

Eurostar International Limited
Times House
Bravingtons Walk
London N1 9AW

22 January 2009

By email: request-24987-cfdfdc8@whatdotheyknow.com

Dear Mr. Sladen,

Request for a copy of "General Gauging Procedure for Class 373 Trains" (Mechanical Systems Engineer Report 42), under the Freedom of Information Act 2000.

Thank you for your request for information dated 22 December 2009 which was received by Eurostar International Limited ("EIL") on 22 December 2009 concerning the provision to you of a copy of the "General Gauging Procedure for Class 373 Trains" (Mechanical Systems Engineer Report 42) ("MSE Report 42").

This request is being handled under the Freedom of Information Act 2000 ("FOIA").

I can confirm that EIL holds the information you have requested. However we are withholding that information as we consider that the exemption under section 43 of the FOIA applies to it on the grounds that the information is trade secret or in the alternative is information the disclosure of which would prejudice the commercial interests of EIL.

Exemptions to Disclosure

Section 43 of the FOIA provides:

"43. Commercial interests



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- (1) *Information is exempt information if it constitutes a trade secret.*
- (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).*
- (3) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2)."*

MSE Report 42 contains extremely detailed and technical analysis concerning the operation and behaviour of EIL (formerly referred to as Eurostar (U.K.) Limited) rolling stock assets which is relevant to EIL's current and future commercial rail operations, including through providing detailed information relevant to the potential use of EIL rolling stock and associated costs. EIL has expended substantial resources in producing the MSE Report 42 and developing the methodology and analysis which it contains. In view of its significance to EIL's commercial operations, access to the MSE Report 42 is controlled.

The standards relevant to gauging are publicly available (see the Railway Group Standard GE/GN8573 which is available on the RGOnline website) and details on railway infrastructure are available to an appropriate level of detail to interested parties from the relevant infrastructure owners. This is designed to make available to interested parties the information they properly require to apply for access to railway infrastructure with whatever railway vehicles they wish to operate. In contrast MSE Report 42 represents extremely detailed and technical analysis specific to the rolling stock operated commercially by EIL which EIL has developed to assist it in its current and future potential commercial operations.

Taking these facts into account, EIL considers the MSE Report 42 to constitute a trade secret.

EIL also considers that the MSE Report 42 contains commercially sensitive material and any disclosure of this document would significantly prejudice EIL's commercial interests in relation to the operation of passenger trains. In particular making available the information contained in the report would weaken its position in a competitive environment by both (i) revealing information of potential usefulness to its competitors, particularly when this would be occurring in a commercial context where its competitors are not subject to similar obligations of disclosure and (ii) providing an advantage to competitors by providing tools of commercial value in competing with EIL, while enabling the competitors to avoid the costs of development of the analysis and studies underpinning the report.

The Public Interest Test

The Information Commissioner has published guidance on circumstances where information should be disclosed where it is in the public interest to do so. In particular, the Information Commissioner has advised that the public interest is served where access to the information would:

- further the understanding of, and participation in the debate of issues of the day;
- facilitate the accountability and transparency of public authorities for decisions taken by them;
- facilitate accountability and transparency in the spending of public money;
- allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions; or
- bring to light information affecting public safety.

In all the circumstances of the case, EIL considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. This is particularly the case given the extent of information available on gauge clearance through the combination of Railway Group Standards and the information on infrastructure available from railway infrastructure operators.

Appeals Process

If you are unhappy with the way that your request for information has been handled, you can request a review by writing to:

Richard Brown
Chief Executive Officer
Eurostar International Limited
Times House
Bravingtons Walk
London N1 9AW.

We will endeavour to respond to your request no later than twenty (20) working days after receipt of your request.

If you are dissatisfied with the handling of your request, you have a right to appeal to the Information Commissioner at:

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

Telephone: 08456 30 60 60 or
01625 54 57 45

Website: www.ico.gov.uk

Please note, there is no charge for making an appeal to the Information Commissioner.

Yours sincerely

A handwritten signature in black ink that reads "Paula Staunton". The signature is written in a cursive style with a large initial 'P'.

Paula Staunton

Head of Legal

Eurostar International Limited