

East Coast Main Line Company Limited  
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eastcoast.co.uk

Peter  
[request-244771-dfa7f88a@whatdotheyknow.com](mailto:request-244771-dfa7f88a@whatdotheyknow.com)

16 February 2015

Dear Peter,

I am writing in response to your request for an internal review which we received 13 January 2015. More specifically, your request concerned the decision to withhold pricing information of uniform by individual garment. The internal review was conducted by Michael Holden, Chairman of East Coast, and the outcome of that review is documented below.

### Appeal Decision

Having considered these details and reviewed the guidance and latest decision notices issued by the Information Commissioner's Office (which can be reviewed at [www.ico.org.uk](http://www.ico.org.uk)), Michael was satisfied that the withheld information relating to uniform prices was correctly withheld under section 43(2) of the Freedom of Information Act 2000 (FOIA) and, following consultation with the supplier, Michael also believed that the exemption under section 41 FOIA applies to this information.

However, more detailed information should have been provided on why the information would be likely to give rise to a commercial prejudice if disclosed into the public domain under the FOIA and that more detailed public interest test arguments should have been provided. I apologise for this.

Accordingly, our revised response to your request following this review is enclosed, for your information. Whilst referred to below, we have not attached a further copy of the information you received previous, but should you require a further copy, please let us know.

Should you have any further queries, please do not hesitate to contact me.

Yours sincerely,



Matt Short  
East Coast Main Line Company Limited

## **Request for information under the Freedom of Information Act 2000 ("FOIA")**

We write in response to your e-mail dated 17 December 2014, in which you made a request under FOIA to East Coast Main Line Company Limited ("the Company") for the following information:

1. *A list of all items of East Coast uniform along with the price of each item;*
2. *A copy of the East Coast uniform policy/guidelines detailing what items of clothing East Coast employees in each role must and can wear;*
3. *The approximate cost of training a guard/Train Manager, Driver and customer service assistant;*
4. *The results of the most recent employee survey (if any) that has been carried out since the start of East Coast taking over the East Coast franchise;*
5. *East Coast's staff turnover rate for 2013;*

(together, the "Requests").

### **Duty to Confirm or Deny**

The Company has considered the Requests and we can confirm that East Cost holds the majority of the information you have requested.

In respect of item 3 of the Requests, the Company does not record the average cost of training for each role in the organisation. Accordingly, this information is not 'held' under the FOIA.

### **Communication**

The Company is pleased to enclose the following information with this letter dealing with items 1 (in part), 2, 4 and 5 of your Requests:

- a file of documents setting out the Company uniform items according to role;
- a copy of the Company Uniform and Presentation Standards guide; and
- a copy of the Company employee survey results relating to 2014.

In response to your request that we disclose the staff turnover rate in 2013, we confirm that the rate was 5.22% during the period 1 January 2013 – 31 December 2013.

Part of the information requested in item 1 of the Requests, individual uniform pricing details, is exempt from our general duty of disclosure. Further details on the relevant exemption is set out below.

### **Exemption**

The uniform pricing information requested is held by the Company but has not been provided (i.e. it has been extracted or redacted) because it is exempt from disclosure under the FOIA. Further details on the exemptions applicable to your request are set out below.

*Section 43(2) FOIA – Commercially prejudicial information*



Under section 43(2) FOIA, information will be exempt from disclosure if its disclosure under the FOIA would, or would be likely to, prejudice the commercial interests of any person.

The Information Commissioner's Office ("ICO") suggests the following questions are considered when applying the exemption:

- *Could the information impact a commercial activity?*
- *Could disclosure result in damage to reputation or business confidence?*
- *Is the activity in a competitive environment?*
- *Is the information commercially sensitive?*
- *Whose commercial interests are affected?*
- *What is the likelihood of prejudice?*

The ICO also confirms that we should identify the interests to be prejudiced; what the prejudice would be, why prejudice would flow from disclosure and the likelihood of prejudice resulting.

You have requested the pricing details of the uniform items worn by the Company employees (the "Requested Information"). The Requested Information contains commercially sensitive information which falls within section 43(2) of the FOIA, as it specifically relates to the amount paid by the Company to its supplier for its goods, operating in a competitive trading environment.

The Requested Information would not only reveal our supplier's pricing strategies, but any approaches taken by either party in relation to rates, discounts and risk. We have consulted with our third party supplier who confirms that their commercial success depends to a large degree on its pricing strategy. Their pricing strategy has particular relevance in the public sector market where they are competing in a climate of restricted and much reduced budgets and as such, offer competitive pricing to help meet client budgetary pressures and win business.

Such pricing information is not currently in the public domain and our supplier's competitors would be highly likely to seize on any such details to obtain a better idea of our supplier's business, financial model and its pricing strategy. Competitors are likely to use the figures to inform their own rates and may price upwards or downwards as a result. Disclosure would facilitate that and risk distortion to normal market competition; damaging not only our supplier's future business opportunities but the Company's ability to negotiate effectively in future to obtain such goods at competitive prices.

Furthermore, if the Requested Information were to be disclosed, it would be likely to put pressure on our supplier's current client relationships and terms and it is highly likely that the details will be scrutinised by their current clients, other actual and potential public authority clients and competitors.

Accordingly we consider that commercial interests in relation to operation of a business are at stake; harm is highly likely to result from disclosure, with damage to the current and future commercial prospects of the Company and our supplier, as explained above. We therefore consider that section 43(2) FOIA is therefore engaged.

#### *Public Interest Test*

The FOIA states that the application of the exemption in section 43(2) FOIA is subject to the public interest test. This requires that the information requested

should be disclosed where that disclosure would be in the greater public interest. Obviously, this test requires consideration of the interests of the public at large, not public curiosity or individual or private group interests.

We have taken account of the fact that there is an assumption that disclosure is in the public interest and that there is a public interest in transparency and accountability for decision making (and especially financial decision making using public funds).

However, there is a high probability of prejudice from disclosure of the commercially sensitive information at issue under the FOIA because disclosure is considered disclosure to the public at large and at this current time could impede future negotiations and the viability of current proposals and future projects. It would therefore be harmful to the negotiating stance and other resources of the Company and our supplier to provide such commercially prejudicial details. In particular, disclosure would lead to more public money having to be spent on such arrangements in the future because details of what may be acceptable for certain types of arrangements have been made available in advance. This would also not be in the greater public interest.

Accordingly, we consider that the significant risk of disclosing this withheld information would be likely to have a material negative impact on the Company and our supplier, our resources and costs which cannot be justified in the circumstances, is disproportionate to the legitimate public interest in any details being disclosed and not in the wider public interest. As a result, we believe that the public interest in maintaining the exemption outweighs the public interest in disclosing the information at present.

#### *Section 41 FOIA – Confidential Information*

The Requested Information has also been withheld as the Company considers it to be exempt under section 41 FOIA. The Company believes that this exemption applies to the Requested Information to the extent that it contains confidential information that was provided to the Company by a third party, as disclosing that information to the public would constitute an actionable breach of confidence by the third party supplier against East Coast. Our supplier reiterated its expectation of confidentiality when consulted in relation to disclosure of the Requested Information and this is underpinned by the contractual obligations between the parties.

The quite clear assumption in supplying this information was that the Company would respect the obligation of confidence, as not to do so would cause detriment to our third party supplier. The Requested Information is not in the public domain and there is no intention for this to be and at no point has our third party supplier given their consent to disclosure of the Requested Information to the public. Considering the specific nature of the Requested Information, the duty of confidentiality should not be overridden, as, in all the circumstances, it would not be in the public interest to authorise a breach of confidence at law.

Section 41 FOIA is an absolute exemption and so the public interest test does not have to be considered. We therefore consider that at this time, the Requested Information is also exempt under section 41 FOIA.

#### **Complaints Procedure**

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of the decision, you should



write directly to the Information Commissioner's Office. The Information Commissioner can be contacted at:

Information Commissioner's Office,  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Matt Short', with a stylized, sweeping flourish at the end.

Matt Short  
East Coast Main Line Company Limited