



Department
for Transport

Ms Kathryn Woods
[By email: request-673888-2f2262ff@whatdotheyknow.com]

Mr Steve Burton
Senior Correspondence Manager
Department for Transport
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Web Site: www.gov.uk/dft

Our Ref: F0018627

13 July 2020

Dear Ms Woods,

Freedom of Information Act Request – F0018627

Thank you for your Freedom of Information (FOI) request of 2 July 2020, in which you requested the following information:

‘Can you please confirm whether, following the early termination of the Northern Rail Franchise, held by Arriva, there has been a review of Arriva's rail franchise bidding passport. Please furthermore confirm the scope of that review and its findings.’

I am writing to confirm that your request has been considered under the FOI Act 2000 and that the Department has completed its search for the information. I can confirm that the Department does hold some, but not all of the information that falls within the scope of your request.

However, the information captured by your request is the content of submissions made by the Passport holder Arriva UK Trains Limited to the Department that related to its business, and is therefore being withheld in reliance upon the exemption at section 44(1)(a) (Prohibitions on disclosure) of the FOI Act 2000. Section 44(1)(a) provides an absolute exemption where disclosure of the information is ‘prohibited by or under any enactment’. The relevant enactment is section 145(1) of the Railways Act 1993 (the ‘Act’), which prohibits the disclosure without express consent of information ‘with respect to any particular business’ which ‘(a) has been obtained under or by virtue of any of the provisions of this Act; and (b) relates to the affairs of any individual or to any particular business’.

The information is information ‘with respect to any particular business’ as it pertains to the business practices and operations of the previous holders of the Arriva Rail North franchise. It ‘has been obtained under or by virtue of any of the provisions of this Act’, in this case, and in particular, sections 23 to 31 of the Act. These sections establish the Secretary of State’s duties with respect to the rail franchising system and the requirements that rail franchisees may be subject to under their franchise agreements, in particular, the

Secretary of State's duty to select a franchisee who is appropriate. The Prequalification Passport is part of the Department's manner of ensuring that appropriate franchisees are selected.

The Department does not consider that the principal counter-exemption to this rule set out in section 142(2)(a) of the Act applies, as there are no functions under the Act that would require it to discharge the information requested. Nor do any of the further specific exemptions under s142(2) apply in these circumstances.

Therefore, as the information is prohibited from disclosure under section 145(1) of the Act, it is also exempt from disclosure under section 44(1)(a) of FOI Act. As section 44(1)(a) is an absolute exemption, there is no requirement for the Department to carry out a public interest test on whether to nevertheless effect disclosure. For an extract of the exemption see Annex A.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's FOI Advice Team at:

E-mail: FOI-Advice-Team-DfT@dft.gov.uk

Please send or copy any follow-up correspondence relating to this request to the FOI Advice Team to help ensure that it receives prompt attention. Please also remember to quote the reference number above in any future communications.

Please see attached details of the Department's complaints procedure and your right to complain to the Information Commissioner.

Yours sincerely

Steve Burton
Senior Correspondence Manager – Passenger Services

Your right to complain to the Department and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition, a complaint can be made that the Department has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

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

Annex A

Section 44 – Prohibitions on disclosure

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it: (a) is prohibited by or under any enactment (b) is incompatible with any Community obligation, or (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

Section 44 is an absolute exemption and therefore does not require a public interest test

Railways Act 1993 ('the 1993 Act')

Section 145 of the 1993 Act states:

(1) ...no information with respect to any particular business which—
(a) has been obtained under or by virtue of any of the provisions of this Act; and
(b) relates to the affairs of any individual or to any particular business,
shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.