In our view the disclosure of the names and email addresses would be unfair to any individuals concerned, who would not reasonably expect their personal information to be disclosed under EIR (bearing in mind that disclosure under EIRs is taken to be “disclosure to the world at large”). Having considered the factors for and against disclosure, we think the public interest favours withholding the information.

Regulation 5(1)

EIR [Regulation 5\(1\)](#) states that a public authority has a duty to make available environmental information on request. In this instance we can fulfil this duty by confirming that some of the documents are already available online. Please see the table below for the document title and the corresponding web address.

Document title	Web address
Rail Delivery Group - Scotland's Rail Infrastructure	https://www.raildeliverygroup.com/component/arkhive/?task=file.download&id=469771815
Scotland Route Study	https://www.networkrail.co.uk/running-the-railway/long-term-planning/
Scotland Route Study Appendices	https://www.raildeliverygroup.com/component/arkhive/?task=file.download&id=469771815

Regulation 12(4)(d) – Material in the course of completion

Regulation 12(4)(d) of the EIRs provides an exception to the duty to make environmental information available when the request relates to material which is still in the course of completion, unfinished documents or incomplete data.

The exception can only properly be applied in circumstances where the public interest favours withholding the information. In order to determine where the public interest lies we have considered the following factors:

Arguments in favour of disclosure

There is always a general public interest in disclosing environmental information as it not only promotes openness, transparency and accountability but it also allows the public to take part in decisions which affect the environment.

Regarding this request, following the announcement by the First Minister on 26th January 2016, there is a specific benefit to providing the information since to do so would inform the local community and the wider public about the progress of the project and the future of the line between Usan and Montrose.

Arguments against disclosure

The information we hold is in draft form, incomplete or subject to final approval. It forms part of the background used to make significant decisions about the future development of the railway line between Usan and Montrose. Those responsible for taking such decisions (whether in Network Rail, Transport Scotland, Tactran or our other stakeholders) need a free space in which it is possible to consider a wide range of options. Disclosure of material still in the course of completion would deny this space to those tasked with taking decisions potentially adversely affecting their deliberations and ultimately having a detrimental effect on the overall outcome.

There is also a strong argument that disclosure would potentially have a ‘chilling effect’ on experts within Network Rail, Transport Scotland, Tactran or our other stakeholders. If disclosure caused an adverse press or public reaction, this would potentially introduce a more cautious mentality meaning that advice ceased to be provided as fully, frankly and uncompromisingly as it should be. Such a decrease in the quality of advice available to key providers of transport infrastructure would clearly not be in the public interest.

Stakeholders provided us information that we hold that falls within scope of your request. They would not have expected that doing so would have meant that the information in question would automatically become subject to disclosure. Whilst we do not believe that the conditions of commercial confidentiality that are necessary to engage Regulation 12(5)(e) are met, we are of the view that disclosure of unfinished material in this instance would be likely to erode the trust between public authorities which regularly need to work together. Such a loss might make it less likely that information would be shared as readily in the future which would clearly not be in the public interest.

Conclusion

In instances like this, it is often difficult to strike a balance between the arguments in favour of providing information which has the potential to inform debate and empower the public and the

arguments in favour of maintaining the safe space required for an impartial decision making process based on the best available evidence.

In many instances the question is ultimately one of timing. The maintenance of the decision makers' 'safe space' cannot be permanent as this removes any opportunity for scrutiny of the process. Here, however, since the decision making process is still live, it is our view that the public interest lies in maintaining the exception in order to protect the integrity of that process.

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

Anisha Pandya
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