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Our Ref: F0019714

13 August 2021

Dear Mr Temple,

## **Freedom of Information (FOI) Act Request reference number F0019714**

I am replying to your request, received on 3 July 2021, for an internal review of our response to your FOI request. You had asked for information in connection with securing and implementing a feasibility study of the restoration of the railway link between Consett and the conurbation(s) close to the River Tyne.

We had refused your FOI request in reliance on section 43 of the FOI Act, on the grounds that disclosure of the information would be likely to prejudice the commercial interests of any person. Your request for a review has been passed to me to deal with, as I was not involved in the handling of your original FOI request.

In your review you have asked that the approach of applying section 43 as a blanket exempting be reviewed, and that we consider partially releasing documents with appropriate redactions.

Having reviewed the information in scope of your request, I am content that section 43 of the Act is engaged in certain sections of the relevant documentation but should not be applied as a blanket exemption. I am therefore partially overturning the decision to rely on section 43 of the Act. I would note that section 43 remains engaged for some of the information in scope and the public interest arguments provided in the original response to you remain valid.

Further to this, my detailed review of the information has identified further exemptions that are engaged for the remainder of the information. These are section 40(2) for personal data and section 35(1)(a), on the grounds that the information relates to the formulation and development of live government policy.

Section 40(2) is an absolute exemption and therefore does not require a public interest test. Section 35(1)(a) is a qualified exemption and I have therefore outlined the public interest arguments below.

There is a clear public interest in transparency and accountability of government, and release would allow the public to see how decisions have been made and allow them to potentially contribute to the policy making process.

However, the restoration of the railway link between Consett and the conurbation(s) close to the River Tyne remains a matter of live government policy and the information in scope of your request is being used to inform that policy. Release of the information at this stage would inhibit the safe space required by government to formulate and develop policy. Ministers and officials require this safe space to formulate and develop government policy without fear of premature disclosure. If information of this type was routinely released into the public domain it would inhibit officials from providing the free and frank advice necessary for good government decision making.

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 via their online form: <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>.

Yours sincerely

Jack Gibson  
Information Rights Team