



Department for Transport

Department for Transport

Web Site: www.dft.gov.uk

Our Ref - F00181519

02 April 2020

Dr Paul Thornton

Via email -
Request-627440-
84d5bac0@whatdotheyknow.com

Dear Dr Thornton,

Freedom of Information Act Request - F0018159

Further to my letters of 10 February and 09 March 2020 I am now writing to update you on the Department's current position on your refined FOI request submitted by you on the 14 January 2020.

For the purpose of this letter and for your ease of reference please find below an exert from your revised request:

....the 2019 document lists just 62 proposed schemes and it is unlikely that there is a separate department or directorate for each one. Even so, if there is a similar number of departments, the requested information should be readily accessible to each. The information I am requesting is already collated in completed documents which are highly current and must be readily accessible to the relevant DfT staff members dealing with projected rail developments.

However, given your response, your inability to accurately determine the workload in advance and for the avoidance of needless further delay, I am willing to amend my request as you suggest.

I request that you provide me with the requested material for the 5 schemes, from the 62, that have the highest estimated total scheme cost.

Thereafter, please provide the remaining information for each remaining scheme in descending order of benefit to cost ratio i.e. information about those schemes with better cost benefit ratios to be provided first.

Please continue to provide this requested information sequentially, but rapidly, until you reach the point at which DfT then regards my request as being “manifestly unreasonable” under the provisions of the EIR’s. Your justification of that point having been reached must be provided at that time.

In determining when the provision of responses has reached the stage of being manifestly unreasonable, DfT should take account that during the development of proposals it is in the public interest and reasonable for the public to be informed of the estimated cost and the cost: benefit ratio’s for proposals that the public will be expected to fund either as taxpayers or ticket buyers. Surely DfT wishes to ensure public encouragement for proposals which have good benefit to cost ratio’s, particularly compared to the appalling BCR for the HS2 Scheme? Those projects will impact on the environment either positively or negatively. Aarhus Convention principles and obligations should be given greater weight than simply the immediate small cost considerations when deciding whether the request is manifestly unreasonable.

In my letter of 09 March 2020 I explained that we now considered the information that the Department holds to be non-environmental in nature and therefore it falls to be handled under the FOI Act.

We have interpreted your request ‘to publish the information contained in the documentation fulfilling the requirements that was prepared to inform the last Rail Network Enhancements Pipeline (RNEP) gateway decision for each of the schemes listed in section 2 of the October 2019 publication’ as a request to release business cases for each of the schemes.

In line with your revised request we have identified the five schemes, from the 62, that have the highest estimated total scheme cost. These are:

- The Transpennine Route Upgrade
- The East West Rail (Phase 2)
- Midland Main Line
- East Coast Main line
- Western Rail Access to Heathrow

The teams responsible for the above list of projects have identified documentation in all five cases relevant to this request. For a summary of the current position on the five projects listed see below:

The Transpennine Route Upgrade

The team have located information within scope of this part of your request and the information is being released to you. Some information has been withheld under Section 40(2)&(3A)(a) of the Act (Third Party Personal Data), Section 35(1)(a) (information relating to formulation or development of Government policy) and Section 43(2): (prejudice to Commercial interests). In applying the latter exemptions we have had to balance the public interest in withholding the information against the public interest in disclosure (See Annex A).

Western Rail Access to Heathrow

The team have located information within scope of this part of your request and the information is being released to you. Some information within the Strategic Outline Business Case is being withheld in reliance on the exemptions at sections 35(1)(a) (formulation or development of government policy) and 43(2) (prejudice to commercial interests) of the Freedom of Information Act 2000. In applying these exemptions we have had to balance the public interest in withholding the information against the public interest in disclosure. (Please see Annex A).

The East West Rail (Phase 2)

Midland Main Line

East Coast Main line

The relevant teams of these projects have located information within scope of your request and the information is being prepared for release to you. This information may be subject to exemptions. I am working towards the deadline of 7 April 2020.

With regard to the second part of your request concerning the remaining schemes (outside the big five), under the FOI Act there is no requirement on public authorities to search up to the appropriate limit. This is confirmed in ICO guidance. Therefore, we will not be processing this part of your request but you are free to submit a more focussed, narrower request and we will consider if that can be answered within the appropriate limit.

However, in the spirit of co-operation I am attaching the documentation for two projects and will write to you further about the other three.

Yours sincerely

G Buckley

Graham Buckley
Briefing and Correspondence Manager

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/exception	
<u>Freedom of Information Act 2000</u> Section 35(1)(a): Information relates to formulation or development of government policy	
Public interest test factors for disclosure	Public interest test factors against disclosure
<ul style="list-style-type: none">• Public interest in transparency, accountability and enabling informed public participation in the issues of the day.• Disclosure would contribute to the Government's wider transparency agenda.	<ul style="list-style-type: none">• Government policy on this matter is still in development e.g. decision on a budget. Disclosing underdeveloped information prematurely may harm proper policy development.• Disclosure at this time would prejudice this process as decision makers in government and across the rail industry need a safe space to make decisions and there may be undue public pressure or concern if this information was released prematurely.• While work is still in progress it could be likely to cause a reaction from the press and the public. Whether this reaction was positive or negative, it would be likely to influence the thinking of our experts. It is in the public interest to protect the safe space for advice and

	<p>discussion since this allows for all views (including those that are radical or unpalatable) to be put forward and the final decision to be based on the full range of opinion.</p> <ul style="list-style-type: none"> • By its very nature these schemes have, and will continue, to involve inter-agency collaboration. We have developed positive collaborative working relationships with a range of partners and these relationships are likely to be damaged by disclosure since it would undermine faith in Network Rail and Department for Transport as a trustworthy partner capable of respecting confidentiality. This is of practical importance since our work on projects with these partner agencies is ongoing and any injury to these working relationships is likely to damage the project as a whole which would clearly not be in the public interest.
<p><u>Decision</u> To withhold some information that relates to ‘live’ formulation and development of Government policy on these rail projects.</p>	

Exemption/exception	
<u>Freedom of Information Act 2000</u> Section 43(2): Prejudice to commercial interests (the Department's or a third party's)	
Public interest test factors for disclosure	Public interest test factors against disclosure
<ul style="list-style-type: none"> • Public interest in transparency, accountability. • Disclosure would contribute to the Government's wider transparency agenda. 	<ul style="list-style-type: none"> • Withheld information is commercially sensitive and would prejudice Network Rail's/the Department's position with its commercial partners and stakeholders. • Some withheld information relates to scheme costs. Disclosure of this information would prejudice the tendering process with contractors and compromise the commitment to secure good value for money for the taxpayer.
<u>Decision</u> To withhold some commercially sensitive information that would prejudice the interests of the Department and those of Network Rail.	

Section 40 Personal Information Exemption.

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

- (a) it constitutes personal data which does not fall within subsection (1), and
- (b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that—

- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.