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Dear XXXXX,

RE: Freedom of Information Request – official correspondence

You requested copies of:

1. All correspondence between myself and Paul Starbrook since November 10.
2. All correspondence between myself and train operating companies since November 10.

There are actually very few items of correspondence in these categories for the period requested, but I have supplied as much as I can. I have included a list of all relevant items over the period (provided as an attachment), citing the exemptions applied for any of the items I am withholding. I exchanged very little correspondence with Paul Starbrook over this period, and only slightly more with train operators. Many of the individual items relate to Freedom of Information requests, and some of this correspondence is not being disclosed.

Certain items include Ministerial Submissions and correspondence relating to these Submissions. Non-disclosure of these falls under the exemptions in section 35 of the Freedom of Information Act 2000.

There are a number of pieces of correspondence between myself and the train operators regarding the provision of data under the Freedom of Information Act. In most cases the requested data were withheld. I am not supplying this correspondence and am applying the exemptions in section 36 of the Freedom of Information Act 2000. Exemption 36 applies because the correspondence includes free and frank exchanges of views about whether or not DfT should release the requested information.

For each item of correspondence, in line with Departmental policy, the names of junior officials below the Senior Civil Service have been withheld under section 40(2) of the Freedom of Information Act 2000 on the grounds that it would be unfair in terms of the first data protection principle to disclose the names of staff at those levels. Also applying this exemption, I am withholding details of private individuals who have approached the Department for data.

Finally I am applying exemption 43 (2) for one series of correspondence where a private company has requested data to conduct some analysis. The data were supplied under confidential terms.

In applying exemptions 35, 36 and 43(2), 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 and details why the public interest test favours withholding the information.

I am attaching all the other relevant correspondence not covered by the above-named exemptions. Where information is being withheld I am providing redacted copies of the full correspondence.

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 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.

Yours sincerely

Margaret Shaw
Rail Statistician

**For copies of the supporting documents please contact
Margaret Shaw at margaret.shaw@dft.gsi.gov.uk.**

<p><u>Your right to complain to [DfT/Agency] and the Information Commissioner</u></p>
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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

Exemption 35

Section 35 exempts information held by a government department and relating to:

- the formulation/development of government policy
- communications between ministers
- requests for/advice provided by law officers
- the operation of any ministerial private office

Public interest test

Public interest test factors for disclosure

- There is a public interest in knowing how crowded train services are, and in knowing what DfT is doing to manage overcrowding:
 - promoting accountability and transparency in the spending of public money in managing train overcrowding
 - promoting accountability and transparency for decisions taken by DfT
- Greater transparency makes government more accountable to the electorate and increases trust that the Department is working effectively to improve rail service delivery
- As knowledge of the way government works increases, the public contribution to the policy making process could become more effective and broadly-based, allowing a

Public interest test factors against disclosure

- Good government depends on good decision making and this needs to be based on the best advice available and a full consideration of all the options.
- The impartiality of the civil service might be undermined if advice was routinely made public as there is a risk that officials could come under political pressure not to challenge ideas in the formulation of policy.
- It is not in the public interest to know the timing of Submissions, the identities of individuals to whom they were circulated or the reasons for that circulation; that is the information implicit in the correspondence accompanying Ministerial Submissions.
- Ministers and officials need to be able to conduct rigorous and candid risk assessments of their policies and programmes including considerations of the pros and cons without there being premature disclosure which might close off better options. Disclosure of detailed advice to Ministers could result in a campaign by those parties who feel they are being disadvantaged which would make it difficult to conduct an unbiased risk assessment as a similar campaign by those benefiting from the proposals is

<p>more effective contribution to be made to decisions on similar issues in the future</p> <ul style="list-style-type: none"> • There is a public interest in being able to assess the quality of advice being given to ministers and subsequent decision making 	<p>unlikely.</p> <ul style="list-style-type: none"> • There needs to be a free space in which it is possible to 'think the unthinkable' and use imagination, without the fear that policy proposals will be held up to ridicule.
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Decision

The overall effect of releasing documentation, specifically Ministerial Submissions, which contribute to decision-making on aspects of Departmental Policy (in this case whether to release information under FoI) would reduce the quality of advice provided to Ministers on similar issues in the future.

Exemption 36

Exemption summary

This section exempts disclosures that (in the reasonable opinion of a "qualified person" - a DfT Minister in DfT's case) will or are likely to:

- **prejudice** maintenance of convention of collective responsibility of Crown Ministers;
- **inhibit** free and frank provision of advice;
- **inhibit** free and frank exchange of views for purposes of deliberation; or
- otherwise **prejudice** effective conduct of public affairs

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- As knowledge of the way government works increases, the public

Public interest test factors against disclosure

- Good government depends on good decision making and this needs to be based on the best advice available and a full consideration of all the options;
- Ministers and their officials need to be able to think through all the implications of particular options. In particular, they need to be able to undertake rigorous and candid assessments of the risks to particular programmes and projects. In this case, to enable us to brief Ministers fully, in collaboration with TOCs, officials have had frank exchanges about a range of FOI cases, and the impact of data release;
- Advice should be broad based and there may be a deterrent effect on external experts or stakeholders who might be reluctant to provide advice because it might be disclosed. In this particular case, it is likely that train operators would be very concerned about the disclosure of advice they had provided and opinions they had expressed, as this could prejudice subsequent negotiations with the Department. Disclosure would be

<p>contribution to the policy making process could become more effective and broadly-based, allowing a more effective contribution to be made to decisions on similar issues in the future</p> <ul style="list-style-type: none"> • The public interest in being able to assess the quality of advice being given to ministers and subsequent decision making 	<p>likely to deter them from providing thorough advice</p> <ul style="list-style-type: none"> • DfT plans to procure a centralised passenger counts database. The database will be a DfT asset used for transport planning. It is being developed with the voluntary assistance of the TOCs on the condition that the data and information they make available for the database are not made public in such a way that there could be damage to their financial positions or reputation. There is a risk that relationships between the Department and the TOCs will be damaged by releasing correspondence in which their views on data sharing are made publicly available. There is a risk that they will stop supplying any information that they are not obliged to under the terms of their Franchise Agreements with the DfT. This would have an impact on DfT's ability to carry out its policy and planning functions, and would limit the information available to the Department when franchises are being let in future;
<p style="text-align: center;"><u>Decision</u></p> <p>The overall effect of releasing documentation relating to decision-making on aspects of the Department's relationships with train operators would reduce the quality of advice provided to Ministers on similar issues in the future, and would have a negative impact on the Department's relationships with Train Operating Companies.</p>	

Exemption 40

Section 40 preserves the right of subject access under the Data Protection Act 1998 (DPA) by exempting requests by individuals for their own personal data. It also exempts requests for information about other living individuals where the disclosure would not be DPA compliant (whilst acknowledging that the public interest might require the disclosure of information that would/might cause damage or distress to an individual).

Exemption 43

1. Information is exempt information if it constitutes a trade secret.
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).
3. The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

Public interest test

Public interest test factors for disclosure

Greater transparency makes government more accountable to the electorate and increases trust that the Department is working effectively to improve rail service delivery

The current coalition Government has promoted the ideal that information should be made public rather than not, and that Government should be more transparent.

Public interest test factors against disclosure

Commercial confidentiality

The requested correspondence includes a request for data made by a private company. We would consider this to be commercially sensitive information.

At a very general level, there is a public interest in protecting the commercial interests of both the private sector (which plays an important role in the general health of the economy) and the public sector (whose commercially-related functions need in any event to be exercised in the wider context of the public interest).

We are not obliged to release any information that could prejudice a private company's commercial interests.

Decision

The Department does not release information on the companies or individuals who request data and/or information, neither do we publish details of the requests they make.