



Florian Ellebrecht

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Network Rail

Freedom of Information

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30 May 2023

Dear Florian Ellebrecht

**Internal Review reference number: IR2023/00436**

**Original request reference number: FOI2023/00313**

Thank you for your email of 6 April 2023, concerning the response you received to your request for various signalling diagrams in the Southern Region. I have considered this internal review under the Environmental Information Regulations 2004 (EIR).

By way of summary of your request history, on 13 March 2023 you requested the signalling diagrams for 10 different lines in Kent. Your request was refused on 28 March 2023 under regulation 12(5)(a) of the EIR on the basis that disclosure of the information would adversely affect public safety.

In your email where you requested an internal review, you disputed the application of this exemption for the following reasons:

It is argued that there are too detailed diagrams, thus providing a source for attacks on the infrastructure. I would like to ask you to reconsider this. There are already numerous videos and pictures of the routes online, which show the exact locations of the signals etc. and are accessible to everyone. Furthermore, there has been no increase in attacks/sabotage on the infrastructure reported by other

countries. Therefore, the danger of such attacks is much lower than actually assumed.

In this internal review I will therefore consider whether it was appropriate to refuse your request for signalling diagrams under regulation 12(5)(a) of the EIR for reasons of public safety.

## **Decision**

After further consultation with our subject matter experts, I have concluded that due to the level of detail contained in these particular diagrams, it was appropriate to refuse these signalling diagrams under regulation 12(5)(a) of the EIR.

## **Consideration**

Regulation 12(5)(a) of the EIR permits a public authority to withhold information where its disclosure would adversely affect international relations, defence, national security or public safety. In the case of your request, it was considered that disclosure of the information would adversely affect public safety. After further consideration I also consider that disclosure of the information would adversely affect national security as well as public safety. As the Information Commissioner (ICO) explains:

National security has many different aspects but the following example [EA/2020/0332&0333] shows that relatively mundane environmental information about civil infrastructure could also be of use to terrorists and therefore could attract the exception provided by regulation 12(5)(a)<sup>1</sup>

EA/2020/00332&00333 concerned information about reservoirs in which the tribunal stated that: ‘release of detailed information about large reservoirs would adversely affect national security or public safety. This is because this information can be used as the basis for a terrorist attack, which would put the public in serious danger.’ (paragraph 30)

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-5-a-international-relations-defence-national-security-or-public-safety/#public-interest>

In decision notice [FER0820729](#)<sup>2</sup>Transport for London applied regulation 12(5)(a) to information about tunnel ventilation systems on the basis that disclosure would adversely affect national security, the ICO agreed with this approach stating:

26. The concept of public safety is readily understood but “national security” is not defined in the EIR. However the term is used in other legislation including the Freedom of Information Act where section 24 of that Act provides an exemption where this is required for the purposes of safeguarding national security. The Commissioner has issued guidance on this exemption which provides examples of where section 24 is likely to apply. In particular, it explains that an exemption for national security would apply to information which could assist a terrorist attack.

In relation to information which can adversely affect public safety, the ICO explains that it can include the following types of information:

- details about systems designed to protect public safety
- material identifying individuals who might be targeted as a result of disclosure
- details about potential targets for terrorists, and
- information that would undermine the security of particular establishments, operations or infrastructure.<sup>3</sup>

The level of detail contained in the signalling diagrams could be used by terrorists to plan attacks on railway infrastructure, therefore disclosure would adversely affect public safety and national security. I appreciate your point that there is a variety of information online which shows the locations of signals, however the reason for withholding the signalling diagrams you have requested is not about revealing their location. Where possible we do disclose signal diagrams where the information contained in the signal diagrams simply shows information that can be gleaned from observation, however the level of detailed contained in these particular diagrams goes beyond that. It provides additional information on the inner workings of the signals, details that cannot be obtained by simply viewing the signals and it is that level of detail that should not be in the public domain.

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615771/fer0820729-1.pdf>

<sup>3</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-5-a-international-relations-defence-national-security-or-public-safety/#safety>

In decision notice [FER0820729](#)<sup>4</sup> the ICO remarked on how transport infrastructure can be a target for attacks and how highly motivated terrorists can use what is seen as potentially harmless information to plan attacks:

27. The Commissioner is also mindful that terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding what seems harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.

29. In the Commissioner's view disclosure would give encouragement to those with ill intent or help them plan an attack. The Commissioner also recognises that disclosure would be likely to increase the confidence of any attacker even if that confidence is ultimately misguided or irrational.

30. The Commissioner considers there is a clear causal link between disclosure of the full technical reports and threats to national security and public safety. In reaching this decision the Commissioner has taken into account the fact that the UK threat level remains severe meaning an attack is 'highly likely' and there have been attacks and suspicious devices found at transport hubs and other infrastructure around the world. The Commissioner is also aware that in a number of cases terrorists have made use of 'open source' information to help plan an attack.

I consider that these points raised by the ICO in their decision notice for TfL apply in the case of your request. The detailed technical information which may initially seem harmless could assist terrorists in gathering intelligence on the railway infrastructure. As mentioned above the level of detail provided in these diagrams goes beyond the information on signals which is already accessible to the public, it provides details of how the signals work in practice, which could allow those with nefarious intentions to target the infrastructure and trains. As acknowledged by the ICO in the TfL decision notice there is a threat to transport infrastructure and a causal link between disclosure of technical reports, such as these detailed signalling diagrams, and the threat to national security and public safety.

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<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615771/fer0820729-1.pdf>

For all these reasons, it is considered that the exception under 12(5)(a) is engaged, however to apply the exception it must also be demonstrated that the public interest lies in withholding the information. I have considered the public interest test below.

## **Public Interest**

I appreciate that under regulation 12(2) of the EIR public authorities are expected to apply a general presumption in favour of disclosure. The factors in favour of disclosure include increased transparency, openness and increasing awareness to the public of how Network Rail's assets work and how the infrastructure is managed. However, I note that the information does not show how public funds are managed and its disclosure would not necessarily make Network Rail more accountable in how it spends tax payers' money.

Set against these reasons in favour of disclosure is the significant public interest factor against disclosure - the potential threat to public safety and national security. In its decision notice for TfL the ICO explains that any public interest argument in favour of disclosure should be balanced against disclosure, taking the view that there is a strong public interest argument in avoiding such risks:

42. However, this has to be balanced against the harm that would be caused by disclosure. The Commissioner takes the view that there is a strong public interest in avoiding threats to national security or disclosing information which would put people in danger. Only when there are compelling arguments for disclosure will it justify releasing information which has the potential to put the public in harms way or assist someone in preparing a terrorist act. No such arguments exist in this case and consequently the Commissioner has found that in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosure.<sup>5</sup>

The ICO also explains in its guidance there would 'have to be compelling public interest arguments in favour of disclosure before you release information that would compromise

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<sup>5</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615771/fer0820729-1.pdf>

the UK's national security.'<sup>6</sup> I appreciate information on Network Rail's infrastructure is of particular interest to a community of railway enthusiasts, however public interest is more than just what interests an individual or a group of individuals, rather it concerns the 'public good'.<sup>7</sup> There are no particular compelling public interests arguments favouring disclosure and there are strong public interest reasons for not disclosing the information. Therefore, I consider that the public interest lies in maintaining the exception under regulation 12(5)(a) and withholding the information.

I appreciate this may not be the outcome you were hoping for, but I hope this additional explanation is helpful.

Yours sincerely

Danielle Stratton

Information Right Specialist– Compliance & Appeals

### **Appeal rights**

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 (ICO) can be contacted at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or you can contact the ICO through the 'Make a Complaint' section of their website on this link: <https://ico.org.uk/make-a-complaint/>

The relevant section to select will be "Official or Public Information".

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<sup>6</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-5-a-international-relations-defence-national-security-or-public-safety/#safety>

<sup>7</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/>