

Dear Sir or Madam,

9 September 2011

**REQUEST UNDER FREEDOM OF INFORMATION ACT 2000**

I am writing to confirm that the Department does hold the information you requested on 11 August, namely:

Please can you state whether the Department for Transport holds any record of any Secretary of State for Transport, any Minister in the Department, or any senior official where any of those people has suggested, required, or directed that Dover Harbour Board or any body in control of a trust port refrain from (either entirely or above certain thresholds) borrowing money either in general or for the purpose of financing infrastructure projects.

Please also state whether the Department holds any record of any of the people above mentioned above suggesting, requiring or directing that restrictions should be applied to the way funds are raised by Dover Harbour Board or any body in control of a trust port.

Please provide copies of any such records or state what is contained in them.

I have searched the Department's records and have found two letters that I have attached which discuss trust port borrowing. Some names have been redacted under exemption 40(2) (personal information) of the Freedom of Information Act 2000.

It might be helpful to explain some background on the classification of major trust ports as public corporations and the impact that this has on Departmental budgets. The Office of National Statistics (ONS) classifies organisations into economic categories. The ONS has ruled that those trust ports, which under the Ports Act 1991 could be compulsorily sold by the Secretary of State, or where the majority of the Board of the port were appointed by the Secretary of State for Transport should be classed as 'public corporations' for the purposes of Whole of Government Accounts, as they are trading bodies where there was a degree of central Government control. Any net borrowing by a public corporation is scored against its sponsoring Department's capital Departmental Expenditure Limit and impacts on public sector net borrowing.

The ONS currently classify the trust ports for Dover, Harwich Haven, Milford Haven, Poole, Shoreham, and Tyne as public corporations. The Port of London Authority is also currently classed as a public corporation although there is no power to compel a sale of it

and the Secretary of State no longer appoints the majority of its directors. Therefore the Department asks these ports to make a quarterly return of their forecast borrowing and repayments in the medium term.

In keeping with the spirit and effect of the Freedom of Information 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.

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](mailto: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

## **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

### Exemption in full: Section 40

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
    - (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).
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 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 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 24 October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the 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 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.