



Network Rail
Freedom of Information
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19th June 2018

Dear [REDACTED]

Bat Surveys

Internal Review reference number: FOI2018/00474

Original Request reference number: FOI2018/00344

I refer to your e-mail of 20th April 2018 which requested an internal review of the handling of your request for information made on 19th March 2018. I have included the details and history of your request in an Annex following this letter.

As a result of this review, I am now disclosing the information that we hold in response to your request; please find the relevant extracts in the attached documents titled 'FOI201800474 Ecology Survey extracts' and 'Mill Water Viaduct Bat Survey Extracts'. I will explain more about the information being disclosed to you later in this response.

Issues on review

The purpose of the internal review procedure is to provide a fair, thorough and independent review of the handling of the applicant's request, and of decisions taken pursuant to the Environmental Information Regulations 2004 (EIRs).

In this instance, your request for a review indicated that regulation 12(5)(g) of the EIRs did not apply to the requested information and argued that there is a compelling public interest in Network Rail being transparent and accountable when it comes to making arrangements to check the environment within our sphere of influence for the presence or absence of bats.

In this review, I will consider:

- whether the exemption applied under the EIR, namely regulation 12(5)(g) was correctly applied to this information;
- whether the public interest lies in disclosure of the requested information;
- if any other exemptions under the EIR apply to the requested information.

Decision

This review is focused on our refusal to provide the information requested in question 3 of your request, as the answers to both questions 1 and 2 were previously supplied to you in response to FOI2018/00344.

Having reviewed your comments and the information held in response to this request and consulted with our experts, I have concluded that:

- regulation 12(5)(g) does not apply to this information (protection of the environment) and I do not uphold the justification and public interest reasons provided in our response to request FOI2018/00344;
- no other exemptions are applicable to this information; and
- the information originally withheld should be disclosed to you in response to this internal review.

Please note that the majority of the documents held are general Ecology Surveys and not surveys specific to bats. I am therefore providing the information contained in the Ecology Surveys where it specifically concerns bats.

Please find attached a document titled 'FOI201800474 Ecology Survey extracts'. This document provides the relevant extracts from the more general Ecology Surveys held on the 27 viaducts that have had pointing work carried out in Scotland between 1st January 2016 and 31st December 2017.

The extracts provided specifically relate to bat activity and bat environment. As noted above, the documents from which they are extracted also comment on a number of other species and plants that are not relevant to your original request; I have not provided any information that is not relevant to your request. We only hold one specific Bat and Otter Survey related to these locations; again, only the relevant

extracts have been provided so only the specific information on bats is supplied to you in this review.

Please note that we only hold relevant information for the 12 viaducts listed below. In relation to the remaining 15 viaducts listed on the spreadsheet we provided in response to request FOI2018/00344, I have made further enquiries and confirm that we do not hold any relevant information for these 15 viaducts¹.

The Ecology Survey extracts provided relate to the following viaducts:

Dunninald Viaduct
River Dee
Castlecary Viaduct
36 Arch Viaduct
Oakbank Viaduct
Carronhill Viaduct
Garry Viaduct
Slochd Viaduct
Blackwater Viaduct
Coatdyke Viaduct
Kinclair Viaduct
Mill/Milk Water Viaduct – please note that for this viaduct we hold a Bat and Otter survey – these extracts are provided in the document titled ‘Mill Water Viaduct Bat Survey Extracts’.

I hope that the information provided is useful for you.

Yours sincerely

Emma Wolstenholme
Information Officer

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¹ Strictly speaking, regulation 12(4)(a) of the EIRs requires that we carry out a public interest test to determine whether the requested information should be disclosed. However, as is recognised by the Information Commissioner’s Office, it is obviously not possible to conduct a public interest test on disclosure when the information that has been requested is not held.

contact me if you wish to re-use the information and need to seek the permission of the copyright holder.

Appeal Rights

If you are not content with the outcome of this 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

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

Annex : Request History

Your original request was made on 19th February 2018 and logged as number FOI2018/00225. Network Rail acknowledged this request on 21st February 2018. The full request wording was as follows:

Request FOI2018/00225 received on 19th February 2018

Would it be possible for you to answer the following information request under the 2015 Freedom of Information (FOI) Act.

- 1. How many railway viaducts does Network Rail manage in Scotland?*
- 2. How many railway viaducts were repaired or maintained between January 2014 and December 2017?*
- 3. Could you provide copies of the all bat surveys undertaken for each of the railway viaducts maintained or repaired between January 2014 and December 2017.*

We subsequently wrote to you on 19th March 2018, providing a refusal under regulation 12(4)(b) of the EIRs (manifestly unreasonable) as the length of time it would take to comply with your request would have been an unreasonable burden on us as a public authority. In this response, we provided the suggestion of focussing on a particular location that would be of interest to you.

You responded to our letter on the same date, and confirmed that you would like your request to focus on the following:

Request FOI2018/00344 received on 19th March 2018

In line with your recommendations, I have narrowed the request as follows:

- 1. Could you provide **a list of all 263 viaducts** on your database.*
- 2. Could you provide a list of **all viaducts that have had pointing carried out between January 2016 and December 2017**. Please exclude the Tay Bridge from this list.*
- 3. Could you provide a copy of the **bat survey reports** for the viaducts that have **had pointing carried out between January 2016 and December 2017**. Please exclude the Tay Bridge from this list.*

Network Rail acknowledged receipt of this most recent request on 20th March 2018, and responded on 18th April 2018. In this response, we confirmed that we held the information you requested and provided the information requested to answer questions 1 and 2, but the information in response to question 3 was being withheld

by virtue of regulation 12(5)(g), where disclosure of the information would have an adverse effect on the protection of the environment to which the information relates. The response explained that the information by its very nature 'discusses the presence or absence of protected species'. Disclosure of the information, while it would demonstrate a level of transparency and accountability on Network Rail's part, would also be likely to lead to the potential of increased disturbance and harm to a protected species should the information be disclosed.

You responded on 20th April 2018 with the following:

Thank you for emailing Network Rail's response to my freedom of information request dated March 19 2018 (see Network Rail's attached FOI response for information).

I note that Network Rail has declined to provide the bat survey reports (Part 3 of the FOI request) for the 27 viaducts/bridges that have had pointing carried out between January 2016 and December 2017 (Excluding the Tay Bridge). Network Rail justified withholding the bat survey reports by stating that it is not in the public interest to release the reports as doing so will reveal the location of bat roosts identified in the bat survey reports which may might result in a protected species (I.e. the bats) being disturbed or harmed.

I do not agree with Network Rail's decision not release the bat survey reports and request an internal review on the following grounds:

1. Network Rail did not described with particularity why revealing the information would adversely affect the environment and the bats.

The response infers that identifying the location of the bat colonies is a risk to their viability, but Network Rail has is not explained why.

Network Rail's reasoning would have been sound if applied to vulnerable species such as badger or birds of prey which are known to be subject to persecution. However, this does not apply to bats roosting in railway viaducts for the following reasons:

- Bats in the UK generally only become an issue with the public when there is a roost affecting a development and/or maintenance programme or if a roost is causing problems (such as smell, noise or phobia) in an occupied dwelling. There is no evidence or history of the general public deliberately blocking or damaging roosts or harming bats located in viaducts/bridges.*

- *I have been a licensed bat worker over 20 years and have specialised bats roosting in bridges and viaducts for the last nine years. In my experience bat roosts associated with viaducts/bridges are located high up on the structure (often in the arch) and are inaccessible to the general public. Anyone with malicious intent would require specialist equipment to enable them to cause any disturbance or harm. So even if someone wanted to harm the bats it would be very difficult, if not impossible without specialist knowledge and equipment, for them to do so.*

- *The act of simply standing under or in the vicinity of a viaduct/bridge with a bat roost, at any time of the day, would not cause any disturbance or harm to the bats.*

As a result the risk of disturbance to a bat roosts identified in any of the bat survey reports should be considered as none existent/negligible.

2. SNH has set a precedence for releasing this type of report.

As you will be aware, Scottish Natural heritage (SNH) is the Scottish public body responsible for the country's natural heritage. Earlier this year in an FOI to SNH, I requested copies of Bat Mitigations Plans associated with licences granted by SNH to disturb bat roosts located in Scottish railway viaducts between January 2014 and December 2017. SNH provided the all the mitigation plans as requested. All the bat mitigation plans including the locations of the bats roosts (See attached FOI response from SNH).

In all matters regarding protecting the natural heritage it seem Network Rail should take their lead from SNH. In this case Network Rail should follow suit and release the bat survey reports.

3. The application of the 'public interest test' is deficient.

Only one public interest factor in favour of release of the bat survey reports was identified by Network Rail. Other relevant public interest factors that where not considered include:

- *The public interest in the public knowing that Network Rail are conducting their duties appropriately;*
- *The public interest that arises from the public knowing that bat colonies are being protected;*
- *The public interest that arises from officials working for Network Rail knowing that transparency will ensure that they act appropriately;*

- *The public interest in the fact that the public know and have evidence that appropriate processes are being followed;*
- *The public interest that arises from knowing that bats are not being pointed into viaducts during maintenance, and that there are appropriate regimes (including protocols and method statements) to prevent this happening that are observed, enforced and any violations reported and dealt with; and*
- *The public interest in knowing that bat survey reports were conducted to the relevant standard.*

To summarise:

- 1. There is considerable public interest in favour of releasing the bat survey reports, including the locations of the bat roosts, for all the viaduct/bridges which have been pointed in the between January 2016 and December 2017; and*
- 2. As indicated by SNH, it is clear that release of the bat survey reports would not adversely affect the protection of the environment (i.e. the bats and their roosts) to which the information relates. As a result it is not appropriate in this case, under Environmental Information (Scotland) Regulations 2004 ('the EIRs'), to refuse to disclosure of the relevant bat survey reports.*

I look forward to receiving copies of the relevant bat surveys following completion of Network Rail's internal review.

Network Rail acknowledged your email on 23rd April 2018, and explained that we would carry out an internal review of the handling of your request.