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28 February 2023

Dear Sophie

Reference number: FOI2023/00138

Following a Teams meeting on 31 January 2023 regarding your previous requests that were refused on the grounds of cost, you narrowed your request to ask for the following information:

As agreed, the Network Rail FOI team will provide a response to question 1 as set out in our request letter of 22 December 2022. As such the Network Rail FOI team undertakes to review the central folder as referred to in its response letter dated 25 January 2023, which we understand to be an accessible online resource, in order to locate and provide the documentation described in question 1 of our request.

1. In relation to the “extensive research” described in the Consultation Document, specifically, any optioneering studies, constructability reports, assessments of options produced in the year prior to, and since HS2 published the public consultation document entitled “Old Oak Common Station Design” on 5 February 2019, which provide the basis for NR’s conclusion that the Site is “the only suitable area” for the Lineside Logistics Compound.

I have processed your request under the terms of the Environmental Information Regulations 2004 (EIR).¹

I can confirm that we hold reports relevant to your request, including an option selection report, within the central folder referenced in response to FOI2022/01512. However, it is my view that this information is exempt from disclosure under regulation 12(4)(d) of the

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. Information about the construction of a lineside logistics compound meets the definition of environmental information at Reg.2(1)(c) of the EIR because it is a plan that will affect elements of the environment such as the landscape.

EIR (material in the course of completion). I will explain this exception and how it applies in the remainder of this response letter.

Regulation 12(4)(d)

Regulation 12(4)(d) of the EIR can be applied when the request relates to material which is still in the course of completion, unfinished documents or incomplete data. The Information Commissioner's guidance explains that examples of incomplete or unfinished documents can include the following:

‘Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete. Draft documents are unfinished even if the final version has been produced.’²

In the case of your request, while this particular document is finished, it has bearing on a larger piece of work still in progress, specifically our application for a Transport and Works Act Order (TWAO).

As the EU made clear when drafting the Directive which led to the EIR it must be:

‘...acknowledged that public authorities should have the necessary space to think in private. To this end, public authorities will be entitled to refuse access if the request concerns material in the course of completion.’³

As final decisions have not yet been made and there are intentions to publish information on option development in the future, we believe it would not inform public debate (and may potentially damage such debate) to disclose the documents we have produced and hold at this time. It is primarily the need for a safe space for Network Rail to reach decisions on the basis of evidence and expertise that has led us to consider that the information we hold constitutes material that is in the course of completion, and therefore regulation 12(4)(d) applies.

The public interest test

While I believe I have demonstrated that the exception is engaged, in order to withhold it I must also demonstrate that the public interest favours doing so. I have considered the issue and set out my findings below.

² More information on this exception can be accessed at the following link: https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52000PC0402&from=EN>

Factors in favour of disclosure

- There is a general presumption in favour of disclosure under the EIR regime as it promotes openness, transparency and accountability.
- This information is likely to be significant those who live in the local area. There is public benefit in promoting access to this type of information.
- Providing this information would give the public greater insight into the development of schemes. This would allow for an increased public understanding of public policy which could cause changes to the economy and the environment of the country.

Factors against disclosure

- The disclosure of documents that form part of a wider evidence base, that have not previously been made publicly available, would be likely to have a negative impact on the 'safe space' required by our experts and for the third parties, such as HS2, who need to make the decisions on the points raised in your request, to consider the initial data or findings as held by Network Rail and review the information fairly, to make appropriate and measured decisions. As the ICO guidance states,

'In such cases the public authority may argue that it needs a 'safe space' in which to do this away from public scrutiny, and that disclosing this material would harm that safe space.'⁴

- The discussions and considerations for projects such as the development of a lineside logistics compound rely on significant amounts of technical expertise and experience as well as a detailed and far-reaching evidence base; this includes the work that we have carried out previously which is withheld from disclosure in this response. Explaining the rationale behind any considerations at this early stage is not feasible, within the constraints of the EIR and this response. In effect, this means that any information we put into the public domain at this time would provide only a partial picture, which is unlikely to further public debate or permit greater engagement with decisions about the environment.
- TWAO documentation will be made publicly available as part of the application process. Given that there is this intention to publish more details around the subject, I am of the view that it is appropriate to allow these details to be published through formal communications, within the wider context and at the appropriate time, rather than by disclosing any information that is being

⁴ https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

considered at this stage. Disclosure of the information we hold at this time, prior to wider publication of our optioneering research would only serve to undermine the public communications strategy which is integral to the decisions that will eventually be made on this project. The Information Commissioner's Office (ICO) suggests that the closer the date of publication, the weaker the public interest arguments are in favour of disclosure, and that:

...information can be withheld on condition that "...it would be sensible to do so, fair to those concerned and in line with accepted practices."

In conclusion, we recognise the strength of the factors above which favour disclosure; however, this must be balanced against the strong public interest in protecting an ongoing process in which we anticipate that the material (or at least the most important parts of it) will be published at which point there will be an opportunity for the public to challenge our actions and decisions should it be appropriate to do so.

I am sorry that I am not able to provide information in response to your request on this occasion but I hope that the explanations provided in this letter are useful.

If you have any enquiries about this response, please contact me in the first instance at FOI@networkrail.co.uk. 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 Rights Specialist

You are encouraged to use and re-use the information made available in this response freely and flexibly, with only a few conditions. These are set out in the [Open Government Licence](#) for public sector information. For further information please visit our [website](#).

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 Compliance and Appeals team at Network Rail, Freedom of Information, The Quadrant, Elder Gate, Milton Keynes, MK9 1EN, or by email at ComplianceandAppealsFOI@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 (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".