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Mr Jonathan Raper

at email address:
request-95021-4d83ee83@whatdotheyknow.com

Our Ref: F0008377

Your Ref:

27 January 2012

Dear Mr Raper,

FOI Request F0008377

I am writing to advise you that the Department does hold information that is relevant to your request of 29th November 2011 but regret to inform you of my decision not to disclose this information.

The information you requested is being withheld in reliance on the exemptions in Section 35 (Formulation of Government Policy), Section 41 (Information provided in Confidence) and Section 43 (Commercial Interest) of the Information Act 2000. The attached annex A to this letter sets out the exemptions in full.

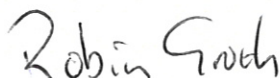
In applying exemptions 35 and 43 we have had to balance the public interest in withholding the information against the public interest in disclosure. The key public interest factors for and against disclosure are set out in Annex A.

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 Information Rights Unit at:

Zone D/01
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-DFT@dft.gsi.gov.uk

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

Yours sincerely,



Mr Robin Groth

Your right to complain to DfT 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 DfT 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

Section 35: Formulation of government policy

(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy

| <i>Public interest test factors for disclosure</i> | <i>Public interest test factors against disclosure</i> |
|---|--|
| <ul style="list-style-type: none"> • open policy making may lead to increased trust and engagement between citizens and government; • the desirability of citizens being confident that decisions are taken on the basis of the best available information; | <ul style="list-style-type: none"> • The disclosure of the information relating to the formulation or development of Government policy will inhibit discussion within Government. It is in the public interest that decision making is based on the best advice available and a full consideration of all the options. The information supplied by ATOC was used to help officials formulate advice. If such information was routinely and advice made public there is a risk that officials could come under political or public pressure not to challenge ideas in the formulation of policy, thus leading to poorer decision making. • The quality of the formulation and development of future government policy should not be put at risk of it, or the information informing it, having to be presented in any particular way were it to be the subject of scrutiny. |
| <p><i>Decision</i></p> <p>Disclosure will inhibit discussion within Government, and this is not outweighed by the public interest in disclosure.</p> | |

- **Section 41 - Information provided in confidence**

- Information is exempt information if:
- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

- **Decision**

- All the information is withheld on the basis that it was provided in confidence.

Section 43 Commercial interests.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Public interest test factors for disclosure

- open policy making may lead to increased trust and engagement between citizens and government;
- the desirability of citizens being confident that decisions are taken on the basis of the best available information;

Public interest test factors against disclosure

- Disclosure of the information would prejudice the commercial interests of the train operators and ATOC. The information is commercially sensitive, even at this high level, as train operators are private companies who operate in competition with coach and bus operators, airlines and sometimes each other ATOC are likely to be less willing to provide the Department with helpful information, if they know it will be subject to disclosure, thus harming the working relationship and information exchange to help work on policy issues.

Decision

- The requested information should not be released, on the grounds that the commercial interests of the train operators are not outweighed by the public interest in disclosure