



Sarah Fitzpatrick

By email: [sarah.fitzpatrick@nortonrosefulbright.com](mailto:sarah.fitzpatrick@nortonrosefulbright.com)

Network Rail

Freedom of Information

The Quadrant

Elder Gate

Milton Keynes

MK9 1EN

8 January 2023

Dear Sarah

**Reference number: FOI-202300263**

Thank you for your email of 3 November 2023, in which you requested the following information:

I refer to the attached FOIA response provided on 28.2.23. In that response you declined to provide the information requested despite having found the document requested, the reason you gave was as follows:

*"...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 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)."*

NR has of course now applied for the TWAO, application having been made on 17 April 2023, and the inquiry commences on 14 November 2023. As you should know, the adequacy of NR's optioneering exercise and the appraisal of alternative sites is a major issue at the inquiry. It is clear that you hold and have not disclosed information material to the proper examination of the issues before the inspector at the inquiry. This of course now raises issues of natural justice. We trust that the document identified can now be disclosed and look forward to hearing from you asap. We have put your solicitors Addleshaw Goddard on notice that we may ask for an order for disclosure from the inspector in the event that our repeated requests for information from NR are ignored or rebuffed.

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

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<sup>1</sup> 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 acquisition of land meets the

We hold a document called 'Old Oak Common Lineside Logistics Compound Options Report' but it is our view that it is exempt from disclosure under regulation 12(4)(d) – material in the course of completion.<sup>2</sup>

This document was created to provide a summary of the research undertaken on alternative locations considered in the context of facilitating the Lineside Logistics Compound and Road Rail Access Point (RRAP) required to complete the Old Oak Common Great Western Mainline (GWML) project. This document is still in draft form and was never completed. I am, therefore, content that it falls within the definition of 'material in the course of completion' set out at regulation 12(4)(d) of the EIR.

I recognise that there is some public interest in disclosure since to do so promotes openness, transparency and accountability. However, the public interest is limited because through the public inquiry, we have given evidence which supersedes the details contained within this draft report. This means that disclosure of 'Old Oak Common Lineside Logistics Compound Options Report' would not further understanding of our optioneering process.

Set against this is the need for our experts to have the safe space required to consider decisions without the need to parse, temper or otherwise modify the expression of their views. For the reasons set out above, I can see only limited value in releasing the information in question, and I am content that there is substantially more public interest in protecting the information in question.

If you have any enquiries about this response, please contact me in the first instance at [FOI@networkrail.co.uk](mailto:FOI@networkrail.co.uk). Details of your appeal rights are below.

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definition of environmental information at regulation 2(1)(c) of the EIR because it is a measure that will affect elements of the environment such as the landscape.

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/#whatisan>

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

Yours sincerely

**Anisha Pandya**  
**Information Rights Specialist**

### **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](mailto: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".