



**Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004 (Regulation 18)**

Decision Notice

Dated 26 July 2006

Public Authority: Network Rail Limited (“Network Rail”)

**Address: 40 Melton Street
London
NW1 2EE**

Summary Decision and Action Required

The Commissioner’s decision in this matter is that:

- 1. Network Rail is a public authority within the meaning of regulation 2.2 of the EIR .**
- 2. As a public authority it did not deal with the complainant’s request in accordance with Parts 2 and 3 of the EIR in that it failed to comply with its obligations under regulations 5(1) and 6(2).**
- 3. Network Rail must now respond to the complainant’s request for information dated 28th July 2005 within the terms of the EIR.**

1. Freedom of Information Act 2000 (the “Act”) and Environmental Information Regulations 2004 (the “EIR”) – Application for a Decision and the Duty of the Commissioner

- 1.1** The Information Commissioner (the “Commissioner”) has received an application for a decision whether, in any specified respect, the complainant’s request for information made to Network Rail has been dealt with in accordance with the requirements of Parts 2 and 3 of the EIR.
- 1.2** The enforcement and appeals provisions of the Act apply for the purposes of the EIR.



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- 1.3 Where a complainant has made an application for a decision, unless:
- a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The complainant has advised that on 28th July 2005 the following information was requested in a letter to Network Rail in accordance with regulation 5:

“Some work was carried out at Dudding Hill Junction and elsewhere around Christmas 2003. I understand that its purpose may have been included in your 2003 Route Plans documentation. There may possibly be a more recent document referring to Cross London routes.

I would be grateful if you would provide me, in paper form, with a copy of any document that is relevant to the proposed future use of the Dudding Hill branch. I believe that under the Environmental Information Regulations 2004 you are required to provide the information requested in the form requested.”

- 2.2 The complainant had previously, in 2004, made a similar request but had been dissatisfied with the responses from Network Rail. He had sent a number of reminder letters to Network Rail, including a brief reminder letter dated 12th January 2005 which did not restate the wording of the request but merely referred back to the dates of earlier letters. Therefore the first request covered by the EIR was the complainant's letter dated 28th July 2005.
- 2.3 The complainant had sought the advice of the Information Commissioner's Office by telephone in March 2005 and had been informed during that telephone conversation, confirmed in writing, that there was some uncertainty as to whether or not Network Rail fell within the definition of a “public authority” under the EIR. The complainant was advised to make a formal request under the EIR to Network Rail and to revert to the Commissioner if Network Rail denied that they were a public authority.
- 2.4 The complainant wrote again to Network Rail on 7th March 2005, referring to his earlier letters but not repeating the actual request. He received no reply.



- 2.5 Following further advice from the Information Commissioner's Office, the complainant wrote again to Network Rail on 28th July 2005 stating his request for information in full, as quoted in paragraph 2.1 above.
- 2.6 Network Rail did not reply to the complainant's EIR request dated 28th July 2005.

3. Relevant Statutory Obligations under the EIR

Regulation 5(1) provides that –

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.”

Regulation 6(2) provides that –

“If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant so requests; and
- (c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18.”

Regulation 2(2) provides that –

“Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.”

4. Review of the case

- 4.1 In this case, although Network Rail had replied to the complainant's earlier letters which predated the advent of the Act and of the EIR, it did not reply at all to the complainant's request made under the EIR.



4.2 However Network Rail's response to a different complainant in an unrelated case would appear to suggest that Network Rail do not regard themselves as a public authority for the purposes of the Act.

4.3 In assessing the case in hand, it was necessary as a principle to clarify the status of Network Rail under EIR, since if Network Rail is not a public authority under EIR, Network Rail is not obliged to reply to the complainant's request for information. The opportunity was also taken to consider the status of Network Rail under the Act.

5. Analysis of the case

5.1 The status of Network Rail

5.1.1 In this case, Network Rail has not replied at all to the complainant's request under the EIR and has therefore not advanced any arguments as to its status as a public authority under the EIR.

5.1.2 The complainant has expressed the view that Network Rail should be regarded as a public authority. He has drawn an analogy with provisions under the Disability Discrimination Act 2005, in which a public authority is defined to include "any person certain of whose functions are functions of a public nature". There is a range of legislation under which the term "public authority" is defined, although in this case we are concerned specifically with the EIR.

5.1.3 The Information Commissioner has analysed the position of Network Rail under the EIR.

(i) Network Rail is a private company limited by guarantee, with members drawn from the rail industry and general public as well as the Department for Transport.

(ii) Referring to the definition of "public authority" in regulation 2(2) of the EIR, it is clear that Network Rail falls under neither regulation 2(2)(a) "government departments", nor under regulation 2(2)(b) "any other public authority as defined in section 3(1) of the Act...." .

(iii) However it does fall within regulation 2(2)(c) , i.e. "any other body or other person, that carries out functions of public administration".

5.1.4 Network Rail took over the railway network in 2002 from Railtrack. It is described by the Office of Rail Regulation ("ORR") as "a private sector monopoly owner and operator of a national asset of considerable public importance".



5.1.5 Network Rail's own Mission Statement makes clear its public administration role: "Our Mission is to provide a safe, reliable and efficient railway fit for the 21st century". Its overall intention is to ensure that the public and commerce benefit from an effective and efficient railway system. Network Rail's responsibility for ensuring public safety on the railway network clearly demonstrates its crucial public administration role.

5.1.6 Network Rail owns and operates a national railway system and its own literature emphasizes this key national strategic role: "Network Rail represents a new beginning, a new vision and a new way of delivering Britain's railway" and "We are ambitious for the future of the railway and wish to grow the railway, meeting the demands and aspirations of rail users. Our task now is to build on the progress we have made so that we can transform Britain's railway into a world-class infrastructure".

5.1.7 Network Rail is subject to regulation by public bodies, primarily by ORR. ORR has stated expressly that this regime exists to ensure the accountability of Network Rail to the public interest.

5.2 Is the information requested caught by the EIR?

5.2.1 Regulation 2(1) of the EIR defines "environmental information" as follows: " "environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);"

5.2.2 Information relating to the route taken by and the use of a railway line through any area is environmental information within the definition in regulation 2(1)(b) since a railway necessarily brings with it noise into its surrounding environment. Regulation 2(1)(c) also applies, since plans relating to the use of a railway line are also a factor likely to have an impact on the environment.

5.2.3 The complainant made clear in his initial letter to the Commissioner dated 7th April 2005 that his interest in the information is environmental and in support of his belief that the information is environmental he states that:

- (i) "the railway in question crosses a local authority park"
- (ii) "a group, now defunct, was set up to oppose the introduction of Heathrow Express trains on the railway, on environmental grounds"
- (iii) "The local authority was considering initiating an 'Environmental Impact Assessment' but so far as I know did not do so."

These points all suggest that the information sought is environmental in nature and therefore covered by the EIR.

5.3 Is Network Rail a public authority under the Act?

5.3.1 As the information requested is environmental information within the terms of the EIR, the question of whether or not Network Rail is a public authority under the Act does not arise. However for the sake of establishing the principle and ensuring clarity for the future, the Commissioner has also considered this issue.

5.3.2 The Act defines "public authority" in section 3(1):
"In this Act "public authority" means –
(a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
 (i) is listed in Schedule 1, or
 (ii) is designated by order under section 5, or
(b) a publicly-owned company as defined by section 6."

5.3.3 As discussed in paragraph 5.1.3(i) above, Network Rail does not fall into any of the specified categories.

5.3.4 Network Rail is not, therefore, a public authority under the Act.

6. **The Commissioner's Decision**

The Commissioner's decision in this matter is that:

6.1 Network Rail falls within the definition of a public authority under the EIR.

6.2 The information requested constitutes "environmental information" within the meaning of the EIR.



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6.3 Network Rail failed to comply with regulation 5(1) in that it failed to make available to the complainant environmental information which it held and also failed to comply with regulation 6(2) in that it did not explain to the complainant the reason for its decision not to supply the information requested.

7. Action Required

The Commissioner requires Network Rail to respond to the complainant's request and either to provide, in the form requested, the information requested or to provide a formal refusal notice to the complainant within 30 days of the date of service of this notice.

8. Right of Appeal

8.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

8.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 26th day of July 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**