



# Department for Transport

Steve Kirtley  
request-541793-d2e3b974@whatdotheyknow.com

Ms I Craig  
MARITIME DIRECTORATE  
DEPARTMENT FOR TRANSPORT  
GREAT MINSTER HOUSE  
33 HORSEFERRY ROAD  
LONDON  
SW1P 4DR

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

Our Ref: F0016889

31 January 2019

Dear Steve

## **Freedom of Information Request F0016889**

Thank you for your information request of 3<sup>rd</sup> January 2019. You requested the following information in relation to the Department's procurement of additional freight capacity in December 2018:

1. Which highly reputable third party organisations were consulted?
2. When they were consulted?
3. How much the consultancy costed?
4. Any reports or analysis provided to the department by those third parties.

Your request has been considered under the Freedom of Information Act 2000.

I am writing to confirm that the Department does hold the information you requested but has decided that some of this information cannot be disclosed for the reasons given below.

The Department used Slaughter & May, Deloitte and Mott MacDonald as professional advisers for the procurement of additional freight capacity. They provided advice throughout the entire procurement process from November 2018 (Slaughter & May) or December 2018 (Deloitte and Mott MacDonald). All three still advise for the Department on the contracts awarded to the ferry operators.

The cost of the advisers is being withheld in reliance on the exemptions in sections 43(2) and 22(1) of the Freedom of Information Act 2000. At the time of your request we have a clear intention of publishing the cost once the period where agreements for the provision of their advice to the Department has concluded.

Any reports or analysis provided to the Department by any of these parties are being withheld in reliance on the exemption in section 43(2) of the Freedom of Information Act 2000.

In applying exemptions under sections 43(2) and 22(1) we have had to balance the public interest in withholding the information against the public interest in disclosure. The attached annex A to this letter sets out the exemptions in full and details why the public interest test favours withholding the information.

In keeping with the spirit and effect of the Freedom of Information Act, all information is assumed to be releasable to the public unless exempt. A copy of this response and the information provided may now be published on the [www.gov.uk](http://www.gov.uk) web-site, together with any related information that will provide a key to its wider context.

If you are unhappy with the way the Department 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 Department'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

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 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,

Ms I Craig  
Maritime Directorate

## **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

### Cost of advisers

<b>Exemption in full – Section 22(1)</b>	
<p>(1) Information is exempt information if—</p> <ul style="list-style-type: none"><li>(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),</li><li>(b) the information was already held with a view to such publication at the time when the request for information was made, and</li><li>(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).</li></ul>	
<b>Public interest test factors for disclosure</b>	<b>Public interest test factors against disclosure</b>
<p>Disclosure would be consistent with the Government's wider transparency agenda.</p> <p>Disclosure would allow the public to see that matters are being properly thought through to ensure best value for the public purse.</p>	<p>Publishing the cost before the intended date of publication would be unreasonable as the companies are currently in live agreements with the Department and the cost remains commercially sensitive. If the Department were to seek to obtain similar agreements with other advisers on other projects or to seek to alter the particulars of the cost agreement, disclosure of the cost at this point would prejudice the Department's approach.</p> <p>Public authorities should be able to publish information in a manner, form and timing of their own choosing. DfT officials' time would be better spent compiling, verifying and preparing information for publication so that everyone gets to see the contract at the same time, as opposed to dealing with individual requests.</p>
<b><u>Decision</u></b>	
<p>On balance, the public interest arguments in continuing to withhold the information until final publication outweighs that for disclosure.</p>	

**Exemption in full – 43(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).

**Public interest test factors for disclosure**

Disclosure would contribute to the Government's wider transparency agenda.

Disclosure would allow the public to see that agreements with external advisers are properly thought through to ensure best value for the public purse and operational readiness.

**Public interest test factors against disclosure**

Disclosure of current commercially sensitive prices the companies are using in live commercial agreements would jeopardise their ability to operate fairly in a competitive market.

Disclosure would be likely to prejudice the Department's commercial interest. If the Department routinely released sensitive commercial information such as that relating to companies' pricing, organisations would be reluctant to enter in to contracts with government which would make it harder for the Department to carry out any of its commercial roles.

**Decision**

On balance the public interest in withholding the information outweighs the public interest in disclosure.

## Any reports or analysis done by third party advisers

<b>Exemption in full – Section 43(2)</b>	
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).	
<b>Public interest test factors for disclosure</b>	<b>Public interest test factors against disclosure</b>
<p>Disclosure would be likely to assure citizens that the decision to award contracts to the successful ferry operators was taken on the basis of robust technical, financial and operational assurance.</p> <p>Disclosure would allow the public to see that matters are being properly thought through to ensure best value for the public purse.</p>	<p>This information is commercially sensitive as it contains detailed sensitive operational, financial and technical details of the ferry operators provided as part of the tendering process. Disclosure of these details would impact their ability to compete competitively in a commercial market.</p> <p>Disclosure would prejudice the Department's commercial interest. If third party sensitive technical, financial and operational details provided as part of procurement were routinely disclosed organisations would be reluctant to share information with the Department that they were not required to or would be reluctant to enter in to contracts with government altogether. This would make it harder for the Department to carry out its role.</p>
<b><u>Decision</u></b>	
On balance the public interest in withholding the information outweighs the public interest in disclosure.	