



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

T 01908 782405
E FOI@networkrail.co.uk

9th February 2018

Dear [REDACTED]

Information request

Reference number: FOI2018/00059

Thank you for your email of 13th January 2018 in which you requested the following information:

'I'm referring to the steps leading up from the road at the North-West corner of the road bridge which is between the two platforms at Slaithwaite Station as shown on the attached map which your colleague [Name Redacted] in Land Information kindly provided. The steps lead up to an unstepped path which is apparently not in your ownership (and this in turn leads to the western end of Hill Top Road).

I would like to know:

- 1. Have you - or are you aware of the existence of - any records of Network Rail or its predecessors having acknowledged that this is a public right of way? If so, what are the records and will you please provide the information they contain.*
 - 2. Have you - or are you aware of the existence of - any records of Network Rail or its predecessors having disputed this being a right of way? If so, what are they and will you please provide the information they contain.*
 - 3. Have you - or are you aware of the existence of - any other records in relation to the use of these steps by the general public? If so, what are they and will you please provide the information they contain.*
 - 4. Who maintains the fabric of the steps and the walls to the sides and provides the lighting?*
 - 5. Would you object if an order were made by Kirklees Council for these steps to be shown in the Definitive Documents as a Public Right of Way (foot only)?*
- You may find it useful to refer to previous email correspondence attached, including with Network Rail Land Information. Their reference is 'Footpath at Slaithwaite: 5981755'.*

I have processed your request under the terms of the Environmental Information Regulations 2004 (EIR). This is the European legislation that runs parallel to the Freedom of Information Act 2000 (FOIA). Under s.39 of the FOIA, if the information an applicant requests is environmental information then we need to deal with their request under the EIR.

In this case because the information you are looking for is about the condition of “built structures inasmuch as they are or may be affected by the state of the elements of the environment”¹.

Have you - or are you aware of the existence of - any records of Network Rail or its predecessors having acknowledged that this is a public right of way? If so, what are the records and will you please provide the information they contain.

Please see the correspondence file attached. You will note there are incorrect historic references to the steps being a Public Right of Way (PrOW) but that, as the later correspondence demonstrates, these references were made in error.

Have you - or are you aware of the existence of - any records of Network Rail or its predecessors having disputed this being a right of way? If so, what are they and will you please provide the information they contain.

Again, please see the file attached.

You will note that a small amount of information has been redacted from the documents in question. This is because I am of the view that it is exempt from disclosure by virtue of Regulation 13(1) of the EIR which allows public authorities to withhold information if it identifies any living individual in breach of the Data Protection Principles (DPP).

In this case the information I have redacted is made up of names, contact details and case reference numbers since these could all potentially be tied back to living individuals. It would be unfair to disclose this information (and therefore not consistent with the DPP) because the individuals in question would have had no expectation that the correspondence and views they proffered in the course of their work would be disclosed to the world at large through the EIR. Given that the substantive information contained within the document remains intact, I cannot make out any overriding legitimate interest that would merit disregarding the DPP.

¹ For information about the definition of “environmental information” according to the EIR, please consult <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>, specifically Regulation 2(1)(f).

Have you - or are you aware of the existence of - any other records in relation to the use of these steps by the general public? If so, what are they and will you please provide the information they contain

We are aware of the steps being used by the general public only because we have received details of liability claims in relation to them. I have removed the part of our correspondence file that relates to these claims because it is made up of correspondence between us and our solicitors and internal memoranda relating to potential personal injury claims.

The EIR allow public authorities to withhold information from disclosure '*to the extent that its disclosure would adversely affect the course of justice...²*'. The definition of what is intended by "the course of justice" has been provided by the courts that have defined the term as being a '*generic concept somewhat akin to "the smooth running of the wheels of justice"*'.³

Here the information in question is all legal advice either received from an external source (our solicitors at the time) or in the form of an internal memo. I am of the view that it meets the definition since its disclosure would *impair the smooth running of the wheels of justice* because putting the information into the public domain would make our employees and solicitors reticent to be open and direct when discussing personal injury claims in the future.

Whilst it is evident that the exception is engaged (i.e. the material you have requested falls within the definition set out by the EIR), this is not sufficient reason for us to withhold it. We must also demonstrate that the public interest lies in not disclosing the information in question.

Factors in favour of disclosure

I recognise that there are public interest factors in favour of disclosure. In the normal course of events it is always good for public authorities to provide information in response to requests since it demonstrates transparency and accountability. Moreover in this instance I understand that the information might be of use in understanding the way in which our property has in the past and might in the future be used by the public at large.

Factors against disclosure

We can, however, also see arguments in favour of withholding the information. It would only be in exceptional circumstances that the public interest would be better

² See <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/12/made> for more information.

³ See https://ico.org.uk/media/action-weve-taken/decision-notice/2014/977030/fer_0520189.pdf.

served by undermining the principle that legal advice should be protected from disclosure. In direct terms, public authorities should be able to discuss legal matters fully and without reticence in order to receive the best possible advice and to act both in accordance with the law and in such a way as to mitigate risk to ourselves and the public. Making our employees and solicitors wary about conducting discussions of this type makes it more likely that we would act unlawfully or in a way that is not consistent with protecting our interests and those of the public we serve.

Conclusion

Taking all of this into consideration, I am of the view that it is appropriate to withhold the information in question. Its disclosure would do little to shed light on the use of the land and the public interest in transparency is largely met by the disclosure of the remainder of the correspondence. Set against this is the significant concern that its disclosure would make us unreasonably guarded in future conversations about issues of this type. This, to my mind, puts the balance of public opinion firmly behind withholding the information.

Who maintains the fabric of the steps and the walls to the sides and provides the lighting?

We are responsible for the maintenance of the steps.

Would you object if an order were made by Kirklees Council for these steps to be shown in the Definitive Documents as a Public Right of Way (foot only)? You may find it useful to refer to previous email correspondence attached, including with Network Rail Land Information. Their reference is 'Footpath at Slaithwaite: 5981755'

While strictly speaking this is not a request for recorded information (and as such is not a matter we can deal with under the EIR), I understand from conversations with colleagues that in principle we would have no objection to the steps being shown on the Definitive Map as a public footpath.

I hope the information and explanation provided are useful to you. If you have any enquiries about this response, please contact me in the first instance at FOI@networkrail.co.uk or on 01908 782405. 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

Jonathan Mantle
Freedom of Information Manager

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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 FOI Compliance and Appeals Manager at Network Rail, Freedom of Information, The Quadrant, Elder Gate, Milton Keynes, MK9 1EN, or by email at foi@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 can be contacted at:

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