

XXXXXXX  
By email:  
XXXXXXXXXXXXXXXXXXXX

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

13<sup>th</sup> August 2012

Dear XXXXXXXXXXXX,

**REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000 – case reference 0009077**

**Request for release of: 11 July 2012 minutes from the monthly performance review meeting between the Department for Transport and First Capital Connect Limited**

I am writing to confirm that the Department for Transport holds a document relating to the information you requested on 16<sup>th</sup> July 2012. It has been decided that some of this information cannot be disclosed for the reasons given below. The information that can be released is:

A copy of the minutes from the 11 July 2012 meeting, with certain redactions made. A copy of this information is enclosed at annex B.

The information withheld falls under Section 43(2) of the Freedom of Information Act 2000, under which information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person. In applying this exemption 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 under s43(2).

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.

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,

**XXXXXXXXXX**  
**Rail Commercial**

### **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	
<p>Section 43: Commercial Interests</p> <p>(1) Information is exempt information if it constitutes a trade secret</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> <p>(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).</p>	
Public interest test factors for disclosure	Public interest test factors against disclosure
<p>There is a public interest in assuring that the Department's commercial activities are conducted in an open and honest manner, to ensure that public money is being used effectively, and that Departments are getting value for money when purchasing goods and services.</p> <p>Transparency of the franchising process is in the public interest.</p> <p>Transparency of the Department's administrative processes in relation to franchising, such as meetings, are in the public interest; in that it reassures the public that the train operating companies' business is being discussed on a regular basis, and that train companies are being held to account.</p>	<p>The commercial interests of First Capital Connect and/or the Department would be prejudiced if the information were released, in that disclosure would or would be likely to:</p> <ul style="list-style-type: none"> <li>• Cause the public release of commercially/market sensitive information about First Capital Connect's business, which would prejudice the commercial position of First Capital Connect and its subsidiaries, shareholders, and suppliers.</li> <li>• Weaken First Capital Connect's position in negotiations/relationship management with third parties, thus putting them at a disadvantage as a result of a loss of competitive edge.</li> <li>• Weaken First Capital Connect's position in the competitive environment by revealing market-sensitive information or information of potential usefulness to its</li> </ul>

	<p>competitors. This in turn would have an adverse impact on future negotiations such as re-franchising.</p> <ul style="list-style-type: none"> <li>• The train operating companies are separate commercial entities, and although they operate services on behalf of the Government, we are not obliged to release any information that could prejudice a private company's commercial interests.</li> <li>• 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). The release of such information would give competitor advantage which would be likely to erode the future value of the franchise.</li> </ul>
<p style="text-align: center;"><b><u>Decision</u></b></p> <p>In determining the competing public interest exemptions, the Department has evaluated the nature of the prejudice that might result from disclosure, against the need for public bodies to exercise their statutory functions in a visible way. Weighing the issues up, it is the opinion of the Department that it is in the public interest to maintain the exemption, and therefore to not release all of the information.</p>	

## Annex B



### First Capital Connect/Department for Transport Franchise Performance Meeting 11 July 2012

#### Attendees:

##### **DfT**



Commercial Manager (Chair)  
Contract Manager (Secretary)  
Finance Manager  
Finance

##### **FCC**

Chris Cornthwaite



Finance Director  
Acting Head of Performance  
Franchise Compliance Manager

#### **1. Minutes of the previous meeting and review**

The minutes of the last meeting were agreed. All actions closed.

#### **2. Service Delivery Performance**

Nothing to mention over and above the report except:

Due to the incidents this period being vegetation related, FCC is expecting a vegetation management plan from NR in the forthcoming week. This will look at the situation and work required for the next 3 years.

There are challenges across the 5 'routes' and the management of those in regards to delivering the JPIP for the year.



Service Delivery Benchmarks for Dec 11 was raised – [redacted] to liaise with [redacted] to resolve the issue.

#### **3. Financial Performance**

Nothing to mention over and above the reports except:

A presentation on Income, covering revenue growth, travelcard allocations and Olympics was given along with a presentation on the HLOS gating schemes revenue generation. KMPG are running the agreed Financial Models for the timetable changes – DfT should receive, along with franchise variation and supporting Record of Assumptions, before the Olympics.

##### **ACTION: DfT to confirm if they want financial reporting accounts**

FCC raised some concerns around ticket sales for the Olympics and covering costs for additional train mileage which may be required according to demand forecast modelling undertaken by LOCOG.

There are some outstanding revenue claims between Southern and FCC.

The gating schemes are having gains almost equal to the business case, however one location needs some investigating as the figures seem slightly low.

#### **4. Service Quality Performance**

Nothing to mention over and above the reports except:

## **5. Period Update**

Nothing to mention over and above the reports except:

FCC is working with BTP and TfL to consider closing National Rail stations if London Underground close theirs for overcrowding during events. E.g Blackfriars.  
ASLEF/RMT have formally accepted the Olympics bonus offer.  
In customer service, NVQs are being offered.  
FCC has secured some good locations for advertising FCC at Gatwick Airport.

## **6. Review of progress of Committed Obligations**

FCC to re-submit to DfT the training spend requirement, once brought up to date.  
FCC to provide selected invoices to DfT for C319 refresh  
Minor works spend for 11/12 and proposed list for 12/13 are yet to be submitted to DfT  
Passenger Count clarification meeting is to be confirmed.  
A meeting in September needs to be put in the diary to discuss timetable procedure changes – **ACTION DfT**

## **7. Information and Industry Initiatives**

N/A

## **8. Outstanding Correspondence**

N/A

## **9. Monitoring of Contraventions to the FA**

N/A

## **10. Remedial Plan & Contraventions**

N/A

## **11. Adjustments to Franchise Payments**

N/A

## **12. Major Programmes**

N/A

## **13. AOB**

FCC asked about the priority O2 licenses they had requested from DfT and asked that we speak to someone internally re-speeding up a decision.  
DfT discussed an outstanding item of correspondence on TVMs on the Great Northern Route, and what actions FCC will be taking. FCC mentioned that they were awaiting a date from the manufacturers regarding coming from Germany to resolve the software problem.

## ACTION LIST

Item No	Action Required	Owner	Due Date	Update
39	DfT to confirm if they want financial reporting accounts for the 2 <sup>nd</sup> time (i.e. certified true copies)	DfT		
40	A meeting in September needs to be put in the diary to discuss timetable changes	DfT		
41	Speak to someone internally re-decision on FCC priority O2 licenses	DfT		