



Department
for Transport

Mr Michael Cook
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Web Site: www.gov.uk/dft

Mr N Hardwick

[By email: request-442919-a4bf3646@whatdotheyknow.com]

Our Ref: F0015394

21 November 2017

Dear Mr Hardwick,

Freedom of Information Act Request – F0015394

Thank you for your Freedom of Information (FOI) request of 3 November 2017. You requested the following information:

‘Could you please provide those elements of the West Midlands Trains tender submission which relate to:

1. proposed use of existing together with details of new rolling stock 2. proposed timetable together with any future enhancements.’

We wrote to you on 9 November requesting clarification of your request, which you provided the same day:

‘I am requesting the information from the final contract.

In other words what is actually going to happen rather than information from the Invitation to Tender or a Tender Submission which was subsequently altered as result of negotiation.’

Your request had been considered under the FOI Act and the Department for Transport (DfT) has undertaken a search for the requested information. I am writing to advise you that the Department does hold some information that is relevant to your request, relating only to the West Midlands franchise.

The Department does not specify how Train Operating Companies (TOCs) deploy/use their rolling stock. Information on new rolling stock is considered commercially sensitive and release of this information would be likely to prejudice the commercial interests of West Midlands Trains Ltd and the Department for Transport.

Therefore this information is being withheld under section 43(2), commercially sensitive, of the FOI Act. As section 43(2) is a qualified exemption, we are required to balance the public interest in disclosing the information against that for withholding it. **Annex A** to this

letter sets out exemption 43(2) in full and details why, on balance, the public interest test favours withholding the information.

The information that the Department holds has been provided in confidence. We are therefore withholding this information at this time in reliance on the exemption at 41(1) - information provided in confidence.

Section 41(1) is an absolute exemption and does not require a public interest test. Further details are provided at **Annex B**.

It may be helpful to explain that the Department does not specify or contract a timetable with train operators. It is the train operators who propose the timetables and Network Rail who then assess the interactions and complexities with other operators to agree an operationally feasible timetable.

The Government believes that operators are far better placed than central Government to react to the changing demands of their customers in the creation of train services and timetables and has committed to taking a less prescriptive approach to rail franchising.

You may wish to contact West Midlands Trains Ltd who may be willing to answer your queries. Please be aware that West Midlands Trains Ltd are not subject to the FOI Act.

contact@westmidlandsrail.com

If you are unhappy with the way the DfT 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 DfT'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 also 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

Michael Cook
Correspondence Manager – Passenger Services

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

Public Interest Test Section 43(2)

Factors for disclosure	Factors against disclosure
<ul style="list-style-type: none">- Disclosure would contribute to the Government's wider transparency agenda and allow the public to scrutinise discussions and decisions the Government and stakeholders make.- It is in the public interest to know what actions have been considered with regard to the West Midlands Franchise. Disclosure would be likely to help the public understand if the optimum level of service has been considered.	<ul style="list-style-type: none">- The information relates to the procurement of new rolling stock and so refers to commercially sensitive information which is not yet public.- It is important that TOCs are able to publish the information in a manner, form and timing of their own choosing.- In order for the DfT to be able to carry out its role effectively, TOCs must feel that they can disclose highly sensitive commercial information to the DfT without risk that this information will be disclosed to the public or competitors.- If TOCs do not have confidence that the DfT will protect information which is deemed commercially sensitive, they would be likely to be reticent to provide information that they are not obliged to, under the terms of their Franchise Agreements with the DfT.- This would be likely to prejudice the DfT's ability to carry out its policy and planning functions, and limit the information available to the DfT when franchises are being let.
Decision Reached	
<p>This information is being <u>withheld</u> as on balance the factors for withholding this information outweighs the factors for releasing it – the release of this information would be likely to prejudice the commercial interests of West Midlands Trains Ltd and the DfT.</p>	

Annex B

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.

Information provided by bidders in confidence is covered by Franchise Procurement Agreement confidentiality provisions, in which the Department agrees to keep applicant information confidential.

Section 41 is an **absolute exemption** and therefore does not require a public interest test.