



Mr P Barker
By email: request-339212-fe8fc027@whatdotheyknow.com

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

T 01908 782405
E FOI@networkrail.co.uk

8 September 2016

Dear Mr Barker

Internal Review reference number: FOI2016/00785

Original request reference numbers: FOI2016/000683

I write in response to your email of 13 July 2016, which requested an internal review of the handling of your request for information made on 9 June 2016. Your request sought the following information:

“Current status and costs of proposed project to allow direct services from Hastings to London St Pancras via Ashford using HS1.

Please publish any project plans and timescales for any upgrade work to line speed and signaling between Ashford to Hastings. Also any dualing and electrification work that is planned. This includes any works that has to be completed at Ashford station.

Also date when Kent Route study document will be published.”

I have considered this matter and my conclusion is that your request was handled appropriately under the Environmental Information Regulations 2004 (EIR). I will explain the reasons for my decision below.

Issues on review

Network Rail's response to your request advised that we intend to publish the Kent Route Study in the autumn of 2016. We refused the remainder of the requested information, citing regulation 12(4)(d) of the Environmental Information Regulations and explaining that this regulation 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.

In your email of 13 July 2016, you sought a review of this decision on the grounds that:

"Once again as before feel public interest flavours disclosure. Any environmental elements can be removed and general statement on progress of project or lack off could be made."

This review will therefore consider whether Network Rail was correct to refuse to provide the information under regulation 12(4)(d).

Analysis

I note first that your present request, FOI2016/00683, asks for similar information to a previous request which you made to Network Rail in July 2015 (FOI2015/00665); that request asked for *"any reports, cost breakdowns, risk assessments, risk analyses and pre-feasibility studies which concerned the subject of the electrification of the Marshlink line from Ore to Ashford, to enable high speed Javelin services to run from Ashford in Kent to Bexhill in East Sussex."*

That request was also refused under regulation 12(4)(d)¹, and the internal review decision explained in some detail why this information was 'material in the course of completion':

"... the information that you have requested forms part of Network Rail's preliminary work on the options for future improvements to a part of the railway network. The information is part of the Kent Route Study; this is one of a series of Route Studies that Network Rail is conducting as part of our Long Term Planning Process (LTPP).² This Route Study will examine priorities across the Kent network and will examine options to extend the high speed rail network to

¹ Internal review decision FOI2015/01289

² Further information on Network Rail's Long Term Planning Process can be found on our website: <http://www.networkrail.co.uk/Long-Term-Planning-Process/>

Route Studies are published here when they are complete: <http://www.networkrail.co.uk/long-term-planning-process/route-studies/>

Hastings alongside other rail solutions. Network Rail is currently in the process of formulating the options for this Study.

The addition of the proposal to extend the high speed rail network to Hastings via Ashford to the Kent Route Study was announced in the Budget in July 2015; this announcement also set out the time scale for the Study.³

“The Department for Transport has asked the rail industry to include extending High Speed 1 services to Hastings and Rye in the forthcoming Kent Route Study. The outputs from this study will be presented to the government for consideration in 2016, with a view to this work being an option for funding after 2019”.

At the time of your request and at the present time, the information held by Network Rail consists of our initial scoping of the options and our preliminary work on the feasibility of these options. This is the very first stage in the Study and work on the Study will continue for some time to come. At this time, we anticipate that a draft for consultation purposes will be published in autumn 2016 and a final document in spring 2017, following agreement from all parties concerned.⁴ It is important to stress that no decisions have been taken at the present time and even when it is complete, the Kent Route Study will not ‘make a decision’ about what options may go forward; rather, once Network Rail’s Study is completed later in 2016, it will then be presented to the Department for Transport for consideration.”

I appreciate that some time has passed since your previous request; however, I have considered the requested information and the circumstances of this case, and I confirm that your present request asks for the current status of the same proposals and captures the same information as you have previously requested.

I should therefore make clear that the current status of the projects you have asked about remains the same as described above. The information that you have now requested continues to form part of our ongoing work on the options and advice which will be included in the forthcoming Kent Route Study; no decisions about what work will proceed have been taken at the present time.

The situation regarding the Kent Route Study also remains the same; the Study is intended for publication in draft form once it is complete. At the time of writing, we continue to work towards publication of the draft version of the Study during the autumn of 2016.

³ The process was also explained in a speech by Claire Perry MP at the Hastings Rail Summit in January 2015: “Network Rail is including the proposal as part of its Kent route study. The study will influence the rail industry’s advice to the government on future spending priorities. And when the government has received that advice, we can decide the best way forward.”
<https://www.gov.uk/government/speeches/hastings-rail-summit>

⁴ Please note that at this early stage, these timings remain provisional.

Decision

On this basis, I consider that Network Rail was correct to apply regulation 12(4)(d) to your request, and to refuse to provide the information to you at this time. In the review of your previous request FOI2015/00665, we explained that material in the course of completion can include information created as part of the process of formulating and developing policy, and where this process is not yet complete. This continues to apply in the present case as the information we hold – much of which is the same as the information captured in your previous request – is not yet complete and finalised for publication in the draft version of the Kent Route Study.

I therefore agree with the position set out in our letter of 7 July 2016, which stated that our work on calculating the costs of the proposed project to allow direct services from Hastings to London St Pancras via Ashford using HS1, and our work on plans for potential upgrade work to line speed and signalling between Ashford and Hastings (plus any duelling and electrification projects, including any works that need to be completed at Ashford station) constitutes material in the course of completion.

In addition to this, I consider that the exception for internal communications – regulation 12(4)(e) – also applies to some of the requested information. This is because it continues to be the case that the greater majority of the information you have requested is being shared internally between those working on the Study and has not been shared outside Network Rail. As we explained in our previous review response to you, this regulation is also used to protect a ‘private thinking space’ when work is being undertaken for policy development. Rather than repeat the arguments that I have previously provided to you, I have attached a copy of the previous review decision - FOI2015/01289 – which contains further discussion of the reasons for the refusal of this information under regulations 12(4)(d) and 12(4)(e).

Public interest test

These exceptions are subject to a public interest test. The Information Commissioner’s guidance highlights the need to protect internal deliberation processes and the need for a ‘private thinking space’ and preserving a ‘safe space’ to debate issues away from external scrutiny. The guidance also identifies that the timing of the request is particularly important in considering the public interest; if the process of formulating policy on a particular issue is still going on when the request is received, disclosure of drafts and unfinished documents at that stage might make it difficult to bring the process to a proper conclusion. These factors are very relevant to the present case. As explained above, at the time of your request and at the time of this internal review, work on the Kent Route Study is still ongoing within Network Rail, and the external consultation process has not yet begun.

There is also a recognised public interest in accountability and transparency, and specifically in the Kent Route Study and the options being considered by Network Rail; however, I consider this public interest is satisfied to a significant degree by the consultation that will follow the publication of the Kent Route Study; I also note that Network Rail has to date undertaken a number of engagement exercises for the public and interested parties during the preparation of the Study.

Additionally, as publication of the draft version of the Kent Route Study is expected to take place in the near future, I also consider that disclosing the requested information at this time would distract from the recognised process of publication and consultation by placing incomplete and unfinished information into the public domain; disclosure of this information would be potentially misleading at a time when final conclusions have not been reached.

I therefore consider that the strongest public interest lies in preserving the safe space for Network Rail to complete their consideration of the options for the Hastings-Ashford line, and to prepare and finalise material for inclusion in the forthcoming Kent Route Study. I therefore consider that the balance of the public interest favours maintaining the exception at this time.

I hope that this explanation will be useful for you.

Yours sincerely

Lou Lander
FOI Manager– Compliance & Appeals

Next steps

If you are not content with the outcome of this 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

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

