



R Bostock
By email: request-469987-038e3844@whatdotheyknow.com

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10th April 2018

Dear R Bostock

Information request

Reference number: FOI2018/00297

Thank you for your email of 11th March 2018, in which you requested the following information:

'I note from your contract with APCOA Ltd regarding management of your car parks that an incentive fee is payable (see page 52: paragraph 17, schedule 2).

Please would you provide the following information:-

- 1. Total such incentive fees paid by Network Rail for the years 2016 and 2017*
- 2. The proportion of these incentive fees that related to income generated from Parking Charge Notices issued for alleged parking contraventions.'*

I have processed your request under the terms of the Freedom of Information Act 2000 (FOIA). I can confirm that we hold the information you requested, however it is my view that this information should be withheld under section 43(2) of the FOIA. This exemption is engaged when disclosure would or would be likely to prejudice the commercial interests of any person. I will explain this in further detail below.

I should first advise that, when considering whether information should be disclosed, we need to remember that information which is disclosed under FOIA is disclosed to 'the world' rather than privately to the requester; information which is disclosed under FOIA is available to 'everyone' without any restrictions on how the information is

further distributed or used; for this reason we need to focus on the consequences of disclosing the information to the wider public, not just to the requestor.¹

Section 43(2) of the FOIA

Overall harm

In this case, APCOA's management contract is due to expire this year and we have commenced the procurement process. As your request specifically asks for incentive fees and income generation, disclosure of this information would be likely to prejudice the commercial interests of Network Rail and APCOA. This is because disclosure of this information would undermine our integrity as a commercial partner, set a benchmark which would inhibit us from achieving best value for money and provide unfair insight into the financial practices of APCOA which would disadvantage their position in a competitive market.

Public interest test

Section 43(2) is a qualified exemption; this means that we are required to consider whether the public interest in disclosure outweighs the public interest in maintaining the exemption.

We consider the following factors favour disclosure

- There is a public interest in transparency and specifically in the disclosure of information where it promotes openness and allows greater insight of public authorities such as Network Rail.
- Furthermore, disclosure would demonstrate positive transparency and meet the public interest in accountability for the use of public monies by Network Rail. There is also a public interest in enabling the public to obtain a greater understanding of Network Rail's decision making processes, and disclosure would also assist in meeting this public interest factor.

We consider that the following factors favour maintaining the exemption:

- Disclosure of this information would be likely to have a detrimental effect on our relationship with future suppliers, leading to third-party suppliers being less inclined to engage and freely share information with us for fear of sensitive information of this type being released under the Act.

¹ <https://ico.org.uk/media/for-organisations/documents/1043418/consideration-of-the-identity-or-motives-of-the-applicant.pdf> ; paragraphs 43 and 44

- Disclosure at this time could impact negatively on the ongoing procurement process and could give unfair knowledge to third parties tendering for contracts in the future; this could undermine the negotiating position of both Network Rail and the fellow bidders.
- There is a public interest in ensuring that no third parties are placed at a commercial disadvantage through their dealings with public authorities. Such circumstances would act as a deterrent to private companies doing business with us and and, where they are content to continue working with us, would like lead to increased costs to account for the additional risk associated with doing so.

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 our revenues (and taxpayers' money) at a time when a procurement process has been initiated, and by ensuring that we and our partners are able to operate commercial enterprises within the standard bounds of commercial confidentiality and without disadvantage to their wider commercial position.

If you have any enquiries about this response, please contact me in the first instance at FOI@networkrail.co.uk or on 01908 782405. 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

Anisha Pandya
Information Officer

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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 FOI Compliance and Appeals Manager 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 can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF