

## **FREEDOM OF INFORMATION REQUEST F0007009: INTERNAL REVIEW**

I am writing further to xxxxx's letters to you of 13 December and 6 January to confirm that the Department has now completed an internal review of the way in which your Freedom of Information request (reference F0007009) was handled. I led the review, as a member of the Department's Senior Civil Service who was not in any way involved in the original decision-making process. I have given this case careful consideration.

The background to the case, as you are aware, is as follows. You wrote on 28 October 2010 asking for a copy of a report with the title "*Transport Management and Policing Integration: Outline Project Brief*", and any internal DfT correspondence relating to the report's recommendations and conclusions, as well as any correspondence between the DfT and the British Transport Police Authority (BTPA) about the report. You received a response from xxxx on 25 November which confirmed that the Department held information relevant to your request, and which made available some factual information from the report in question, but which withheld other information on the grounds that it was subject to a qualified exemption under section 35(1)(a) of the Freedom of information Act 2000 (FOIA).

You replied on 6 December saying that you intended to appeal against the Department's decision to withhold the information in question on the grounds that:

- a. you had been provided by a third party with extracts from the report in question which suggested that it was not subject to any protective security marking, and that it was a joint publication issued on behalf of the DfT, VOSA, the Highways Agency and the BTP; and
- b. the fact that a third party had provided you with extracts from the report suggested that it had already had a degree of public exposure.

You said that, in your view, a report containing proposals to integrate any of the functions of the bodies involved should have been subject to consultation with, among others, Departmental and other affected trade unions from the outset.

In reviewing the way in which this case was handled, I have considered, among other things, whether the Department was right to apply the exemption in section 35(1)(a) of the FOIA, and, as part of this, whether the public interest test was properly carried out. My findings are as follows.

First, the presence or absence of protective markings (such as “restricted”) on any document does not, in itself, mean that the information can, or cannot, be disclosed. The test is always whether or not the information has been considered against the exemptions in the Act. I do not therefore consider the fact that the document had a “not protectively marked” header sufficient grounds in itself for disclosing it.

Second, it is my understanding that, although the document does indeed have the logos of the BTP, DfT, HA and VOSA on its front page, it was not, in fact, a jointly agreed document. It was, instead, a document written by the BTP, with some support (including eg the provision of factual information) from colleagues in the DfT and HA, which was intended to inform further discussion with the DfT and its agencies. The inclusion of the DfT, HA and VOSA logos on the front page should not therefore be taken to imply that the report’s findings are in any way endorsed by the DfT or its agencies. The report was not widely circulated in the DfT or its agencies, and did not have the degree of public exposure that you suggest. There was also a suggestion on the front page of the report that the document was an “outline project brief”: again, this is misleading because it incorrectly implies a firm commitment on the part of the DfT and its agencies to taking forward some of the proposals.

Turning to the appropriateness or otherwise of the section 35(1)(a) exemption, I should perhaps first set out my understanding of what the report was (and what it was not).

To put the report in context, it was submitted to DfT on 20 October 2010 and was prepared against the background of the wider Spending Review and Public Bodies (Reform) Bill. It contained some early thinking on ways in which the delivery of existing services in the BTP, HA and VOSA might be improved while at the same time reducing the overall associated costs. It might perhaps best be described as a think-piece or scoping document exploring whether or not there was a good case for carrying out further work. As such, it represented “blue skies thinking”, and it was one of a number of similar exercises that were carried out across the public sector last year, against the background of a Government commitment to deliver big savings in the costs of running the public sector.

On balance, I therefore agree with the original decision to withhold the report and other associated information (including, for example, a small number of internal DfT email exchanges on its content, and a covering letter from the Chief Executive of the BTPA), on the grounds that it is strongly in the public interest that there should be sufficient free space for thinking of this sort to take place, without the fear of premature disclosure. Disclosing the report in its entirety could, in my view, cause undue concern among employees in each of the bodies concerned. This would not be appropriate given the provisional and high-level nature of the proposals in the report, and given that they do not represent agreed policy. I understand that the Department is not currently taking forward any further work on the proposals in the report. If this were to change, and if the Department were to take any of the proposals forward, it would of course wish to consult all those who would be affected.

I accept, however, that the public interest test arguments are somewhat finely balanced in this case, and I am therefore of the view that it would be appropriate for me give you some more information about the content and structure of the report, given its obvious relevance to colleagues in the Highways Agency.

The report, in summary, set out two possible options for integration and recommended that further work might usefully be done to explore these more fully. The options were, in brief:

- some sharing of “back-office” functions between the BTP, HATOS and VOSA, without any operational integration
- the creation of a new strategic transport network enforcement agency combining the functions of the BTP, HATOS and VOSA.

The report attempted to quantify potential savings associated with each option to inform consideration of whether or not there might be any value in carrying out further work on either of them, but noted that *“within the timeframe available to complete this work it has not been possible to establish potential savings with any degree of certainty”*. It suggested instead indicative ranges of possible savings and wider economic benefits. These focused solely on BTP and HATOS. In other words, any potential savings from the inclusion of VOSA in any integration were excluded from the report, with a recommendation that if the Department were to take forward any further work on the proposal, this should include consideration of the scope for delivering further potential savings and operational benefits by including VOSA. The estimates of potential savings were of a very broad-brush and indicative nature: potential back-office savings, for example, were based on an assumption from an earlier report commissioned by HM Treasury that Government Departments could generally achieve cost savings of between 25-30% if they re-engineered back-office functions. The report concluded by recommending that further work should be undertaken to develop a Project Initiation Document (PID) and business case in order that a formal project could be established. As I have made clear earlier, the Department has not acted on this recommendation.

I hope that this further information is helpful. If you are not content with the way in which this internal review has been conducted, 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  
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Water Lane  
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