



Department  
for Transport

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Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)

Ms S H Tang

[By email: [request-464139-9eabdbe7@whatdotheyknow.com](mailto:request-464139-9eabdbe7@whatdotheyknow.com)]

Our Ref: F0015767

28 March 2018

Dear Ms Tang,

### **Freedom of Information Act Request – F0015767**

Thank you for your Freedom of Information (FOI) request of 12 February 2018. You asked for the following information:

***Please treat this as my Freedom of Information request for a copy of West Midlands Railway's Penalty Fare Scheme and its guidance to Authorised Collectors. A copy has not been made available since they took over the franchise from London Midlands.***

***Please also provide evidence or/and confirmation of when, or whether, this Scheme was approved by the Department.***

We wrote to you on 12 March 2018 to confirm that the Department for Transport (DfT) holds information that is relevant to your request. We also advised you that we required more time to consult West Midlands Trains (WMT) and to complete public interest considerations. I am pleased to say that this process is now complete. Replies are provided under each of your requests below.

***Please treat this as my Freedom of Information request for a copy of West Midlands Railway's Penalty Fare Scheme and its guidance to Authorised Collectors. A copy has not been made available since they took over the franchise from London Midlands.***

On balance, the public interest test favours disclosing most of the information you have requested and I enclose with this letter all correspondence held by the DfT that falls within the scope of your request.

Some of the words contained within page 1 of WMTs' Penalty Fare Scheme have been withheld in reliance on the exemption at section 43(2) - prejudice to commercial interests; of the FOI Act 2000. The information contained is factually incorrect. In addition, information regarding the discretions given to authorised collectors of fares is also being withheld under section 43(2). 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.

**Annex A** to this letter sets out the exemption in full and details why the public interest test favours withholding the information.

***Please also provide evidence or/and confirmation of when, or whether, this Scheme was approved by the Department.***

WMTs' Penalty Fare Scheme was approved by the DfT on 17 November 2017.

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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](mailto: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**

### Section 43(2) - Commercial interests

(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).

<b>Factors for disclosure</b>	<b>Factors against disclosure</b>
<ul style="list-style-type: none"><li>- The public interest in scrutinising WMTs' penalty fare scheme.</li><li>- Public interest in seeing that WMTs' penalty fare enforcement is complying with the set scheme.</li><li>- The Government has promoted the ideal that information should be made public rather than not, and that Government should be more transparent.</li></ul>	<ul style="list-style-type: none"><li>- Disclosure of the redacted information from page 1 of the attached document would be likely to prejudice the Train Operating Company's (TOCs) commercial interests as this information is factually incorrect. Release of the redacted information would be likely to misinform both the public and rail industry at this time.</li><li>- Disclosure of the redacted information would be likely to prejudice the TOCs commercial interests as it would reveal the list of discretions given to authorised collectors of fares. Public knowledge of this may result in passengers taking advantage of these discretions, which they may not be entitled to. This would result in a loss of penalty fare revenue for WMT which would be likely to prejudice their commercial interests.</li><li>- Full disclosure of the written instructions provided to authorised collectors would be likely to undermine the effectiveness of revenue protection ability. It would assist those intent on not paying a fare which would result in a loss of penalty fare revenue for WMT which would be likely to prejudice their commercial interests.</li><li>- Disclosure would be likely to make</li></ul>

WMT and other Train Operating Companies reluctant to provide the DfT with information in the future that they are not required to if they felt that this would be routinely disclosed. This would prejudice the DfT's ability to carry out its rail policy and planning functions and limit the information available to the DfT. This would not be in the public interest.

**Decision Reached**

Inaccurate information relating to WMT passenger services and information about the discretions given to authorised collectors of fares is being **withheld** as disclosure of this information would be likely to prejudice the commercial interests of WMT and also prejudice the DfT's ability to carry out its rail policy and planning functions.