

15 January 2024

Norton Rose Fulbright LLP
3 More London Riverside
London SE1 2AQ
United Kingdom

Tel +44 20 7283 6000
Fax +44 20 7283 6500
DX 85 London
nortonrosefulbright.com

Direct line
+44 20 7444 3678

Email
Sarah.Fitzpatrick@nortonrosefulbright.com

Your reference	Our reference
TWA/21/APP/01/OBJ/8	SFIT/1001174320
TWA/23/APP/02	

The Inspector and the Programme Officer

Gateley Hamer
One Eleven
Edmund Street
Birmingham B3 2HJ

By email only

Attention: The Inspector and the Programme Officer
(Joanna Vincent)

Dear Sirs,

THE NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE TRACK ACCESS) ORDER 202[] (the draft Order)

- 1.1 We refer to our email of 12 December 2023 sent to the Programme Officer for the Inspector's attention, which attached NRF's FOIA/EIR request sent to Network Rail on 3 November 2023, Network Rail's response dated 4 December 2023 and NRF's response to Network Rail's response dated 11 December 2023.
- 1.2 As explained in that email, during the Inquiry we have made repeated references to the FOIA/EIR requests made to Network Rail on behalf of Bellaview Properties Limited (**BPL**). A chronology of the requests and responses received (including the accompanying correspondence) in the period between 26 October 2022 and 28 February 2023 is included in Adam Rhead's rebuttal evidence (see **Appendix ARR1**).
- 1.3 Amongst other items, the FOIA/EIR requests require the disclosure of Network Rail's optioneering studies, constructability reports and assessments of options to consider alternative sites to 239 Horn Lane as well as Network Rail's communications with Agility Trains, Hitachi and/or the Department for Transport (**DfT**). To date, save for the disclosure on 12 December 2022 of a document titled '*Old Oak Common Lineside Logistics Compound Strategy*' (the **Strategy Document**) (this document is appended to Adam Rhead's rebuttal evidence (see **Appendix ARR1i**), the requests relating to these issues remain unsatisfied.
- 1.4 The Inspector will recall that during the procedural meeting of 18 December 2023, Counsel for BPL drew attention to BPL's FOIA/EIR requests and noted that, should Network Rail fail to make the relevant disclosures by 29 December 2023, BPL would consider whether to make a formal request to the Inspector for disclosure. In light of Network Rail's continued failure to provide the requested information after more than one year since this was originally requested, and in light of the upcoming closure of the Inquiry on 9 February 2024, BPL would like to request that the Inspector issues a direction for disclosure.
- 1.5 We set out below a detailed and up-to-date chronology of the FOIA/EIR requests and responses received and the reasons why we consider that a direction for disclosure is necessary.

2 Background

- 2.1 An up-to-date chronology of BPL's FOIA/EIR requests and Network Rail's responses to date relating to Network Rail's assessment of alternative sites as well as communications with Agility, Hitachi and/or the Department for Transport (the **Chronology**) is enclosed as **Enclosure 1** below. The underlying requests and responses are also enclosed as **Attachments 1 to 14**.
- 2.2 To summarise, the first request was made on 26 October 2022 (see **Attachment 1**) in response to the consultation document published by Network Rail on 10 October 2022 (see **Appendix A** to Chris Gent's Proof of Evidence). In the consultation document, Network Rail wrote: "*after extensive research in the area, we have identified that the only suitable area for the compound and access to the south side of the railway*" was 239 Horn Lane [underlining added]. In light of Network Rail's reference to 'extensive research' having been undertaken, BPL requested Network Rail to disclose this information.
- 2.3 Network Rail acknowledged receipt of the request on 29 November 2022 and stated that it would pass the request to Network Rail's FOI team (see **Attachment 2**). However, when Network Rail provided a formal response on 12 December 2022 (see **Attachment 3**), in relation to material relating to Network Rail's 'extensive research', Network Rail refused to provide this (with the exception of the Strategy Document referred to above – see **Attachment 3(a)**) on the basis that it would create a disproportionate burden on its resources. Network Rail explained that from a preliminary search they had located 53 documents and they estimated that reviewing these would take over 150 hours.
- 2.4 Following Network Rail's refusal to fully comply with BPL's request, on 22 December 2022 we sent a narrower request relating to Network Rail's 'extensive research' (see **Attachment 4**). In that request, we also asked Network Rail to disclose any reports, assessments, consultations or communications with Agility/Hitachi and/or DfT with reference to the penultimate paragraph on page 10 of the Strategy Document. For reference, this paragraph reads as follows:

"The DfT and depot operators Agility/Hitachi will not entertain a lineside logistics compound at North Pole Depot as they consider this will be disruptive to depot operations and performance KPIs under the Agility/Hitachi contract."
- 2.5 The Inspector will recall that reference to this paragraph was made during the cross-examination of Mr Ford. Following that, during the examination in chief of Mr Sinclair, Network Rail disclosed one email between Network Rail and the DfT dated January 2021 relating to the use of the Hitachi North Pole Depot as an alternative site (see Inquiry document **INQ-04**, the **DfT Email**). However, other than the DfT Email, Network Rail has not provided any other evidence of communications between Network Rail and DfT in relation to the North Pole Depot being used as an alternative site, and no reports, assessments, consultations, or communications have been disclosed between Network Rail and Agility or Hitachi.
- 2.6 Despite NRF having narrowed its FOIA/EIR request, in its response dated 25 January 2023 (see **Attachment 5**), Network Rail refused to comply, once again arguing that compliance with the request would place a 'disproportion burden' on its resources. Following this, there was a call between NRF and Network Rail's FOIA team on 31 January 2023, on that call Network Rail advised that the project was an "online project now", that they did have a "central folder" which was an "online resource" for the storage of documents, and advised that they would review that central folder. We followed that oral confirmation with a written request on 31 January 2023 (see **Attachment 6**), confirming what had been discussed on the call. In its response dated 28 February 2023 (see **Attachment 7**), Network Rail confirmed that they held "*reports relevant to your request, including an option selection report, within the central folder*", however, Network Rail refused to disclose the information held as it was considered to be "*material in the course of completion*". The letter then goes on to state "*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).*" Network Rail went on to state:

"As final decisions have not yet been made and there are intentions to publish information on option development in the future, we believe it would not inform public debate (and may potentially damage such debate) to disclose the documents we have produced and hold at this time. It is primarily the need for a safe space for Network Rail to reach decisions on the basis of evidence and expertise that has led

us to consider that the information we hold constitutes material that is in the course of completion, and therefore regulation 12(4)(d) applies” [of the Environmental Information Regulations 2004 (EIR)]

2.7 Following this exchange, we had hoped that the requested information would be disclosed as part of Network Rail’s application for the draft Order. We had also assumed that once Network Rail had published all of its application documents and inquiry evidence that any information held relating to our request would no longer constitute “*material that is in the course of completion*”. Network Rail have published the following in support of its application: the application documents (17 April 2023), Network Rail’s Statement of Case (4 August 2023), Network Rail’s Proofs of Evidence (16 October 2023) and Rebuttals (3 November 2023). These do not contain the requested information. Therefore, on 3 November 2023, once Network Rail had published the last of its supporting evidence so that it could no longer be said that its application was “*work still in progress*”, and before the opening of the Inquiry, we requested again that Network Rail provide the information which had been withheld on 28 February 2023 (see **Attachment 8**). We also wrote to Addleshaw Goddard on 8 November 2023 requesting, amongst other items, that Network Rail provide information in relation to meetings and communications with Hitachi / DfT as well as a copy of the agreement in place between Network Rail and/or Hitachi, and/or Agility (see **Attachment 9**).

2.8 Regrettably, on 4 December 2023 (see **Attachment 10**) – after the adjournment of the Inquiry – Network Rail requested an extension of time to respond to our 3 November 2023 FOIA/EIR request, the letter advised as follows:

“While I have been working towards providing a substantive response by today, it has become apparent that this is not possible. This is because we are still in discussions with our colleagues about the potential prejudice that might stem from releasing the information in question meaning that it is impracticable to provide a substantive response today.”

The letter purported to rely upon Regulation 7(1) of the EIR which provides that a public authority can extend the period of time to determine an information request if “*it reasonably believes that the complexity and volume of information requested means that it is impracticable*” to make an earlier decision.

NRF followed this up with two letters dated 11 and 15 December 2023, expressing serious concerns about Network Rail’s latest explanation for not providing the requested information (see **Attachments 11-12**), it being difficult to align withholding information because of “*potential prejudice*” with an extension of time for “*complexity and volume*” impracticality reasons.

2.9 After providing a holding response on 29 December 2023 (see **Attachment 13**), on 8 January 2024 Network Rail finally refused to comply with our information request (see **Attachment 14**). Network Rail explained that, whilst they did manage to locate a document titled ‘*Old Oak Common Lineside Logistics Compound Options Report*’ (a document which they explain was created to provide a summary of the research undertaken in relation to alternative sites) (the **Options Report**), they considered that this was exempt from disclosure:

“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.”

Network Rail also commented on the public inquiry as follows:

“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.”

3 Request for a direction for disclosure

- 3.1 In light of Network Rail’s failure to disclose the information requested relating to its assessment of alternative sites and communications with Agility/Hitachi and/or DfT after repeated requests made on behalf of BPL since October 2022, we have no other choice but to ask the Inspector for a direction for disclosure.
- 3.2 It is clear from the responses provided by Network Rail to date that Network Rail holds evidence relevant to the request. At the very least it holds:
- (a) 53 documents (22 December 2022);
 - (b) Reports (plural) relevant to the request including an option selection report (document is complete) (28 February 2023);
 - (c) “the information in question” (4 December 2023);
 - (d) A report entitled “Old Oak Common Lineside Logistics Compound Options Report” (draft).
- 3.3 Moreover, the following documents were disclosed by Network Rail to BPL following informal information requests:
- (a) The Arcadis Report (see Nick Gallop Proof, Appendix L) – received July 2021 (this is described as a GRIP 4 Construction Methodology Report, the report is given reference number 152270-ARC-REP-EMF-000005);
 - (b) Document titled “Access Points at Old Oak Common Station” (see Nick Gallop Proof, Appendix M) – received July 2021 (note this document is entitled “Draft Version 0.1 – Issued for Comment”) and contains paragraphs that have been scored through – not redacted);
 - (c) Document titled “Site layout-4L016725 (002) construction methodology report extract” (see Chris Gent Proof, Appendix G) – received February 2022 (note this document was also prepared by Arcadis, is entitled at the top of the page “Construction Methodology Report” and the reference number 152270-ARC-REP-EMF-000005-P05, the pages provided were numbered 27 and 28).

Given that Network Rail divided its projects into 8 distinct GRIP stages, and now divides it into 5 main PACE stages, with GRIP 3 being “option selection”, GRIP 4 “single option development” and GRIP 5 “detailed design”, it seems likely that there exist more GRIP reports than the one GRIP 4 report that has been provided. At the very least a GRIP 3 report should exist, and possibly a GRIP 5 report. The remainder of the document identified in (c) above must exist, and it may be that this is the GRIP 5 report given that it has the same document reference number as the GRIP 4 report, but has a later revision number. There may also exist later drafts of document (b) given that this was “Draft Version 0.1”.

- 3.4 One of the central issues at the Inquiry has been the adequacy of Network Rail’s optioneering and site selection exercise, whether it has properly evaluated alternatives, including the use of publicly held land, and its reasons for dismissing those alternatives, hence determining that its only option was the exercise of compulsory purchase powers. The Inspector will be required to report to the Secretary of State on that central issue, and the Secretary of State will be obliged to determine whether on the basis of the

lack of any alternative, here is a compelling case in the public interest for the granting of compulsory powers over 239 Horn Lane.

3.5 During the course of the Inquiry as this central issue was explored the following information was provided by Network Rail:

- (a) an email from the DfT dated January 2021; and
- (b) 3 risk assessments which provide a comparative analysis of options for the location of the temporary RRAP the subject of the draft Order dated 2.9.22, 15.11.22, and 28.6.23.

All of this information was plainly relevant to the FOIA/EIR requests, had been withheld by Network Rail, yet there was clearly no issue in releasing it to BPL, given its subsequent release.

3.6 It is plain from paragraphs 3.2, 3.3, and 3.5 that Network Rail has withheld and continues to withhold evidence and information which is within the scope of the information requests, and is plainly material to matters that the Inspector and ultimately the Secretary of State are being asked to consider. A reasonable inference is that information is being deliberately withheld because Network Rail have completed “discussions with our colleagues” and have concluded that there is “potential prejudice that might stem from releasing the information in question”. In other words, there is a reasonable inference that Network Rail hold information prejudicial to their case, and are therefore deliberately withholding disclosure. This is considered to raise issues of natural justice and ultimately the lawful determination of Network Rail’s application for the Order. The effect of Network Rail’s failure to disclose material information in its possession means that BPL – the party whose land is the subject of the draft Order – is unable to effectively test Network Rail’s case submitted to the Inquiry and the Secretary of State. In consequence, we consider that the Inspector’s ability to report to the Secretary of State is also significantly compromised, as is the Secretary of State’s ability to make an informed decision on the draft Order. The information requested by BPL goes to the core of Network Rail’s application, and the assessment whether Network Rail has appropriately tested alternative sites such that there can be confidence in Network Rail’s pleaded case that 239 Horn Lane is the “only suitable” site as stated in its October 2022 consultation.

3.7 Network Rail’s refusal to provide the requested information also adds to BPL’s concerns relating to the undisclosed engagements between Network Rail and variously the DfT, Agility and Hitachi so that Network Rail were able to report “*The DfT and depot operators Agility/Hitachi will not entertain a lineside logistics compound at North Pole Depot*”. Whilst Network Rail has disclosed the DfT Email during the Inquiry, our wider requests for disclosure of all reports, assessments, consultations or communications with Agility/Hitachi and/or DfT remain unsatisfied. This too, raises issues relating to the fairness of the proceedings. Again, a reasonable inference can be drawn that material communications are being withheld that prejudice Network Rail’s case.

3.8 We also point to the contradictory and obfuscatory responses we have received from Network Rail to date, which include the following:

- (a) Initially, Network Rail sought to refuse our request (12 December 2022) on the basis that it would create an unreasonable burden on its resources. For instance, Network Rail had indicated that potentially 53 documents could be relevant to BPL’s request. However, Network Rail was able to disclose the Strategy Document so it is unclear on what basis it was possible to disclose this document from the available 53, whilst also stating that it would be unreasonable for Network Rail to review and/or disclose the other documents.
- (b) Network Rail then sought to rely on a different exemption from disclosure on the basis that although the reports it had identified (including an option selection report) were final and complete,

that it would be premature to disclose such material at a time where their application for the Order was in progress (see Network Rail letter dated 28 February 2023).

- (c) Following the making of the Order application, and the submission of all evidence by Network Rail in preparation for the Inquiry – at a time, therefore, when all material information should have been disclosed to enable all parties to properly assess Network Rail’s case – Network Rail still refused to comply with our requests, stating that disclosure may cause “*potential prejudice*” to Network Rail.
- (d) Finally, in the latest response of 8 January 2024, Network Rail again pointed to the fact that a specific document they were able to locate (the Options Report) (draft) was also exempt from disclosure given that it was in draft and material in the course of completion. Yet we note that Network Rail has no difficulty disclosing the draft document referred to at paragraph 3.3(b) above.

3.9 We consider that the reasons provided by Network Rail for not disclosing relevant material are unreasonable and unjustifiable. Network Rail have repeatedly changed their story as to what information they hold, and why they consider the information held is exempt from disclosure. We have made repeated references to the fact that a request for a direction for disclosure would be made should Network Rail fail to provide the relevant information.

3.10 This information is relevant to a matter which is central to the decision of the Secretary of State in respect of confirmation of the Order, and there to the Inspector’s report to the Secretary of State.

3.11 In light of the upcoming roundtable discussion on 1 February 2024 and closing submissions on 9 February 2024, we request that the Inspector make a direction pursuant to s.11(5) of the Transport and Works Act 1992 (and s.250(2) of the Local Government Act 1972) for disclosure as soon as possible and ideally the Inspector should make such a direction by **19 January**, which directs Network Rail to make disclosure and provide inspection of the documents so disclosed by **25 January** (6 days from 19 January), giving BPL 6 days (to 31 January) to review the material for inspection before the roundtable discussion on 1 February 2024. We suggest that the direction is in the following terms:

“Network Rail is directed to make full disclosure of, and provide inspection of the following documents to Bellaview Properties Limited no later than 5 pm on 25 January 2024:

1. *All optioneering reports, studies, assessments and documents that assess alternatives for a new temporary RRAP onto the Great Western Mainline for the purposes of the Rail Systems Project, this may include GRIP or PACE reports;*
2. *All optioneering reports, studies, assessments and documents that assess alternatives for a new permanent RRAP onto the Great Western Mainline for the purposes of longer term maintenance, this may include GRIP or PACE reports;*
3. *All reports, assessments, consultations, communications and documents between Network Rail, their contractors or agents and Agility and/or Hitachi, and/or the DfT (in addition to the DfT email) relating to a RRAP (temporary or permanent) at the North Pole Depot.*

In this direction “document” means anything in which information of any description is recorded.

Network Rail is also directed to provide to Bellaview Properties Limited no later than 5 pm on 25 January 2024 a list of the documents that exist relevant to points 1 to 3 above, accompanied by a statement of truth that the documents included in the list, of which inspection is provided to Bellaview Properties

Limited are the only documents that exist relevant to points 1 to 3 above following the completion of a diligent search.

The disclosure list and inspection are to be provided by electronic means.”

3.12 We have copied this letter to Addleshaw Goddard.

Yours faithfully

Norton Rose Fulbright LLP

Norton Rose Fulbright LLP

Copies to: Marnix.Elsenaar@addleshawgoddard.com
Tatiana.Volodina@addleshawgoddard.com
Victoria.Pearson@addleshawgoddard.com

Enclosure 1: chronology of BPL's requests for information and responses provided by Network Rail relating to Network Rail's assessment of alternative sites and communications with Agility/Hitachi/DfT

Enclosure 1

CHRONOLOGY OF BPL’S REQUESTS FOR INFORMATION AND RESPONSES PROVIDED BY NETWORK RAIL RELATING TO NETWORK RAIL’S ASSESSMENT OF ALTERNATIVE SITES AND COMMUNICATIONS WITH AGILITY/HITACHI/DfT

[Please note that a chronology of FOIA/EIR requests submitted on behalf of BPL can be found in Adam Rhead Rebuttal Evidence, Appendix ARR1. However, note that the chronology in Adam Rhad’s Rebuttal Evidence does not include the latest requests and responses from November 2023, December 2023 and January 2024.]

	Date	Event	Summary of Request/Response	Key Extracts
1.	26 October 2022	<p>Gerald Eve sends Network Rail a letter drafted by NRF responding to Network Rail’s consultation document dated 10 October 2022 (the Consultation Document). This letter includes a FOIA request (the October 2022 FOIA Request).</p> <p>Attachment 1 – FOIA Request 26 October 2022</p>	<p>The Consultation Document included reference to ‘extensive research’ done in the area and that Network Rail had identified 239 Horn Lane as the ‘only suitable area’ for the compound and access to the south of the railway.</p> <p>In light of this, BPL asked Network Rail to disclose all Network Rail’s ‘extensive research’, including but not limited to:</p> <ul style="list-style-type: none"> • notes (digital and manuscript) • records of meetings • presentations (including PowerPoint presentations) • reports • all optioneering studies • all constructability reports • all assessments of options • formal decisions. <p>(together, the First Request).</p> <p>BPL specified that the information should include earlier and later drafts where more than one version existed. BPL also requested that it should be specifically explained why other</p>	<p><i>“2.1. The consultation document refers as follows “after extensive research in this area, we have identified that the only suitable area for the compound and access to the south side of the railway, is the land currently occupied by Jewson Ltd, Horn Lane, Acton”. Network Rail (NR) are asked to disclose all of their “extensive research” aforementioned, including but not limited to notes (digital and manuscript), records of meetings, presentations (including PowerPoint presentations), reports, all optioneering studies, all constructability reports, all assessments of options, and formal decisions. This information should include earlier and later drafts where more than one version exists. It should be specifically explained why other options have been discounted and why this is “the only” suitable site, including why the North Pole Depot, which had been one of NR’s options, is now not an option and not considered “suitable”.”</i></p>

	Date	Event	Summary of Request/Response	Key Extracts
			<p>options had been discounted and why 239 Horn Lane was “the only” suitable site, including why the North Pole Depot, which had been one of Network Rail’s options, was not an option and not considered ‘suitable’.</p> <p>The October 2022 FOIA Request also requested Network Rail to provide responses in relation to other matters, including Jewson’s relocation, plan numbered 176215-SRS-P2R-MLN1-DRG-ECV-601001 Rev P01.1 and issues relating to permitted development rights relating to the works proposed at 239 Horn Lane.</p>	
2.	29 November 2022	<p>Network Rail replies to Gerald Eve’s consultation response, including the October 2022 FOIA Request</p> <p>Attachment 2 – NR Response 29 November 2022”</p>	<p>Network Rail’s response provided certain information in relation to various questions raised in the October 2022 FOIA Request.</p> <p>However, in relation to the First Request (i.e., the request relating to Network Rail’s ‘extensive research’), Network Rail simply responded that they would pass this information to their FOI team. Network Rail noted that where information would prejudice the commercial interests of any person, was provided to Network Rail in confidence, is personal information or intended for publication in the future, Network Rail may not be able to disclose all information requested.</p>	<p>“<i>Extensive Research</i>”</p> <p><i>2.1 We note your request under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). NR has passed your request to its freedom of information team (FOI team) to follow due process having regard to NR’s obligations as a public authority and its commitment to transparency. However, where such information would prejudice the commercial interests of any person; was provided to NR in confidence; is personal information about other individuals or is intended for publication in the future NR may not be in a position to disclose all information requested.”</i></p>
3.	12 December 2022	<p>Network Rail replies to the October 2022 FOIA Request</p> <p>Attachment 3 – FOIA Response 12 December 2022</p> <p>Attachment 3(a)– Attachment to FOIA response of 12</p>	<p>BPL’s First Request in the October 2022 FOIA Request was refused by Network Rail on the basis that retrieving and reviewing all information would create a disproportionate burden on their resources.</p> <p>Network Rail explained that the process of locating information along would take a minimum of 4 hours. Network Rail also noted that from a preliminary search they had located 53 documents of up to 243 pages in length and they estimated that the review of these documents would take over 150 hours.</p>	<p>“<i>In the course of working on your request it has become clear that for question one, locating, retrieving and reviewing all the information we hold would create a disproportionate burden on our resources. This means that we need to refuse this request under regulation 12(4)(b) of the EIR, which applies to requests which would take too much time for us to reasonably deal with under the Regulations.”</i></p>

	Date	Event	Summary of Request/Response	Key Extracts
		<p>December 2023 (Old Oak Common Lineside Logistics Compound Strategy)</p> <p>Attachment 3(b) - Attachment to FOIA Response of 12 December 2022-12.10.22 Ealing Meeting Minutes_Redacted</p>	<p>However, in response to BPL's First Request, Network Rail disclosed a document titled "Old Oak Common Lineside Logistics Compound Strategy" (see Attachment 3(a), the Strategy Document). This document is appended to Adam Rhead's Rebuttal, Appendix ARR1i.</p>	<p><i>"There is a minimum of eight people who are working or have worked on the team. Each of these individuals would need to carry out comprehensive searches of their emails, hard drives, portable media (flash drives, etc.), notebooks, phones and anywhere else where they might conceivably have stored information over the last two years. This would take a minimum of three hours per individual. It should be noted that this is a conservative estimate since there has been a turnover of team members and it is likely to take people longer to locate information when they are no longer working on the project."</i></p> <p><i>"This means that just the process of locating information alone would take at an absolute minimum 34 hours."</i></p> <p><i>"Even once this was done, we would need to read through and extract only the information that was relevant to your request. Even from our preliminary searches we've located 53 individual documents of up to 243 pages in length – many of these documents contain a series of appendices. There is no way we could review these to determine their relevance, remove any personal data and check with our subject matter experts to confirm whether there are commercial, security or other reasons why the information should be withheld within a reasonable timeframe. It is difficult to be precise but even at a conservative estimate of 90 minutes per document, this review process would still take well over 150 hours."</i></p> <p><i>"Bearing this in mind I am content that there is no means of meeting your request without placing a disproportionate burden on our resources."</i></p>

	Date	Event	Summary of Request/Response	Key Extracts
4.	22 December 2022	<p>NRF sends Network Rail a FOIA request (the December 2022 FOIA Request)</p> <p>Attachment 4 – FOIA Request 22 December 2022</p>	<p>Following Network Rail’s refusal to respond to BPL’s First Request, NRF sent the December 2022 FOIA Request, narrowing the scope of the First Request.</p> <p>In relation to Network Rail’s ‘extensive research’ referred to in the Consultation Document, BPL requested any optioneering studies, constructability reports, assessments of options produced in the year prior to, and since HS2 published the public consultation document entitled “Old Oak Common Station Design” on 5 February 2019, which provided the basis for Network Rail’s conclusion that 239 Horn Lane was “the only suitable area” for the compound (Question 1).</p> <p>In the December 2022 FOIA Request, BPL also requested other information as specified in the request as well as copies of certain documents referred to in the Strategy Document, including:</p> <ul style="list-style-type: none"> • Any reports, assessments, consultations or communications with depot operators Agility/ Hitachi and / or with the Department for Transport, which show their views on the lineside logistics compound at the North Pole Depot • Supporting documentation that provides the basis for the assessment of available locations for the lineside logistics compound 	<p><i>“1. In relation to the “extensive research” described in the Consultation Document, specifically, any optioneering studies, constructability reports, assessments of options produced in the year prior to, and since HS2 published the public consultation document entitled “Old Oak Common Station Design” on 5 February 2019, which provide the basis for NR’s conclusion that the Site is “the only suitable area” for the Lineside Logistics Compound.”</i></p> <p><i>“6. Any reports, assessments, consultations or communications with depot operators Agility/ Hitachi and / or with the Department for Transport, which show their views on the lineside logistics compound at the North Pole Depot, as set out in the penultimate paragraph on page 10”</i></p> <p><i>“7. Supporting documentation that provides the basis for the assessment of available locations for the lineside logistics compound as shown at figure 8, page 11.”</i></p>
5.	25 January 2023	<p>Network Rail replies to NRF’s December 2022 FOIA Request</p> <p>Attachment 5 – FOIA Response 25 January 2023</p>	<p>Network Rail responded that it was not possible to comply with the December 2022 FOIA Request due to the fact that it would create a disproportionate burden on their resources.</p> <p>Network Rail noted that the December 2022 FOIA Request was very broad and looking at large number of different reports and studies. According to Network Rail, the process of locating the information alone would take a minimum of 24 hours.</p>	<p><i>“I have processed your request under the terms of the Environmental Information Regulations 2004 (EIR). I am afraid that as with your previous request (FOI2022/01332), it is not possible to comply with this new request without creating a disproportionate burden on our resources. In consequence, this response represents a refusal of your request under Regulation 12(4)(b) of the EIR.”</i></p>

	Date	Event	Summary of Request/Response	Key Extracts
			Network Rail requested BPL to further refine the request.	<p><i>“Like before, this new request is very broad as it is looking for a large number of different reports and studies which cover a time period of four to five years. As explained before, this information is not all held in a central folder, some of it is held on individual’s local files. There is a minimum of eight people who are working or have worked on the team. Each of these individuals would need to carry out comprehensive searches of their emails, hard drives and anywhere else where they might conceivably have stored information over the last four to five years. We estimate that this would take a minimum of three hours per individual. For those no longer working at Network Rail, we would need to “rebuild” their profiles to locate any records they may have held locally. This process adds an additional two hours onto the time required to search the systems.”</i></p> <p><i>“Taking this into account, the process of locating the information alone would take at an absolute minimum 24 hours.”</i></p> <p><i>“Once we had located all the information relevant to your request, we would need to read and review each document to remove any personal, commercial or security data and consult with relevant stakeholders before issuing any disclosure. This would be a timely process dependent on the length and sensitivity of each document.”</i></p> <p><i>“There is a general presumption in favour of public authorities providing information under the EIR to promote transparency and accountability, and I appreciate that there is a public interest in any development associated with Old Oak Common. However, complying with your request would place</i></p>

	Date	Event	Summary of Request/Response	Key Extracts
				<i>significant demands on our resources and would hinder us from being able to deliver other services and answering other requests.”</i>
6.	31 January 2023	NRF sends Network Rail a FOIA Request (the January 2023 FOIA Request). Attachment 6 – FOIA Request 31 January 2023	Following a call between NRF and Network Rail FOI team on 31 January 2023, it was agreed that Network Rail FOI team would provide a response to Question 1 from the December 2022 FOIA Request (i.e., Question 1 being: <i>“In relation to the “extensive research” described in the Consultation Document, specifically, any optioneering studies, constructability reports, assessments of options produced in the year prior to, and since HS2 published the public consultation document entitled “Old Oak Common Station Design” on 5 February 2019, which provide the basis for NR’s conclusion that the Site is “the only suitable area” for the Lineside Logistics Compound.”</i>). It was agreed that Network Rail FOI team would review their central folder in order to locate and provide the documentation described in Question 1.	<i>“As agreed, the Network Rail FOI team will provide a response to question 1 as set out in our request letter of 22 December 2022. As such the Network Rail FOI team undertakes to review the central folder as referred to in its response letter dated 25 January 2023, which we understand to be an accessible online resource, in order to locate and provide the documentation described in question 1 of our request.”</i>
7.	28 February 2023	Network Rail replies to NRF’s January 2023 FOIA Request Attachment 7 – FOIA Response 28 February 2023	Network Rail again refused to provide the relevant information requested pursuant to the January 2023 FOIA Request. Network Rail confirmed that they held reports relevant to the request, including an option selection report. However, Network Rail submitted that the information was exempt from disclosure due to the fact that the document was still in the course of completion as it had bearing on the TWAO application. According to Network Rail, the following factors weighed against disclosure: <ul style="list-style-type: none"> • Disclosure would have a negative impact on the ‘safe space’ required by Network Rail’s experts and third parties 	<i>“I can confirm that 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> <i>“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</i>

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			<ul style="list-style-type: none"> Explaining the rationale behind discussions and considerations for projects would not be feasible within the constraints of a response under EIR TWAO documentation would be made publicly available as part of the TWAO application process 	<p><i>the process is not complete. Draft documents are unfinished even if the final version has been produced.' 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)."</i></p> <p><i>"As final decisions have not yet been made and there are intentions to publish information on option development in the future, we believe it would not inform public debate (and may potentially damage such debate) to disclose the documents we have produced and hold at this time. It is primarily the need for a safe space for Network Rail to reach decisions on the basis of evidence and expertise that has led us to consider that the information we hold constitutes material that is in the course of completion, and therefore regulation 12(4)(d) applies."</i></p>
8.	3 November 2023	<p>NRF sends Network Rail a FOIA Request (the November 2023 FOIA Request)</p> <p>Attachment 8 – FOIA Request 3 November 2023</p>	<p>Following Network Rail's TWAO application submission on 17 April 2023 and Network Rail's submission of its Statement of Case (4 August 2023), Proofs of Evidence (16 October 2023) and Rebuttal Proofs (3 November 2023), and in light of the upcoming Inquiry due to start on 14 November 2023, NRF sent Network Rail the November 2023 FOIA Request, requesting the information Network Rail had failed to disclose (in particular the document referred to in Network Rail's response dated 28 February 2023).</p> <p>NRF noted that it was clear Network Rail held documents material to the Inquiry and failure to disclose such material raised issues of natural justice. NRF also noted that Network Rail's solicitors were put on notice that NRF may ask for an order for disclosure from the Inspector.</p>	<p><i>"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></p>
9.	8 November 2023	<i>[Note – this is not a FOIA request]</i>	NRF wrote to Addleshaw Goddard in relation to various questions that remained outstanding following repeated	<i>"6. Please provide minutes of meetings between Network Rail and Hitachi / Department for Transport</i>

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		<p>NRF sends Addleshaw Goddard a letter (reminding Addleshaw Goddard of the information requested by BPL which remained outstanding).</p> <p>Attachment 9 – Letter to Addleshaw Goddard 8 November 2023</p>	<p>requests made to Addleshaw Godard / Network Rail via correspondence or directly to Network Rail via FOIA/EIR requests.</p> <p>Amongst other questions, NRF asked Network Rail to provide:</p> <ul style="list-style-type: none"> • Minutes of meetings between Network Rail and Hitachi / Department for Transport regarding access to the Hitachi lease area at the North Pole Depot (by HS2 or Network Rail and/or contractors) • A copy of the agreement in place between Network Rail and/or Hitachi, and/or Agility trains to use the compounds within the North Pole Depot referred to in Mr Ford’s rebuttal evidence • Evidence of the “refusal” and “discussions” with the North Pole Depot operator referred to in Mr Ford’s rebuttal and the “regular meetings” (including notes taken etc) referred to in Mr Ford’s rebuttal • Information as to the stakeholders who have been engaged with at North Pole Depot as referred to in Mr Ford’s rebuttal and evidence of the “engagement” referred to. <p>Once again, NRF noted that, if necessary, NRF may ask the Inspector for a disclosure direction.</p>	<p><i>regarding access to the Hitachi lease area at the North Pole Depot (by HS2 or Network Rail and/or contractors)."</i></p> <p><i>"7. Please provide a copy of the agreement in place between Network Rail and/or Hitachi, and/or Agility trains to use the compounds within the North Pole Depot referred to in Mr Ford’s rebuttal evidence."</i></p> <p><i>"15. Please provide evidence of the “refusal” and “discussions” with the North Pole Depot operator referred to (Mr Ford’s rebuttal page 7), and the “regular meetings” (including notes taken etc) (Mr Ford’s rebuttal page 14)."</i></p> <p><i>"16. Who are the “stakeholders” who have been engaged with at North Pole Depot (Mr Ford’s rebuttal page 18)? Please provide evidence of the “engagement” referred to."</i></p>
10.	4 December 2023	<p>Network Rail replies to NRF’s November 2023 FOIA Request.</p> <p>Attachment 10 – FOIA Response 4 December 2023</p>	<p>Network Rail failed to respond to the information requested by NRF pursuant to the November 2023 FOIA Request.</p> <p>Network Rail sought to rely on the Environmental Information Regulations 2004 for a time extension to respond to the request. Network Rail explained that they were still in discussion with colleagues <i>“about the potential prejudice that might stem from releasing the information”</i>.</p> <p>Network Rail noted that they aimed to reply by 8 January 2024.</p>	<p><i>“Under regulation 7(1) of the EIR, a public authority can extend the period of 20 working days to 40 working days, if the complexity and volume of the information requested means it is impracticable to make a decision within the earlier period.</i></p> <p><i>While I have been working towards providing a substantive response by today, it has become apparent that this is not possible. This is because we are still in discussions with our colleagues about the potential prejudice that might stem from releasing the information in question meaning that it</i></p>

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				<i>is impracticable to provide a substantive response today.”</i>
11.	11 December 2023	<p>NRF replies to Network Rail’s letter of 4 December 2023</p> <p>Attachment 11 – NRF Response to NR’s letter of 4 December 2023 dated 11 December 2023</p>	<p>NRF challenged Network Rail’s attempt to rely on the 2004 Regulations for a time extension on the basis, according to Network Rail, that there could be a prejudice to Network Rail which might arise from releasing the information requested.</p> <p>NRF noted that BPL is prejudiced from Network Rail’s refusal to disclose material information and that failure to disclose would compromise the Inspector’s ability to make an informed decision in relation to the TWAO application.</p> <p>Again, NRF reserved its right to seek an order for disclosure from the Inspector.</p>	<p><i>“You will note that the ‘potential prejudice’ to Network Rail which you state might arise from releasing the requested information clearly has no relationship whatsoever to the information we have requested being potentially complex or voluminous. Your reason for refusing to release the information is therefore outside the legislation and the information should accordingly be released immediately.</i></p> <p><i>It appears to us that Network Rail is simply looking for excuses not to release the information, the excuse of 28 February 2023 not being tenable, so a new one has been asserted.</i></p> <p><i>In relation to prejudice, the prejudice which arises from Network Rail refusal to disclose material information is to significantly prejudice BPL’s position as the party whose land is subject of the TWAO, and the inability of BPL to effectively test Network Rail’s case submitted to the Inquiry and to Secretary of State. Furthermore, we consider that such failure compromises the Inspector’s ability to effectively report to the Secretary of State, and for the Secretary of State to make a properly informed decision on the TWAO, thereby raising concerns relating to procedural fairness, natural justice and the legality of the decision.”</i></p>
12.	15 December 2023	<p>NRF follows up previous letter of 11 December 2023</p> <p>Attachment 12 – Response to NR’s EIR response of 4</p>	<p>In light of Network Rail’s failure to respond to NRF’s letter of 11 December 2023, and in light of the upcoming Procedural Inquiry Meeting scheduled for 18 December 2023, NRF followed up with an additional letter, requesting Network Rail’s response by 29 December 2023.</p>	<p><i>“We have repeatedly stated that BPL reserves its right to seek an order for disclosure from the Inspector should Network Rail fail to provide the information requested. We note that there is a case management conference before the Inspector on Monday 18 December 2023. We have provided the Inspector with copies of all of the correspondence</i></p>

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		December 2023 (follow up letter of 11 December 2023) dated 15 December 2023	Again, NRF reserved its right to seek an order for disclosure from the Inspector.	<i>referred to in the first paragraph of this letter. Since we have not heard from you we will be raising this matter with the Inspector and putting a marker down that we will be applying for an order unless you provide the requested information. You have 14 days to respond, namely by 29 December 2023. We look forward to hearing from you."</i>
13.	29 December 2023	Network Rail replies to NRF's letter of 15 December 2023 Attachment 13 – FOIA Response 29 December 2023	Network Rail provided a holding response, noting that the information provided under FOI/EIR may differ from information provided in other contexts and that in some cases the complexity of the information means that they require more time to consider the request. Network Rail also explained that they had forwarded NRF's concerns to relevant subject matter experts.	<i>"It is important not to confuse FOI/EIR requests with other legal processes. The information we provide under the FOI Act or the EIR might differ greatly from the information that we provide under, by way of illustrative example, the civil procedure rules or to a Coroner's court. The legal frameworks which govern these different processes determine what information can/cannot be released into the public domain. When we consider requests under the EIR it is sometimes the case that the complexity of the information means that it is not practicable for us to make a decision about whether to release or disclose information within 20 working days. This is recognised both at Regulation 7(1) and the ICO's Code of Practice. An extension of the deadline should not be taken as an indication that the public authority has determined that the information in question is exempt from disclosure, merely that it needs more time to consider its position."</i>
14.	8 January 2024	Network Rail responds to the November 2023 FOIA Request Attachment 14 – FOIA Response 8 January 2024	Network Rail refused to provide the information requested pursuant to the November 2023 Request. Network Rail noted that they hold a document relevant to the November 2023 FOIA Request titled 'Old Oak Common Lineside Logistics Compound Options Report'.	<i>"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."</i>

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			<p>However, according to Network Rail, this document is exempt from disclosure as it is material in the course of completion. Network Rail explained that the document was created to provide a summary of the research undertaken on alternative locations but that it is still in draft form and never completed.</p> <p>Network Rail also explained that Network Rail's evidence at the Inquiry supersedes the details contained in the draft document and there is also a need to ensure expert have safe space required to consider their decisions.</p>	<p><i>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></p> <p><i>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.</i></p> <p><i>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."</i></p>