

Reply by email.
XXXX

Thameslink Rolling Stock Project
Our ref: P0007807

I am in receipt of your request for access to all documents relating to the decision to make Siemens the preferred bidder for the supply of the new Thameslink trains.

The Department does hold the information you requested on 24 June 2011 but has decided that some of this information cannot be disclosed for the reasons given below.

1. Information which led Theresa Villiers MP to claim that the preferred bidder decision represents best value for money

Both bids were subject to a vigorous evaluation process and the detailed evaluation criteria for the Thameslink rolling stock contract are viewable on the Department's archives at the following address:

<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/rail/pi/thameslinkrollingstock/itt/invitation.pdf>

The rolling stock procurement competition is still underway and it is therefore not possible to release details of the bids, which are commercially sensitive. The information you requested is being withheld in reliance on the exemptions in the following sections of the Freedom of Information Act 2000 (the "Act"):

- (a) section 36; where in the reasonable opinion of a qualified person, in this case the Minister of State, disclosure would inhibit free and frank advice to Ministers and the free and frank exchange of views, and would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs;
- (b) section 41, under which information obtained by a public authority is exempt if disclosure of the information to the public by the public authority would constitute an 'actionable breach of confidence'; and
- (c) section 43(2), under which information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

These exemptions apply because:

- (a) in the case of section 36, the disclosure of internal communications would inhibit the free and frank provision of advice to Ministers and the free and frank exchange of views for the purposes of deliberation in relation to the Thameslink competition, and would be likely to prejudice the effective conduct of the Department in the procurement process;
- (b) in the case of section 41, much of the information you requested is protected by the law of confidence in such a way that disclosure of it to the public by the Department would constitute an actionable breach of confidence. That

information is protected in this way because (i) it is of a confidential nature, (ii) it was disclosed to the Department in circumstances of confidence and (iii) there is no overriding public interest in its disclosure; and

- (c) in the case of section 43(2), disclosure of much of the information you requested would prejudice the commercial interests of both the Department, Bombardier Transportation UK Ltd with VeloCity – a special purpose company comprising Bombardier Transportation (Holdings) UK Ltd, RREEF Ltd, Serco Holdings Ltd, Amber Infrastructure Group Ltd and SMBC Leasing (UK) Ltd and Siemens Plc with Cross London Trains (XLT), the consortium comprising of Siemens Project Ventures GmbH, Innisfree Ltd and 3i Infrastructure Plc (the “Consortium”).

In applying the exemption under sections 36, and 43(2) we have had to balance the public interest in withholding the relevant 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. Section 41 is an absolute exemption, and therefore not subject to a Public Interest Test (PIT).

2. The effect of the decision on employment levels

The criteria against which bids for the Thameslink rolling stock contract were judged included an evaluation of affordability, value for money and deliverability. The effect on employment levels at Bombardier Transport, Siemens and supply chain companies was not assessed in the evaluation criteria specified in the Invitation to Tender. This document, and the full evaluation criteria contained within, is available on the DfT website at <http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/rail/pi/thameslinkrollingstock/itt/>.

The Department did not carry out a specific economic impact assessment beyond the work done evaluating the bids against the published criteria.

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:

XXXX

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,

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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:

XXXX

Annex A

Exemption in full

Section 36: prejudice to effective conduct of public affairs

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act:...

(b) would, or would be likely to, inhibit:

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

**Public interest test factors for
disclosure**

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disclosure**

<ul style="list-style-type: none"> • The general public interest in the scrutiny and transparency of public procurement processes, including the scrutiny and transparency of relevant public expenditure and the impact on UK jobs. • The particular public interest in the scrutiny and transparency of Thameslink procurement, which is of high value and national significance. 	<ul style="list-style-type: none"> • The public interest in preserving effective public administration and decision making through the free and frank provision of advice and exchange of views. • The public interest in preserving public and industry confidence in the ability of public authorities to protect confidential information.
<p>41 Information provided in confidence</p> <p>(1) Information is exempt information if—</p> <p>(a) it was obtained by the public authority from any other person (including another public authority), and</p> <p>(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.</p> <p>(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.</p> <p>(This is not subject to the Public Interest test).</p>	
<p>43(2) Commercial interests</p> <p>(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).</p>	
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<ul style="list-style-type: none"> • The general public interest in the scrutiny and transparency of public procurement processes, including the scrutiny and transparency of relevant public expenditure and the impact on UK jobs. • The particular public interest in the scrutiny and transparency of Thameslink procurement, which is of high value and national significance. 	<ul style="list-style-type: none"> • It would be likely to prejudice the ability of the Department to achieve value for money in relation to the Thameslink Programme procurement. • The public interest in preserving public and industry confidence in the ability of public authorities to protect confidential information. • The DfT intends to publish substantial information in relation to the Thameslink Programme procurement once contracts have been signed. That information is likely to include redacted contracts. • Disclosure would prejudice the commercial interests of the Consortium in that it would weaken the Consortium's position in negotiations with third party suppliers. • Disclosure would be likely to reveal market-sensitive information or information of potential usefulness to the Bidders' competitors. • The public interest in achieving value for money from the Thameslink procurement. • The Thameslink procurement process is in any case subject to scrutiny within the Department for Transport, by the National Audit Office and by the Public Accounts Committee. • Disclosure could damage the business reputation of the Department and the confidence that suppliers have in it.
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Decision

The fact that the information relates to a procurement process which is ongoing, and in respect of which no contract has yet been entered into, increases the likelihood of prejudice to the procurement process, delaying the procurement exercise and possibly requiring tendering. This would lead the Department to incur greater expense and hence prejudice its own commercial interests. Further the information released would affect the bids submitted in terms of either content or price, reducing value for money achieved to date.

In view of the above, the Department is of the view that the balance of the public interest is clearly against disclosure of the relevant information.