



## Department for Transport

Department for Transport

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

Our Ref - F0018159

03 April 2020

Dr Paul Thornton

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

Dear Dr Thornton,

### **Freedom of Information Act Request - F0018159**

Further to my letter of 2 April 2020 I am now writing with a further update on the Department's position on your refined FOI request submitted by you on the 14 January 2020.

To clarify for 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 line with your revised request we identified the five schemes, from the 62, that have the highest estimated total scheme cost and sent you redacted documents in relation to the Transpennine Route Upgrade and the Western Rail Access to Heathrow (letter dated 2 April refers). I am now able to update you on the three remaining projects, (below):

- The East West Rail (Phase 2)
- Midland Main Line
- East Coast Main line

### **The East West Rail (Phase 2):**

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 Freedom of Information Act 2000 (Third Party Personal Data). (See Annex A).

### **Midland Main Line:**

The team have located information within scope of this part of your request and the information is being released to you. Some information is being withheld in reliance on the exemptions under section 40(2)&(3A)(a) of the Freedom of Information Act 2000 (Third Party Personal Data), section 41(1) (a) & (b) (information provided in confidence), and 43(2) (prejudice to commercial interests) of the Act. In applying the latter exemption we have had to balance the public interest in withholding the information against the public interest in disclosure. (Please see Annex A).

### **Exemption S41**

Some information has been withheld under Section 41(1) (a) & (b), as it is information that was provided in strict confidence by an outside source. The information is not trivial and is not already in the public domain. It is our view that disclosure of this information would constitute an actionable breach of confidence and so disclosure would also be unlawful under the Act. In these circumstances, Section 41(1) of the Freedom of Information Act confers an absolute exemption on disclosure and there is no public interest test to apply.

### **The East Coast Main Line:**

The team have located information within scope of this part of your request and the information is being released to you. Some information is being withheld in reliance on the exemptions under section 40(2)&(3A)(a) of the Freedom of Information Act (Third Party Personal Data), and 43(2) (prejudice to commercial interests). In applying the latter exemption we have had to balance the public interest in withholding the information against the public interest in disclosure. (Please see Annex A).

I hope that this documentation alongside that which was released to you on the 2 April 2020 is helpful.

Yours sincerely

*Graham 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**

<b>Exemption/exception</b>	
<b><u>Freedom of Information Act 2000</u></b> Section 43(2): Prejudice to commercial interests (the Department's or a third party's)	
<b>Public interest test factors for disclosure</b>	<b>Public interest test factors against disclosure</b>
<ul style="list-style-type: none"><li>• Public interest in transparency, accountability.</li><li>• Disclosure would contribute to the Government's wider transparency agenda.</li></ul>	<ul style="list-style-type: none"><li>• Withheld information is commercially sensitive and would prejudice Network Rail's/the Department's position with its commercial partners and stakeholders.</li><li>• 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.</li></ul>
<b><u>Decision</u></b> 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.

## **Section 41 – Information provided in confidence**

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.