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

Our Ref: F0008151

15 December 2011

Dear XXXXXXXX

**Re: Freedom of Information Act Request: F0008151**

I am writing to inform you that we are now in a position to respond to your Freedom of Information request of 19 September 2011.

You requested three separate pieces of information. I have set out your requests and our responses below.

Firstly, you requested information from a previous FOI request (case number F0007859) for the disclosure of the job titles of those staff members who attended the periodic meetings between the Department for Transport (the Department) and Southeastern. I am writing to confirm that the Department holds the requested information. The list below sets out those members of staff who attended these meetings from the Department for Transport and Southeastern. It is worth clarifying that some of the staff listed below did not attend all of the meetings in question:

- DfT Contract Manager
- DfT Commercial Manager
- DfT Finance Manager
- Southeastern Finance Director
- Southeastern Financial Planning Manager
- Southeastern Service Delivery Director
- Southeastern Engineering Director
- Southeastern Franchise Regulatory and Compliance Manager

Secondly, you requested a list of job titles of those who were consulted on what to publish in the final set of meeting minutes from these periodic meetings. I confirm the Department holds the requested information. The following individuals were consulted on what information would be published:

- DfT Commercial Manager
- DfT Finance Manager
- DfT Contract Manager
- DfT Divisional Manager (for meetings attended)
- Southeastern Franchise Regulatory and Compliance Manager

Thirdly, you requested

- a copy of the high level register for the Southeastern franchise;
- a statement whether the risk owner is Southeastern or the Department; and
- what controls are in place to mitigate each risk.

I confirm that the Department holds the information you requested but has decided that some of this information cannot be disclosed for the reasons given below.

The information being withheld falls under the exemptions in section 36 (information prejudicial to the effective conduct of public affairs) and section 43(2) (Commercial Interests) of the Freedom of Information Act 2000 (the Act). The decision to engage section 36 of the Act has been approved by the Permanent Under Secretary of State for Transport, Norman Baker MP.

In applying these exemptions 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 in full and details why the public interest test favours withholding the information.

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Most documents supplied by the Department will have been produced by government officials and will be Crown Copyright. Most Crown Copyright information can be re-used under the Open Government Licence (<http://www.nationalarchives.gov.uk/doc/open-government-licence/>).

For information about OGL and about re-using Crown Copyright information please see [The National Archives website](http://www.nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm) ([www.nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm](http://www.nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm)).

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.

A redacted version of the Southeastern risk register is attached as **annex B**.

### **Right to Complaint**

If you are unhappy with the way the Department has handled your requests or with the decisions made in relation to your requests 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](mailto:FOI-Advice-Team-DFT@dft.gsi.gov.uk)

Please see attached details of the Department's complaints procedure and your right to complain to the Information Commissioner, attached as **annex C**.

I hope this is helpful.

Yours sincerely

**Luke Burton**

## Annex A – Public Interest Test

Exemption in full	
<p><b>Section 36 – Prejudice to effective conduct of public affairs</b></p> <p><b>(1) This section applies to -</b></p> <p><b>(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and</b></p> <p><b>(b) information which is held by any other public authority.</b></p> <p><b>(2) 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></p> <p><b>(a) would, or would be likely to, prejudice -</b></p> <p><b>(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or</b></p> <p><b>(ii) the work of the Executive Committee of the Northern Ireland Assembly, or</b></p> <p><b>(iii) the work of the executive committee of the National Assembly for Wales,</b></p> <p><b>(b) would, or would be likely to, inhibit -</b></p> <p><b>(i) the free and frank provision of advice, or</b></p> <p><b>(ii) the free and frank exchange of views for the purposes of deliberation, or</b></p> <p><b>(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.</b></p>	
Public interest test factors for disclosure	Public interest test factors against disclosure
<p>Citizens, and in particular passengers who use Southeastern services, will be interested in the disclosure of the information regarding the Department's assessment of key risks relating to the Southeastern franchise.</p> <p>Transparency and openness in decision making may lead to increased trust and engagement between citizens and government.</p>	<p>The public interest in preserving effective public administration and decision making through the free and frank provision of advice and exchange of views.</p> <p>Ministers and officials need to be able to conduct rigorous and candid risk assessments of issues relevant to rail franchises which could potentially be of detriment to the business of the Department. The release of certain elements of the Southeastern risk register</p>

	<p>would be contrary to this requirement and would inhibit the free and frank provision of advice for the purpose of deliberation.</p> <p>Disclosure of some of the information in the Southeastern risk register is likely to be a deterrent to stakeholders and experts who may be reluctant to provide advice if there is a likelihood that information formulated to enable the Department to deliver objectives, meet planned financial outcomes and maintain and improve the Department's reputation, is released.</p> <p>The risk register contains information which refers to the business of Southeastern and elements of information which have been discussed with and provided to the Department in confidence. There is a public interest in preserving public and industry confidence through the ability of the Department to protect confidential information.</p> <p>A functional point of risk registers is for Departmental officials to think 'outside of the box' in assessing potential risks that could negatively impact the Department. The disclosure of the Southeastern risk register could lead to officials who have responsibility for other risks registers, becoming more circumspect and less open in their assessment of risk. This would be contrary to the objectives of risk management.</p>
<p><b><u>Section 43 (2) exemption</u></b></p> <p><b>Full text: section 43 of the Freedom of Information Act (commercial interests).</b></p>	
<ol style="list-style-type: none"> <li>1. Information is exempt information if it constitutes a trade secret</li> <li>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).</li> <li>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).</li> </ol>	
<p><b>Public interest test factors for disclosure</b></p>	<p><b>Public interest test factors against disclosure</b></p>

<p>Citizens, and in particular passengers who use Southeastern services, will be interested in the disclosure of the information regarding the Department's assessment of key risks relating to the Southeastern franchise.</p> <p>Transparency and openness in decision making may lead to increased trust and engagement between citizens and government.</p>	<p>The risk register that the Department holds for the Southeastern franchise refers to commercial negotiations between the Department and Southeastern that relate to the planning and preparations for service provisions. The release of information in this respect would damage the Department's commercial position in that it would provide an insight to private sector operators as to the manner in which the Department approaches commercial negotiations.</p> <p>The Southeastern risk register refers to commercial information and possible impacts on revenue lines. This information would expose sensitive information to Southeastern's competitors, which would be likely to prejudice the commercial interests of Southeastern and its parent company.</p> <p>The risk register refers to the commercial discussions between Southeastern and the DfT with regard to the interpretation of a specific clause of the Southeastern Franchise Agreement. The release of this information into the public domain prior to a formal resolution to this negotiation, could damage the commercial position of both parties. Its release would be contrary to the provisions of Section 43 of the Act.</p>
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### **Decision**

The public interest in withholding outweighs the public interest in disclosing the information for risks 1, 2, 3 and 5 which the Department has in the Southeastern risk register.

There is a public interest in open decision making in order to promote engagement with citizens and to provide information on the basis for decisions taken. However, disclosure of the Southeastern risk register would be contrary to both the provisions of Sections 36 and 43(2) of the FOI act.

The disclosure of some of the information in the register would in summary, be likely to inhibit the free and frank exchange of views for the purpose of deliberation, as well as having negative commercial impacts for both the Department and Southeastern should it be released into the public domain.

On the balance of this public interest test, we judge that the public interest in maintaining the exemption outweighs that in releasing the information.

## **Annex C**

### **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