

January 13th 2011

XXXXX
XXXXX

Dear XXXXX

Freedom of Information Request – Reference F0007207

I am writing to confirm that the Department for Transport has now completed its search for the information which you requested on 22 December 2010.

The information relating to your request is as follows:

The handling of train operating companies' (TOC's) revenue losses due to disputes with trade unions can vary depending on the contractual provisions contained within the individual Franchise Agreements.

For all franchises let since 2004, there is a contractual (non discretionary) protection for TOCs against the financial effects of Industrial Action via the Force Majeure provisions. The applicability of this protection depends on when in the franchise lifecycle the event takes place, but the level of protection is also impacted by how the TOC concerned is performing against its Target Revenue.

(The franchise agreements are available on the Public Register area of the DfT website: www.dft.gov.uk/pgr/rail/passenger/publicregister] and each one will have specific provisions in the relevant template.)

In addition, all Franchise Agreements contain provisions whereby *“the Secretary of State, in his discretion, may at any time decide to reimburse or ameliorate net losses of the Franchisee arising from industrial action (however caused and of whatever nature) in circumstances where the Franchisee has demonstrated to the satisfaction of the Secretary of State that it has taken all reasonable steps to avoid the industrial action and that, industrial action having nevertheless occurred, the Franchisee has taken all reasonable steps to mitigate effects.”*

Although the provisions can be interpreted to allow either party (DfT or the TOC) to initiate this process, it is envisaged that in reality any such claim would be initiated by the TOC.

The decision to support a TOC via these provisions is taken on a case by case basis. The actual decision-making is a matter for Ministers, based on the recommendation from the DfT Rail Group executive committee (or its replacement) after its scrutiny of the claim.

If a claim for support is approved, the support granted would only cover a portion (determined case by case) of net losses, capturing any savings operators may make as a consequence of the industrial action.

Whilst a number of potential enquiries have been received, our records indicate that since 2005 only one formal claim has been received, and only one compensation payment has been made under these provisions.

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. The Department will, therefore, be simultaneously releasing to the public the information you requested.

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 Information Rights Unit 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 see attached (Annex A) for details of DfT's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

XXXXXX

Deputy Director, Rail Performance, Department for Transport
XXXXXX@dft.gsi.gov.uk

Tel: 020 XXXXXXX

Annex A

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

From: FOI DfT [mailto:XXXXXX@transportsite.gov.uk]
Sent: 22 December 2010 11:28
To: FOI-ADVICE-TEAM-DFT
Subject: Online FOI request form for central DfT

Online FOI request form for central DfT

Your request:

Title: XXXXX

Name: XXXXX

Address: XXXXX

Address: XXXXX

Address: XXXXX

Post code: XXXXX

Email address: XXXXX

Telephone: XXXXX

Fax:

Date of this request: 22/12/2010

Description of your request: Following on from the response to the question about Railways: Industrial Disputes (21 Dec 2010 : Column 1294W), I would like to request the following. What the criteria is for calculating the losses to a train operating company for loss of revenue arising from a dispute with a trade union? What the process is and who is involved in the decision (at the DfT) to pay a train operating company for loss of revenue arising from a dispute with a trade union? Who instigates a claim for the loss of revenue arising from a dispute with a trade union (DfT or the TOC's)? How many claims have been paid per year since 2005? How many claims have been started per year since 2005?

Please select your preferred method of receiving the response: By email

Other information: