



Department
for Transport

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Web Site: www.gov.uk/dft

Our Ref: F0014479

10 April 2017

Mr Paul Barker
request-385632-4246f013@whatdotheyknow.com

Dear Mr Barker,

Freedom of Information Act Request – F0014479

Thank you for your Freedom of Information (FOI) request of 30 January 2017. You requested the following information:

Please release all correspondence including emails, meetings notes & minutes between Chris Gibb and staff at Department for Transport (DfT) in regard Southern's contract and network rail.

This should include detail report Chris Gibb has written on Southern contact.

We wrote to you on 27 February and 27 March 2017 to advise that we needed to extend our deadline for reply to complete complex public interest test considerations. I can confirm that these are now complete and I can provide the following response.

Your request has been considered under the FOI Act 2000. The Department for Transport (DfT) does hold information relevant to your request.

The information we hold regarding emails, meeting notes and minutes between Chris Gibb and the DfT is being withheld in reliance on the exemptions at sections 41(1)- information provided in confidence; 43(2) - prejudice to commercial interests and 35(1)(a) – formulation or development of government policy; of the FOI Act. The information received from Chris Gibb was shared with the DfT in strict confidence, is not trivial and is not already in the public domain. Disclosure of the information would also be likely to prejudice the commercial interests of Chris Gibb, GTR and the DfT. Section 41(1) is an absolute exemption, and therefore not subject to a Public Interest Test.

Annexes A & B to this letter sets out exemptions 35(1)(a) and 43(2) in full and details why the Public Interest Tests favour withholding the information.

The Chris Gibb report will be published later this year on the GOV.UK website <https://www.gov.uk/government/organisations/department-for-transport> and is therefore being withheld at this time in reliance on the exemption at section 22(1) of the FOI Act which covers information intended for future publication.

As section 22(1) is a qualified exemption, we are required to balance the public interest in disclosing the information against that for withholding it. **Annex C** to this letter details why the public interest test favours withholding the information at this time.

If you are unhappy with the way the DfT 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 DfT's FOI Advice Team at:

Zone D/04
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-DFT@dft.gsi.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 DfT's complaints procedure and your right to complain to the Information Commissioner.

Yours sincerely

Michael Evans
Correspondence Manager – Passenger Services

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

Annex A

Exemption 43(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:

Public interest test factors for disclosure	Public interest test factors against disclosure
<ul style="list-style-type: none">- Disclosure of communications between Chris Gibb/ CLGR Limited and the DfT with regard to the Southern Network would promote accountability and transparency by the DfT for decisions it takes.- Disclosure of the communications could help to allow the individual concerned, or the public as a whole, to understand the decision making process of public authorities.- Disclosure of this information would contribute to the Government's wider transparency agenda.	<ul style="list-style-type: none">- Emails, meeting notes and minutes between Chris Gibb/ CLGR Limited and the DfT with regard to Govia Thameslink Railway's (GTR's) contract and Network Rail's activities were communicated as part of Chris Gibb's work to understand fully the relevant performance issues, in the course of exploring the issues and writing his report.- The DfT's role during this time was to manage the commercial interests of the DfT in respect of the contractual relationship with GTR, and other related parties. As the contractual relationships are still live and critical to the commercial interests of all the parties, it would be likely to prejudice those commercial interests if emails, meeting notes and minutes on this subject were disclosed.- Releasing any information pertaining to GTR will give its competitors access to commercially sensitive information. This would be likely to prejudice GTR's commercial interests by disadvantaging them in future competitions.- In order for the DfT to be able to carry out its role effectively, consultants and operators must

	<p>feel that they can disclose highly sensitive commercial information to the DfT without risk that this information will be disclosed to the public or competitors.</p> <ul style="list-style-type: none"> - If consultants and operators do not have the confidence that the DfT will protect the information provided to it, it is unlikely that they will provide any information in the future that they are not obliged to. - This in turn, would be likely to prejudice the DfT ability to carry out its policy and planning functions, and limit the information available to the DfT when franchises are being let.
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Decision

On balance the information is being withheld as disclosure would be likely to prejudice the commercial interests of Chris Gibb, GTR and the DfT.

Passengers on the Southern network, after months of disruption to their journeys will evidently want to see how the Government plans to improve resilience and performance on their route. As the Chris Gibb report will be published later this year on GOV.UK, this does not outweigh the commercial interests of all concerned parties in that they should not be prejudiced by release of communications between Chris Gibb/ CLGR Limited and the DfT.

Annex B

Exemption 35(1)(a) – Information held by a government department is exempt information if it relates to the formulation or development of government policy.

Public Interest Test:

Public interest test factors for disclosure	Public interest test factors against disclosure
<ul style="list-style-type: none">- Disclosure of the communications between Chris Gibb/ CLGR Limited and the DfT would contribute to the government's wider transparency agenda.- Disclosure of the information would promote government accountability with regard to decisions on the Southern Network.- Disclosure would also help to increase public understanding of the function of the DfT and enable public debate.	<ul style="list-style-type: none">- Between 1 September and 31 December, 2016, Chris Gibb was commissioned through CLGR Limited to write a report about performance issues on the Southern network. The report was written under the terms of a contract between CLGR Limited and GTR. The contract contains a wide-ranging confidentiality clause.- This is a 'live' government policy. Officials need a safe space away from public scrutiny where they can formulate and develop government policy with regard to business case proposals without fear of premature disclosure.- In developing proposals for the Southern Network, policy advice should continue to be free, frank and candid. By releasing communications between Chris Gibb/ CLGR Limited and the DfT, future discussions may not be as free, frank and candid, because officials would be reluctant to give their views and opinions if they felt that they would be routinely disclosed. This would be likely to lead to poorer decision making which is clearly not in the public interest.- Officials need to be able to conduct rigorous and candid risk assessments of their policies and programmes of work including considerations of the pros and cons without there being premature disclosure which might close off better options.

	<ul style="list-style-type: none"> - Maintaining a safe space to consider policy options in private is in the public interest.
<p><u>Decision</u></p> <p>The disclosure of the communications between Chris Gibb and the Department, is being withheld as on balance the public interest in maintaining the exemption outweighs that for disclosure.</p>	

Annex C

Exemption 22(1) - Information intended for future publication

Public Interest Test:

Factors for disclosure	Factors against disclosure
<ul style="list-style-type: none">- The general public interest in disclosure for the scrutiny of the Chris Gibb report and of the Department for Transport's (DfT's) decisions relating to the performance of the Southern network.- Disclosure could help to allow the individual concerned, or the public as a whole, to understand the decision making process of the DfT.-The Government's promotion of the ideal that information should be made public rather than not, and that Government should be more transparent.	<ul style="list-style-type: none">- It is important that we are able to publish the Chris Gibb report and related documents in a manner, form and timing of our own choosing.- It is important that the DfT is able to consult with the relevant people before the documents are published.- Publishing the documents for the first time on the DfT's website will allow everyone to see them at the same time and provide a clear and consistent approach.- Officials' time would be better spent compiling and verifying the information in readiness for publication as opposed to dealing with piecemeal requests and to avoid misinterpretation and confusion.
Decision Reached	
The Chris Gibb report and related documents are being withheld at this time as they are intended for future publication. On balance the public interest in withholding this information until formal publication outweighs that for disclosure.	