

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 29 January 2026

Public Authority: Chiltern Railways

Address: Great Central House, Marylebone Station,
Melcombe Place, London, NW1 6JJ

Decision (including any steps ordered)

1. The complainant has requested Chiltern Railways (CR) to disclose information relating to the refurbishment of Leamington Spa railway station. CR refused to comply with the request, stating that it is not a public authority under the EIR.
2. The Commissioner's decision is that CR is a public authority under regulation 2(2)(d) of the EIR and therefore it should have complied with the request.
3. The Commissioner requires CR to take the following steps to ensure compliance with the legislation:
 - Issue a substantive response to the request in accordance with its obligations under the EIR.
4. CR must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 June 2025, the complainant wrote to CR and requested information in the following terms:

"1) Copies of all correspondence, meeting notes, or records of discussions with the local Conservation Officer regarding the 2024/2025 lavatory refurbishment works at Leamington Spa railway station, a Grade II Listed Building.

2) Any internal assessments, advice, or documents that informed the decision that Listed Building Consent was not required.

3) Any environmental or heritage impact assessments related to the removal of the fixtures in question.

4) Any policies or procedures you followed in determining the need for Listed Building Consent for these works."
6. CR responded on 16 June 2025. It stated that it was unable to comply with the request, as it is not a public authority for the purposes of the EIR.
7. The complainant requested an internal review. They believe CR is a public authority for the purposes of the EIR.
8. CR responded on 25 June 2025. It confirmed that it is not a public authority for the purposes of the EIR and would therefore not provide the information requested. CR passed the complainant's request on to the Department for Transport (DfT).

Scope of the case

9. The complainant contacted the Commissioner on 23 July 2025 to complain about the way their request for information had been handled. They believe CR is a public authority for the purposes of the EIR as outlined in regulation 2(2) of the legislation.
10. The Commissioner considers that the scope of his investigation is to determine whether or not CR is a public authority for the purposes of the EIR and therefore under a duty to comply with the request.

Reasons for decision

Regulation 2 – public authorities

11. Regulation 2(2) of the EIR defines a public authority as:

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding—
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or person, that is under the control of a person falling within paragraphs (a), (b) or (c) and—
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

12. It is the Commissioner's decision that CR is a public authority for the purposes of the EIR, under regulation 2(2)(d). He will now explain why.

13. He understands that CR is a DfT contracted train operator and from its National Rail Contract (NRC) it is under the control of the Secretary of State for Transport (DfT). The Commissioner considers DfT is a government department falling within subsection (a) and it carries out public responsibilities, public functions, and provides public services relating to the environment.

14. In the [Scottish Information Commissioner's 2021 decision in respect of Abelli Scotrail \(AS\)](#), the Scottish Commissioner was satisfied that AS was under the control of the Scottish Ministers for the purposes of the delivery of the ScotRail franchise.

15. The decision stated that the franchise agreement was far more prescriptive than a standard contract for the provision of goods and/or services, and it contained terms and mechanisms which allowed the Scottish Ministers to unilaterally vary the terms. For example, changes to train timetables during the COVID-19 pandemic and what, if any, sum of compensation would be paid to cover any financial loss to AS, as a consequence.
16. The Commissioner has reviewed CR's NRC, and considers it to be comparable to AS and the Scottish Ministers, as it gives the Secretary of State for Transport powers to unilaterally vary many terms of the contract (exception being protected provisions) by notice, such as the Train Service Requirement and requiring timetable changes.
17. The NRC appears to also give the Secretary of State for Transport control over budget and revenue adjustments and requires CR to produce certain documentation.
18. The Commissioner's view is that CR is providing a public service relating to the environment based on the nature of rail travel in England and Wales and also the environmental obligations set out in the NRC with the Secretary of State for Transport. Therefore, CR meets the requirements outlined in regulation 2(2)(d) of the EIR.
19. CR disputes it is a public authority under regulation 2(2)(d) of the EIR and referred the Commissioner to chapter 9.6 of its NRC and how this sets out its obligations relating to FOIA and EIR matters.
20. It confirmed that it is a private company, owned by Arriva Ltd, and contractually it is unable to provide any information relating to a FOIA or EIR matter without the explicit consent from the Secretary of State for Transport (9.4 of its NRC). CR advised that its NRC also sets out that CR does not act as an agent for the Secretary of State (chapter 9.7).
21. It stated that on receipt of this request it complied with its contractual obligations and sent the request to the Secretary of State for Transport.
22. The Commissioner disagrees that this prevents CR from being a public authority under regulation 2(2)(d) of the EIR. It is the Commissioner's position that the starting point is whether CR falls within the definition of a public authority under regulation 2(2)(d) and if it is found to be, CR cannot opt out or be contracted out of its obligations under the legislation. The Commissioner's decision is that the clause referred to by CR above cannot override obligations CR has under the EIR, when it meets the definition of a public authority as outlined in regulation 2(2)(d), for the reasons given above.

23. CR referred to it being a private company, part of the Arriva Group (which is a private transport group), with its own board of directors, corporate governance structure and statutory duties under the Companies Act 2006. It said that its directors owe statutory duties to the company and shareholders and not DfT or the Secretary of State for Transport. It explained how, in its view, it is authorised to provide railway passenger services under the license from the Office of Rail and Road (ORR), in the same way open access operators and freight operators are licensed.
24. CR stated that it is contracted by the Secretary of State for Transport to provide passenger services on the routes it operates under its NRC (dated 2 December 2021). It argued that it is not owned by the Secretary of State for Transport or any other public authority, it is not a statutory body and does not exercise statutory powers over and above that which is granted to all train and freight operators under the Railways Act 1993. It stated that once the NRC is terminated/expires it will remain a private company and will instead transfer assets relevant to the NRC and its employees to TUPE to any successful operator.
25. As regulation 2(2)(d) states, the relevant consideration is whether CR is under the control of a person falling into subsections (a) to (c). The relevant consideration is not whether CR is owned by a person falling into subsections (a) to (c).
26. As stated above, the NRC gives the Secretary of State for Transport/DfT powers to unilaterally change or vary many terms with notice, similar to the franchise agreement between AS and the Scottish Ministers in the Scottish Commissioner's decision in 2021, as referenced above. Like AS's franchise agreement, CR's NRC is far more prescriptive than a standard contract and the powers the NRC gives the Secretary of State for Transport demonstrates a level of control over CR and how it delivers its train services, which again would not be in a standard contract.
27. CR acknowledged that the Secretary of State for Transport has certain contractual rights under the NRC (and it did not dispute the examples the Commissioner gave and the similarities between these and AS). But it said that the Secretary of State for Transport does not have direct control over CR's day to day operations and it maintains full autonomy on a daily basis over its core operational functions. It also said that it is within CR's full control and authority as a private company as to how it complies with the NRC and any failure would be a contractual breach, which is entirely consistent with a commercial contracting relationship; not a relationship of public-authority control.
28. It is the Commissioner's view that the NRC gives the Secretary of State for Transport a level of control over CR and how it delivers its rail

service, such that it takes away the freedom in how CR operates for the reasons he has already given above. But this does not have to extend to every aspect of their operations for regulation 2(2)(d) to be met. The control that the Secretary of State for Transport has in the NRC is again not the same as a standard contract and it is this control (not of every operation) which is sufficient for CR to meet the definition of a public authority under the EIR.

29. CR does not dispute that it provides a public service relating to the environment but considers that this does not make it a public authority under the EIR. It referred to many private companies delivering environmentally relevant public services, for example, bus operators, waste contractors, energy suppliers, without being deemed public authorities.
30. The relevant consideration here is whether CR meets the definition of a public authority under regulation 2(2)(d) of the EIR; not whether other private companies do or not.
31. If information requests were made to those other private companies and those companies dispute that they are subject to the EIR, a complaint can be brought to the Commissioner as has been done in this case. The Commissioner would then consider, as he has set out here, whether that organisation meets the definition of a public authority under the EIR. Each case is considered on its own merits.
32. This has previously happened in relation to water companies, some energy companies (E.ON, Drax Power Ltd, NNB Generation Company Ltd), BT and Openreach. Based on the unique circumstances of each one, the Commissioner decided that they are public authorities under regulation 2(2)(c) of the EIR, but for differing reasons depending on their unique circumstances.
33. The Commissioner's position is that it is because CR is under the control of the Secretary of State for Transport/DfT (a government department falling into subsection 2(2)(a)), **and**, provides a public service relating to the environment, it falls to be a public authority under 2(2)(d) of the EIR.

Right of appeal

34. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Coward
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