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XXXX
Thameslink Programme Team
Department for Transport
Zone xxxx
Great Minster House
33 Horseferry Road
London
SW1P 4DR

DIRECT LINE: 0207 944 XXXX
FAX: 0207 944 XXXX
GTN No: 3533
xxxx@dft.gsi.gov.uk

Web Site: www.dft.gov.uk

Dear xxxx,

Our Ref: FOI 7981

14 December 2011

Thameslink FOI Request 7981

I am in receipt of your request relating to information about the Thameslink Programme which we received on 10 August 2011. I am writing to confirm that the Department for Transport has now completed its search for the information which you requested.

You requested:

- 1. A full copy of any emails exchanged between the Department for Transport Private Offices and 10 Downing Street between 1 May 2011 and the present which contain the word Thameslink (as the subject or within the text of the email).*
- 2. A full copy of all emails currently contained on DfT Private Office computers or DfT private office officials' email accounts which contain the word Thameslink (or a substitute for the word Thameslink such as TL or T-link).*
- 3. A full copy of all emails currently contained on DfT Press Office computers or DfT press officers' email accounts which contain the word Thameslink (or a substitute for the word Thameslink such as TL or T-link).*
- 4. A full copy of any emails exchanged between the Department for Transport Private Offices and the Department for Business, Innovation and Skills between 1 May 2011 to the present date which contain the word Thameslink (as the subject or within the text of the email).*

Section 12 of the Act (the full text of which is attached) does not oblige the Department to comply with requests that exceed an appropriate limit (in this case the appropriate limit is £600. We are unable to answer your request at questions 2 and 3 within the cost limit as to do so would require the collation of a considerable number of Private Office and Press Office staff computers, some of which have now left the Department. This would require a significant amount of time of a sizeable staffing resource. We calculate that this time would cost more than £600, and we are therefore refusing your request. If you send us a new, more specific request, we will consider if that can be dealt with within the limit, and with due consideration to the FOI Act.

Although you ask in your request that we give priority in order of questions 1-4 in the event that we '...are minded to seek an exemption to this FOI request on the grounds of

cost..', we are able to release some information in respect of your question 4. This can be found at Annex B.

Information you requested in question 1 and some information in question 4 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 Secretary 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; and
- (b) section 42, under which legal advice received is exempt from disclosure to protect the confidential relationship between lawyers and their clients;

The names of officials have been withheld pursuant to section 40(2) and 40(3) of the Freedom of Information as disclosure could contravene data protection principles.

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; and
- (b) in the case of section 42, there is an important public interest in a person (including a public authority) being able to consult his or her lawyer in confidence;

In applying the exemption under sections 36 and 42 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 40 is an absolute exemption, and therefore not subject to a Public Interest Test (PIT).

Please note that we are processing a number of FOI requests on the subject of the Thameslink Rolling Stock procurement. Our answers will be published on the DfT website and you may wish to view these responses there.

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,

xxxx

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

Exemptions in full

Section 12: Exemption where cost of compliance exceeds appropriate limit

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

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

Public interest test factors against 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 giving Ministers and officials space to think through the implications of particular options and undertake rigorous and candid assessments of the risks to particular programmes and projects, and to obtain expert advice as necessary. • The public interest in preserving public and industry confidence in the ability of public authorities to protect confidential information.
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Section 40 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 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

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(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 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).

42 Legal professional privilege

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

Public interest test factors for disclosure	Public interest test factors against disclosure
Public interest in ensuring that decisions have been made on the basis of good quality legal advice.	Public interest that Thameslink decisions are taken in a fully informed legal context where necessary, and that the Minister is fully cognisant of both the strengths and weaknesses of any relevant position. Public interest in protecting the relationship between a client and their lawyer.
<u>Decision</u> 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.	

Annex B

4. A full copy of any emails exchanged between the Department for Transport Private Offices and the Department for Business, Innovation and Skills between 1 May 2011 to the present date which contain the word Thameslink (as the subject or within the text of the email).

DfT to BIS 4 July 2011 10.43

FYI

xxxx

Private Secretary

Secretary of State for Transport's Office

Great Minster House

76 Marsham Street

LONDON

SW1P 4DR

From: Philip Hammond
Sent: 04 July 2011 08:16
To: Philip Hammond_MP
Subject: FW: Thameslink

From: xxxx **On Behalf Of** EAGLE, Maria
Sent: 02 July 2011 14:41
To: 'mpcorrespondence@no10.x.gsi.gov.uk'
Cc: Philip Hammond
Subject: Thameslink

Offices of the Shadow Secretary of State for Business, Innovation and Skills and Shadow Secretary of State for Transport

**The Prime Minister
10 Downing Street
London SW1A 0AA**

1st July 2011

Dear Prime Minister

Thameslink

We write to you to express our concerns about the recent awarding of the Thameslink rolling stock contract to the Siemens consortium. The Thameslink project is worth over £6 billion, with the rolling stock contract accounting for more than half of this.

The Thameslink project is undoubtedly beneficial to the country. It was set up by a Labour government to relieve overcrowding on the busy cross-London route, and will double the capacity that currently exists. We fully support the project and the benefits that it will bring. Jobs will be created and travel quality will improve irrespective of who builds the rolling stock.

Yet the number and quality of jobs secured and created did depend on who became the preferred bidder. The news that the contract had been awarded to a consortium that will build the Thameslink carriages in Germany dealt a body-blow to British manufacturing. The only remaining company which designs, builds, maintains and exports trains and parts in the UK is now in peril. And the effect of losing such a company would not only impact on the workforce and their families in Derby. The supply chain that provides high-quality parts and services will be undermined by the loss of a key manufacturing company, with huge repercussions.

Following the decision, Bombardier is reviewing its operations in the UK, placing 6,000 jobs under review across the country. Many of these are highly skilled jobs, and are involved in producing world-leading products. The loss of the Thameslink contract could affect the rest of their operations in the UK, from Belfast to Brighton.

The wider impact could affect up to 20,000 jobs in the supply chain. At a time when economic growth remains weak, such a threat to so many people's jobs cannot be allowed to happen unless all possible solutions have been explored.

This decision has further implications for the UK's manufacturing ability. The contract to build rolling stock for the Crossrail project will be influenced by which company has the Thameslink order on its books. The same is also true for the rolling stock for the proposed High Speed 2 project. It is clear that this decision could put the country's ability to compete for these high-value contracts at a serious disadvantage.

We urge you to review this case. It is our belief that the loss of the contract could critically damage Britain's last train manufacturing company. It could affect the inward investment that Bombardier

makes in its own operations across the UK, and to the many suppliers which rely on it. And it raises serious questions about Britain's ability to be a world-leading base for manufacturing.

It is essential that we do all that we can to support our manufacturing businesses. If we do not, British companies will continue to lose out to our global competitors. This will mean more jobs will be lost overseas, and more communities feeling the pain of seeing their sources of employment disappear. If the taxpayer is really going to see the best result from the awarding of such contracts, we must take into consideration the impact on the UK's competitiveness. The taxpayer is being disadvantaged if we lose our competitiveness to other countries. The UK risks being left unable to compete for such contracts, resulting in less job creation, less investment and less tax revenues.

The Thameslink contract needs to undergo a full independent review. A review must take into account the effect on the UK economy that the loss of this contract to a foreign consortium would create. The review must also look at the social impact on the UK's workforce, both for those directly employed by Bombardier and those in the wider supply chain.

Yours sincerely

John Denham MP

Shadow Secretary of State
for Business, Innovation and Skills

Maria Eagle MP

Shadow Secretary of State for Transport

cc Rt Hon Philip Hammond MP, Secretary of State for Transport