



Department
for Transport

International Rail
Rail Group
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Web Site: www.gov.uk/dft

Our Ref: F0017180

Edward Williams

[By email: request-557563-d7d2eb8f@whatdotheyknow.com]

01 April 2019

Dear Mr Williams,

Freedom of Information Act Request – F0017180

Thank you for your information request of 1 March 2019 concerning the £33 million settlement between the Department and Eurotunnel. You requested the following information:

- 1. Provide a copy of the settlement agreement.***
- 2. How much did you spend on your legal fees and their legal fees, provide a schedule setting out fees.***

Your request has been considered under the Freedom of Information Act 2000, ("the FOI Act 2000").

I am writing to confirm that the Department for Transport does hold certain of the information you requested.

A copy of the settlement agreement between the Department and Eurotunnel is enclosed with this response, with limited redactions as explained below. I ask you to note that the agreement contains three appendices numbered one, two and four. This is a numbering error and there is not an appendix three to the agreement which has been withheld.

In accordance with current data protection legislation, personal signatures have been redacted from the attached documents to safeguard against identity theft. The names of junior representatives of Eurotunnel and Freshfields Bruckhaus Deringer LLP have also been redacted from the attached information in reliance on the third party personal information exemption at section 40 (2) and (3) of the FOI Act 2000 (see **Annex A** for the full text of the exemption).

These individuals are not in public facing roles and, therefore, have a reasonable expectation that their names will not be placed into the public domain. To do so would be unfair and would contravene current data protection legislation. Section 40 is an absolute exemption.

Some of the information in the settlement agreement is being withheld in reliance on the exemption at section 43(2) of the FOI Act. Disclosure of the information would be likely to prejudice the commercial interests of the Department.

Under the terms of the Settlement Agreement each party bore its own costs. Although there are some further legal administrative tasks in hand to finalise specific costs, the Department does not expect the final costs of the litigation to exceed £1m. As final information is not yet available, and this represents an estimate, the Department does not hold a final breakdown of these costs. Even were such a breakdown to be available, the Department would have to give consideration as to the applicability of the exemption at 43(2) of the FOI Act to all, or aspects of, a breakdown, in case disclosure would be likely to prejudice the commercial interests of suppliers of the Department's legal services.

As section 43(2) is a qualified exemption, we are required to balance the public interest in disclosing the information against that for withholding it. The full text of this exemption and details of why, on balance, the public interest test favours withholding some of the information you requested can be found at **Annex B**.

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:

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

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

Yours sincerely,

International Rail, Rail Group

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

FOI Act section 40 (Personal Information):

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A (1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the

extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

...

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

Annex B

FOI Act Section 43

(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).

Public interest test factors for disclosure

- Disclosure would allow the requestor and the public to scrutinise the spending of public money.
- Disclosure would contribute to the government's wider transparency agenda.

Public interest test factors against disclosure

- Disclosure would be likely to prejudice significant and ongoing commercial interests of the Department for Transport in the management of its Capacity Contracts and the taking of likely future actions to secure freight capacity.
- Disclosure could be likely to reasonably lead to the realisation of liabilities for the taxpayer.
- Substantial transparency and scope for scrutiny of the efficiency of the expenditure of public money has already been provided for by the disclosure of the settlement agreement (as per this request) and the previous publication of Eurotunnel's obligations under the settlement agreement, found at Appendix 4 of the agreement.¹

Decision

The information is being withheld as, on balance, the factors for withholding this information outweighs the factors for releasing it – the release of this information would be likely to prejudice the commercial interests of the Department for Transport.

¹ <https://www.gov.uk/government/publications/eurotunnel-obligations-under-government-settlement-agreement/eurotunnel-obligations-under-government-settlement-agreement>.

Overall, the partial release of the agreement, of which some information on its obligations have already been published, and the approximate total of legal costs incurred by the Department allows for sufficient scrutiny of the spending of public money.