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Bryn Morgan
By email: bryncmorgan@gmail.com

25 June 2021

Dear Bryn Morgan

Information request
Reference number: FOI2021/00801

Thank you for your email of 27 May 2021, in which you requested the following information:

I am writing to request copies of documents relating to the Angerstein rail crossing and Network Rail's continued plans to close the crossing and sever the only safe pedestrian route between Charlton and Westcombe Park in south east London.

In particular, I would like information about:

- the number and severity of incidents relating to the Angerstein Crossing,*
- any memos to drivers and other Network Rail staff about reporting incidents on the Angerstein Crossing*
- any internal documents setting out the justification for the closing of the crossing, including the benefits to Network Rail*
- any internal documents relating to plans for the future use of the Angerstein wharf line*
- any historic documents about previous plans for extension of the Angerstein wharf line*
- any information about the costs of replacing the crossing with a tunnel*

I have processed your request under the Environmental Information Regulations 2004 (EIR) as this type of information, relating to the measures taken at a level crossing, is environmental according to the definition in regulation 2(1)(c) of the EIRs.¹

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. Regulation 2(1)(c) refers to information requested on *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.*

I can confirm that we hold some information in response to your request. I will address each of your points in turn.

- the number and severity of incidents relating to the Angerstein Crossing

Please find attached an Excel document in response to this part of your request, titled *FOI202100801 Angerstein Wharf foot crossing incidents_redacted*. We have recorded a total of 17 incidents since August 1995 at this crossing, the details of 15 of these incidents are contained in this spreadsheet. When reviewing the data provided in this document, please note that it is a combination of data taken from our Safety Management Intelligence System (SMIS), which we have used for reporting incidents since August 1995, and details of any other specific incidents noted by the route level crossings team.

I note that as well as the number of incidents, you asked for the “severity” of incidents. In our SMIS system, we do not record or rank incidents by severity, but we record descriptions and categories; these details are all provided in the attached Excel document.

As well as the incidents listed in this Excel document, we conducted a couple of census surveys through the level crossings team to understand crossing usage and to see if any misuse took place; this was in June 2019 and October - November 2019. While incidents were not recorded separately, it was noted that various misuse incidents took place, such as individuals stopping to take photographs on the track, loitering and trespass, including adults using the crossing to access the track. It was also noted that various vulnerable users were using the crossing, such as those with pushchairs. Our level crossings team have also advised that in 2019 we also increased the safety measures at the crossing by fitting wicket gates, as it was previously an ‘open’ crossing. However, these gates are subject to daily abuse - they are often wedged open by members of public and as such the closing mechanism needs to be regularly fixed.

I have withheld a small amount of information from this Excel document under regulation 13(1) of the EIR (personal data). This is denoted by ##### markings.

Regulation 13(1) allows us to withhold personal data where its disclosure would breach the data protection principles set out at Section 35 of the Data Protection Act 2018 and Article 5 of the General Data Protection Regulations. In this instance, publishing the personal data of our employees and third parties, such as job titles, acronyms for job titles and details related to personal circumstances, as well as SMIS, British Transport Police (BTP) and other system reference numbers, would breach the first principle, which states that data should be processed fairly and lawfully. The individuals in question would have had no reasonable expectation that their details would be provided to the world at large through the EIR and it would therefore not be fair for us to disclose them.

I am also withholding the date and details of two incidents that took place at this crossing during this timeframe under regulation 12(5)(a) of the EIR (public safety). I will explain why this is the case in more detail below.

Regulation 12(5)(a) of the EIR – public safety

This exception allows us to withhold information where we consider that its disclosure would adversely affect public safety.

The Regulations do not specify the meaning of ‘public safety’ but the Information Commissioner’s Office (ICO) makes it clear that the term is to be understood as having broad implications:

‘Public safety’ may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public’s health and safety.

We do understand that there is a public interest in transparency and openness and Network Rail is committed to providing information where appropriate. However, on this occasion we consider that disclosing the date and type of these incidents would be likely to adversely affect public safety and endanger individuals as it may aid criminals in being able to be more targeted in their activities. We believe that the consequences of such activity would then also be likely to adversely affect public safety and endanger individuals.

When assessing the harm that a disclosure would be likely to cause, it is necessary to take into account the fact that disclosures made under the FOIA and the EIRs are public disclosures which are made to the ‘world at large’; any information disclosed is released into the wider public domain rather than simply to the person making the request. Because of this, we have to consider the wider impact of making information such as this available to ‘the world’ and whether any individual could then use the information to cause harm.

Public Interest Test

We are required to consider whether the public interest in disclosure outweighs the public interest in maintaining the exception. I consider that the factors in favour of disclosing the information are that it would increase transparency and public understanding of the incidents recorded at this crossing.

Set against this, I consider that there is a significant public interest in safeguarding the safety of people travelling and working on the rail network which is part of the critical

national infrastructure. Disclosure of this details of this one incident could lead to others targeting this area in a similar way, in turn having a negative effect on public safety.

Having considered the above, I consider that the public interest is strongly in favour of withholding the information, owing to the fact that disclosure of the information regarding these two incidents could have a detrimental effect on the safety of individuals.

- any memos to drivers and other Network Rail staff about reporting incidents on the Angerstein Crossing

I can confirm that we do not hold recorded information in response to this aspect of your request.² To explain, while we do not hold specific instructions for anyone in relation to reporting incidents at this location, we do hold standards that provide details of the process by which any incidents on the railway should be recorded, particularly in this case into the SMIS reporting system. You may find it useful to review the attached standard, a pdf document titled *NR_L3_INV_3001_902, for Reporting of Accidents, Incidents and Occupational Health* and the attached National Operating Procedure, *NR_L3_OPS_045_4.11, for Reporting and risk assessing railway crime*.

With specific reference to drivers reporting incidents, they work to the associated Rail Safety Standards Board (RSSB) rule book modules with regards to reporting trespassers within the railway boundary anywhere across the rail network, including crossings such as that at Angerstein, and any other incident that may affect safety of the line.

If it is of interest to you, you may be able to download a copy of the rule book from the RSSB website at <https://www.rssb.co.uk/>.

- any internal documents setting out the justification for the closing of the crossing, including the benefits to Network Rail

In response to this aspect of your request, please find attached a document titled *Angerstein FPW_redacted*. This is the most recent risk assessment conducted by Sotera on Network Rail's behalf in December 2019, in which it is explained that the recommendation is for closure of the crossing, with some setting out of the factors considered as to why this is the case and how we came to this conclusion.

I have also withheld a small amount of information from disclosure in this document under regulations 13(1) (personal data) and 12(5)(a) (public safety) of the EIR. The same justifications apply for this document as supplied earlier in this response but in this case

² 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.

the black box marking represent the personal data and grey box markings represent the information withheld for public safety reasons. In the case of information withheld for public safety reasons, the information withheld also includes a signalling diagram.

We do not hold recorded information setting out how the closure of this crossing would benefit Network Rail – this is because the overarching benefit in closing the crossing would be to public safety, not to us as an organisation for our own advantage.

- any internal documents relating to plans for the future use of the Angerstein wharf line

We have already published some information about potential future use of the Angerstein Wharf line in our Kent Route Study, published in May 2018 and available at the following link:

<https://cdn.networkrail.co.uk/wp-content/uploads/2018/06/South-East-Kent-route-study-print-version.pdf>

In this document, on the numbered page 82, there is an overview of a potential improvement we have identified for Angerstein Wharf.

While we do hold some documents produced internally in response to this part of your request about plans for future use of the Angerstein Wharf line, it is my view that at this current time we should withhold this information from disclosure under regulations 12(4)(d) (materials in the course of completion) and 12(5)(e) (confidentiality of commercial information) of the EIR. I will explain why this is the case below.

Regulation 12(4)(d)

Regulation 12(4)(d) of the EIRs 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 Office's (ICO) 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.³

³ 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

In the case of your request, the information held by Network Rail provides significantly more detail beyond that already published in the Kent Route Study in 2018 for our recommendations and suggestions on development for this line. However, the final decision on whether to authorise and fund our suggestions is for Department for Transport (DfT) to make.⁴ These internal documents have been shared with the DfT.

As DfT intend to publish an update to their Rail Network Enhancements Pipeline (RNEP) at some point in the near future, which will show whether our suggestions for the development of this line has been approved and will be funded, we consider that the information we hold in response to this question constitutes material that is in the course of completion, and therefore regulation 12(4)(d) applies.

The public interest test

While we believe we have demonstrated that the exception is engaged (i.e. that the information in question meets both descriptions above), in order to withhold it we must also demonstrate that the public interest does not favour disclosure under both of these exceptions. We have considered the issue and set out our findings below.

Factors in favour of disclosure

- There is a general presumption in favour of disclosure under the EIR regime.
- This information is of particular regional significance because changes to the transport infrastructure are likely to affect people's daily lives (how they get to work, the value of property, opportunities for commercial enterprise, etc.) There is public benefit in promoting access to this type of information.
- Disclosure of the information we have submitted to DfT for this location so they can consider implementation and funding would allow public debate on issues which affect the environment.

Factors against disclosure

- The subtlety of the process of selecting schemes for funding and development is not properly explained through the publication of this information outside of its true context. This process relies on significant amounts of technical expertise and experience as well as a detailed and far reaching evidence base. Explaining the rationale behind any given decision is not possible, or at least not feasible, within the constraints of the EIR and this response;
- The information we hold in response to this question will allow DfT to decide whether they wish to proceed with funding of our suggested improvements for this area. It is our view that it is appropriate to allow DfT to publish their decision

formally as part of the intended process and within the wider context. Disclosure of this information at this time would only serve to undermine the process which is integral to the decisions that are being made on this proposed scheme. The ICO explains 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.”⁵

In light of the concerns set out above, I am content that it is sensible, fair and in keeping with accepted practices to withhold our documents and to allow DfT to make a decision regarding funding and release those details through the RNEP once decisions have been finalised.

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 on which a decision will be made in due course. On balance, we believe that the public interest lies in withholding the information at this time.

The decision as to whether to authorise and fund our suggestion for this line will be published on the DfT website in the near future; please use the following link to access: <https://www.gov.uk/government/publications/rail-network-enhancements-pipeline>

Regulation 12(5)(e) of the EIR

Regulation 12(5)(e) of the EIR (commercial confidentiality) states that:

‘a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.’

The Information Commissioner’s guidance sets out four requirements necessary for this exception to apply. These are:

- The information is commercial or industrial in nature.
- Confidentiality is provided by law.
- The confidentiality is protecting a legitimate economic interest.
- The confidentiality would be adversely affected by disclosure.

In this instance I am of the view that all four requirements are met because:

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619148/ic-43830-w1y3.pdf> While it is worth noting that this decision notice was made under the FOIA rather than the EIR, the fundamental principle remains the same.

1. I am content that this is commercial information since the documents are being used to inform funding decisions.
2. The information is confidential in common law, it has been agreed with an understanding of confidence and it is not trivial in nature; the information relates to a proposal put forward by Network Rail to DfT for consideration for funding. The information has not been made public prior to the receipt of this request and was not intended to be published for wider dissemination.
3. Disclosure of the information contained in this document would, on the balance of probabilities, be likely to harm the commercial prospects for some Operators, whose businesses are discussed within the documents captured by your request. Disclosure of this information would amount to putting their commercially confidential information into the public domain.
4. Regarding the adverse effect on the confidentiality of the information, the ICO guidance provides that: *'... once the first three elements are established the Commissioner considers it is inevitable that this element will be satisfied.'* On consideration of the above comments I have concluded that disclosure of the withheld information would adversely affect the confidential nature of Operators' commercial enterprises.

This exception requires us to consider whether the public interest in maintaining the exception outweighs the public interest in disclosure. I consider the factors in favour of disclosure are that there is a general presumption in favour of openness, and that disclosure would promote and demonstrate accountability and transparency of the commercial activities of public authorities. It is in the public interest that as much information as possible on this and other proposals for funding are available for public scrutiny so as to foster public confidence in our processes, procedures and decisions and to inform those who may live in the areas affected by this and other proposals.

Set against this is the public interest in retaining a degree of confidentiality for the Operators referenced in these documents, the information contained in which was meant for consideration only by the relevant public authorities. Disclosure would amount to putting their commercially confidential information about their businesses into the public domain, harming their future commercial prospects and opportunities for new business as well as negatively impacting on Network Rail's reputation as a trustworthy business partner. It is in the public interest for us to be trusted by third party companies to be able to deliver goods and services to other businesses.

Having considered the public interest, our decision is to withhold this information. Whilst we recognise the force of the arguments in favour of increased transparency and accountability, we are ultimately of the view that the public interest is best served by

protecting this information from disclosure so that the relevant Operators trust that they can operate within the standard bounds of commercial confidentiality.

- any historic documents about previous plans for extension of the Angerstein wharf line

I have consulted with our experts and with our archives department and we do not hold any historic document regarding previous plans for extension of the Angerstein Wharf railway line. Our archive department has suggested that you may wish to see if the National Archives hold any information in response to this aspect of your request; they can be contacted using the details at the following link:

<https://www.nationalarchives.gov.uk/contact-us/>

- any information about the costs of replacing the crossing with a tunnel

In the level crossing risk assessment conducted by Sotera on our behalf and issued in December 2019, Sotera indicated that it could cost around an estimated £3 million to close the crossing as it is currently and install an underpass.

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

Emma Meadows
Information Rights Specialist

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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 Head of Freedom of Information 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 (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".