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Freedom of Information
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[REDACTED]

27 April 2022

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Information request

Reference number: FOI2022/00386

Thank you for your email of 28 March 2022. You requested the following information:

Under the Freedom of Information Act 2000 I request the following information in respect of the works proposed at Farnborough North and Hatches Level Crossing.

- 1. How many people per day have used the crossing in the past 5 years?*
- 2. How many accidents have there been in the past 5 years?*
- 3. What is the total expected cost of the works?*
- 4. Has the use of a magnetic gate or any other solution been considered for the Hatches crossing?*
- 5. What ecological studies have been undertaken in respect of the land at Spencer Close?*
- 6. What studies into current and future parking in and around the Hatches have been undertaken and what were the findings?*
- 7. How many trees/ hedgerows will be removed to allow for the development?*
- 8. If existing tree and hedgerow screening is to be removed what noise impact assessment has been undertaken to determine if noise levels will increase for local residents?*

I have processed your request under the Environmental Information Regulations

2004 (EIR). The EIR, like the Freedom of Information Act 2000 (FOIA), allows people to access information held by public authorities, like Network Rail. When people ask for environmental information, we need to consider the request under the EIR rather than the FOIA.¹ This request meets the definition of environmental information at Regulation 2(1)(c) of the EIR² as it relates to the measures and activities that could affect elements of the environment, in this instance being vegetation and the land.

1. How many people per day have used the crossing in the past 5 years?

Please see the table below which shows the number of people (pedestrians and cyclists) who used the crossing over the past five years.

Month/Year	Peds/Cyclists	Survey type
Feb 2021	312	24 Hour
Jan 2020	312	24 Hour
Aug 2018	321	24 Hour
May 2017	300	24 Hour

The last census, in January 2021, that ran for seven days, averaged 234 pedestrians and 78 cyclists. Despite this being conducted during the Corona Virus pandemic, the details of previous other censuses below show a similar level of use. What was noted was that the commuters had been replaced by those undertaking leisure activities.

Please note there was no 2019 survey. Risk assessments are conducted every year and a quarter which ensures that the full changes over the seasons are then recorded. The 2019 survey was supposed to be conducted in December, however, we decided not to do it as the holidays would have skewed the results.

2. How many accidents have there been in the past 5 years?

I can confirm that no accidents have taken place at this crossing over the past five years. We determine access as events that have caused harm. However, the reason that we are offering these alternatives to the crossing is so that these events are avoided. We work on the basis that it is better to act to mitigate a risk than to wait until an accident, which is usually catastrophic, has taken place and then provide the alternative.

I should also note that, under the EIR, when we respond to requests about incidents that have occurred at specific named locations, we always add a caveat to our response which neither confirms nor denies whether any further information is held under regulation

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.

² <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

12(6) of the Regulations. This section of the EIR removes our duty to confirm whether or not information is held if doing so would itself endanger the mental health or physical safety of any individual. We do this as part of our wider work in suicide prevention, to protect whether or not a suicide may have occurred at any particular location. This is because research has shown that identifying locations where deaths have occurred, whether or not by suicide, also potentially creates a trigger for vulnerable individuals who are considering suicide. For this reason, we include this caveat with all EIR responses which ask for incident details at specific locations.

3. What is the total expected cost of the works?

The expected cost of the works are circa £9 million. This will provide project costs, delivery and installation of a stepped footbridge with lifts at Farnborough North and a ramped structure at the Hatches, Frimley.

4. Has the use of a magnetic gate or any other solution been considered for the Hatches crossing?

No, the use of a magnetic gate has not considered a suitable long-term method of controlling risk. They can only be installed where there are staff present as this is the only way to guarantee that no-one is trapped within the locked area. This is, therefore, an expensive and non-sustainable option. It is partly the reason for delivering the footbridge at Farnborough North, in order to remove the ongoing operational cost.

5. What ecological studies have been undertaken in respect of the land at Spencer Close?

Please find attached the ecological studies undertaken in this area, labelled as the following:

- *Farnborough North Hatches Level Crossing PEA R1 2021_Redacted*
- *GOL-20-73 PEA Report - Spencer Close_1.0_Redacted*
- *GOL-20-73 PEA Report - Blackwater River Bridge_1.1_Redacted*
- *GOL-20-73 PEA Report - Farnborough North_1.0_Redacted*
- *GOL-20-73 PEA Report - The Hatches_1.0_Redacted*

The first listed is the full ecological study has been undertaken for this project, and the project will adapt to the ecological environment as part of their delivery.

Regulation 13(1) – Personal data

You will notice that a small amount of information has been redacted from these surveys indicated by black and grey boxes. The information indicated by the black boxes is

redacted under Regulation 13(1) of the EIR, as it constitutes personal information.³ The information indicated by the grey boxes is redaction under Regulation 12(5)(g) of the EIR, for the legal reasoning explained below:

Regulation 12(5)(g) – protection of the environment

I have withheld information that relates to the presence or absence of protected species under Regulation 12(5)(g) - protection of the environment⁴. This information is withheld as it relates to specific locational information on the presence or absence of badgers at the site. This information is redacted within paragraphs 4.4.6 of this document.

A public authority may refuse to disclose information under Regulation 12(5)(g) *'to the extent that its disclosure would adversely affect the protection of the environment to which the information relates'*. The Information Commissioner's Office (ICO) provide guidance on this exception and what is required under this regulation⁵. In this instance we believe that each of the ICO's guidance criteria is met because the withheld information indicates the presence or absence of badgers.

To explain in more detail, badgers are protected by law in England and Wales under the Protection of Badgers Act 1992⁶ and the Wildlife and Countryside Act 1981⁷. Confirming any details about the location this species would provide those who may wish to mistreat these animals with enough information to trace the exact locations of the badgers. It is important to bear in mind that any disclosure under FOI or EIR is a public disclosure and not just to the individual making the request. This means we must consider whether the information is appropriate for 'every' person in the wider public to access.

This exception is subject to a public interest test meaning that the information can only be lawfully withheld if the public interest lies in favour of non-disclosure. I have set out my considerations below.

³ Please note I have withheld names from these surveys under Regulation 13(1) of the EIR; this regulation allows us to withhold information which constitutes the personal data of identifiable individuals in circumstances where its disclosure would breach the key principles set out in Article 5 of the General Data Protection Regulations. In this instance, disclosure would breach the first principle which mandates that data must be processed fairly, lawfully and in a transparent manner. The individuals in question would have had no reasonable expectation that their names would be disseminated to the world at large through the FOI/EIR process. It would not be a fair or lawful processing of their data to disregard this expectation

⁴ http://www.legislation.gov.uk/uksi/2004/3391/pdfs/uksi_20043391_en.pdf

⁵ To refuse a request for environmental information under the exception in regulation 12(5)(g), public authorities will need to establish: 1) that the information in question relates to the aspect of the environment that is being protected; 2) how and to what extent the protection of the environment would be affected; and 3) that the information is not on emissions -

https://ico.org.uk/media/1630/eir_guidance_protection_of_the_environment_regulation.pdf

⁶ <http://www.legislation.gov.uk/ukpga/1992/51/contents>

⁷ <https://www.legislation.gov.uk/ukpga/1981/69/schedule/7/crossheading/the-badgers-act-1973/enacted>

Public Interest Test

There is a general public interest in openness, and disclosure would promote transparency. It is in the public interest that, as a publicly funded organisation, as much information in relation to our operations and if/how these are incorporated into the environment in an appropriate manner is disclosed. Full disclosure would also raise public awareness of environmental matters and provide an understanding of the process Network Rail follows when undertaking work and reviewing the results of ecological surveys. I understand this matter is important for you and for others too, so full disclosure would be in the public interest.

However, it is in the public interest to avoid harming or causing any adverse effect to elements of the environment. Disclosure of information relating to the presence of any protected species has a specific sensitivity which requires us to carefully consider the impact if it were to be disclosed to the world at large. In this instance, it is our view that providing any information may put the species at an increased risk of danger or harm. In our view disclosure would be likely to lead to an increased risk of disturbance, therefore, we have reached the conclusion that the public interest lies in us withholding some of the requested information.

Overall, having considered the points for and against disclosure, I am of the view that the information on these species should be withheld from the surveys under Regulation 12(5)(g).

We publish further information on our website in reference to how we educate and plan our workforce to protect biodiversity when dealing with vegetation management; this information can be found on the following link:

<https://www.networkrail.co.uk/communities/environment/wildlife/>

6. What studies into current and future parking in and around the Hatches have been undertaken and what were the findings?

No studies on these issues have been undertaken as there is no reason to expect levels of parking to change from what it is currently at the location at the Hatches.⁸

7. How many trees/ hedgerows will be removed to allow for the development?

⁸ This means that there is an exception to the duty to provide information under regulation 12(4)(a) of the EIRs. While the way in which the legislation is drafted requires a public interest test to determine whether the requested information should be disclosed, the Information Commissioner's Office recognises that it is self-evidently not possible to conduct a public interest test in these circumstances

Please see the ecological survey reference in question five for this information.

8. If existing tree and hedgerow screening is to be removed what noise impact assessment has been undertaken to determine if noise levels will increase for local residents?

After consulting with the relevant experts, I can confirm that all noise assessments are done at a later stage after a detailed design of the bridges is produced. This is to ensure we can assess more accurately the impact noise will have at this location. Whilst we are unable to provide a noise assessment at this stage, it is worth noting that at Hatches, we do plan to keep as many trees standing as possible to provide a 'Tree like wall' to reduce the noise, lighting and visual impact as much as possible.

The noise impact assessment for this work is planned to be carried out within the first quarter of 2023. If you are interested in receiving the noise impact assessment, we suggest you come back to us then and we process a new request for you.

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

Isabella Battaglia
Information Officer

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 Head of Freedom of Information 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".