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Rail Commercial Contracts  
Department for Transport  
Great Minster House  
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33 Horseferry Road  
London  
SW1P 4DR

Web Site: [www.dft.gov.uk](http://www.dft.gov.uk)

09 May 2012

Dear xxxxxxxx,

## **Freedom of Information Request F0008746**

Thank you for email of 21 March 2012 to the Department for Transport, requesting information under the Freedom of Information Act (FOIA) 2000.

### **Information Requested**

You have requested the following information;

'Information held by the DfT relating to the recent application made by the Chiltern Railways Company Limited ("Chiltern Railways") to the DfT to amend their Passenger Service Requirement (as defined in Schedule 3 of their Franchise Agreement). I understand that the application was made in 2012, that the proposed changes have been approved by the DfT and that they are to take effect from December 2012.

I would like to see the Application (with any attachments or enclosures), the subsequent Approval and any correspondence (external or internal within the Department) relating to the Application made by Chiltern Railways and its Approval by the Department.'

### **Information to release**

I can confirm that the Department for Transport does hold information which is applicable to the request that you have made. Information that can be released is attached as supplemental information to this letter.

### **Information to withhold**

The submission to Norman Baker MP, dated 28 November 2011, refers to an Annex 2 which contains information with regard to the operational performance of Chiltern. This Annex has not been released as it does contain information that is relevant to the request which you have made.

The Department has decided that some of the information that is held and is applicable to the request that you have made, cannot be disclosed for reasons which are provided below.

The information that we have withheld falls under the following exemptions:

## **Section 40 (2) (“Personal Information”)**

We have redacted personal information (such as names and telephone numbers) from some of the information released. The redacted information constitutes personal data under the Data Protection Act and, as such, is exempt from disclosure under section 40 of the FOIA. The text of exemptions which are permitted under section 40 of the FOIA is attached as **annex B**.

## **Section 43(2) (“Commercial Interests”)**

Certain section of documents supplied to the Department for Transport by Chiltern Railways to validate their proposal to alter their PSR for the December 2012 timetable, have been redacted.

This material has been deemed to be exempt from disclosure under section 43(2) of the FOIA because disclosure would be likely to prejudice the commercial interest of Chiltern commercial interests. In applying the exemption under section 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 exemption in full and details why the public interest test favours withholding the information.

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In keeping with the spirit and effect of the Act, all information is assumed to be releasable to the public unless exempt. A copy of this response and the information provided may now be published on our website together with any related information that will provide a key to its wider context.

## **Right to Complaint**

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,

xxxxxxx

## **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

I have set out above the information which falls under section 43(2).

### **Section 43 (2) exemption**

**Full text: section 43 of the Freedom of Information Act (commercial interests).**

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 factors for disclosure**

The disclosure of information with regard to proposal to change their PSR for the December 2012 timetable will be of interest to those passengers affected by the change.

### **Public interest test factors against disclosure**

Certain information has been withheld from disclosure as it could be used by competing rail and other transport operators to proactively target Chilterns customers through access to commercially sensitive information. The release of this information would enable competitors to change ticket sale prices or implement specific advertising strategies, which would be of commercial detriment to Chiltern and its parent company.

The disclosure of the Commercially Sensitive Information contained has the potential to infringe the DfT's commercial interests by undermining the future willingness of Chiltern, and possibly other rail franchises, to provide information to DfT on a voluntary basis, thus impeding the Department's ability to manage franchise agreements effectively in the public interest.

### **Decision**

There is a public interest in withholding certain information from release under section 43 (2) of the FOIA, as its release would potentially have detrimental consequences for both Chiltern as the franchisee and the DfT, as the government body responsible for rail franchises.

## Annex B

### Text of the Exemptions in sections 40

#### **Section 40 exemption**

#### **Full text: section 40 of the Freedom of Information Act (Personal Information)**

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [M1](#) Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [M3](#) Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [M4](#) Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii)by virtue of any provision of Part IV of the [M5](#)Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6)In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [M6](#)Data Protection Act 1998 shall be disregarded.

(7)In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [M7](#)Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.