

XXXX
by email to xxxx

Web Site: www.dft.gov.uk

Our Ref: F0007304

Dear xxxx,

5 May 2011

FOI on Franchise competition

I am writing to confirm that the Department does hold the information you requested on 14 January 2011 via the Office of Rail Regulation (and which we obtained clarification on from you on 4 March 2011, confirmed by email on 8 March 2011), but has decided that some of this information cannot be disclosed for the reasons given below. You originally requested the names of the companies who competed for rail franchises and details of the rejected bids. Following a telephone conversation you said that you wanted to know the amounts of money offered and what was offered in terms of service. This was to cover the competitions shown in the table below, the amounts of money being shown on an anonymous basis.

The information that can be released is:

Franchise	Started	Amounts are in £000,000			
		Losing bidders' premiums/(subsidies)			
South Central	Sep 2009	456	238	(223)	
ICEC	Dec 2007	1,557	902	1,217	
Cross Country	Nov 2007	(1,341)	(1,110)	(1,677)	
West Midlands (London Midland)	Nov 2007	(1,138)			
East Midlands	Feb 2007	41	(3)		
South Western	Feb 2007	636	513	501	
Thameslink/GN (FCC)	Apr 2006	628	814	788	807
Greater Western	Apr 2006	384	511		
South Eastern	Apr 2006	(626)	(685)	(737)	

The information being withheld falls under the exemptions in sections 41(1) (Information provided in confidence), 43(1) and 43(2) (Commercial Interests) of the Freedom of Information Act 2000.

Disclosure of the requested information in the bids received by the Department would constitute a breach of confidence towards bidders. Moreover the bid information is commercially sensitive to the bidders (including strategy developed specifically by bidders and financial performance including profit margins) and some information has the quality of trade secrets. Disclosure would prejudice the commercial interests of bidders by weakening their position in a competitive environment, both in operating train services and in submitting bids in current and future franchise competitions. The detrimental effect

on the quality of the bids would also prejudice the commercial interests of the Department in achieving value for money through the competitive process.

In applying section 43(1) and 43(2) 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.

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

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

41 Information provided in confidence.

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

43 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	Public interest test factors against disclosure
<p>There is public interest in scrutinising how public money is spent on procuring services, and so ensuring that the Department obtains value for money, in this case by knowing how the bids for rail franchises compare with each other.</p> <p>There is public interest in increasing access to information about the tendering process which could lead to improved bids being submitted in future, enhanced competition and decreased costs to the Department.</p>	<p>There is public interest in ensuring that private companies can compete fairly. It would not be in the public interest to make it more difficult for the private sector to bid without fear of suffering detriment to their commercial interests as a result of the disclosure of information in a competitive environment.</p> <p>There is public interest in ensuring there is competition for public sector contracts such as rail franchises resulting in the Department obtaining value for money for the taxpayer. It would not be in the public interest to disclose information which</p>

	resulted in a decrease in the quality of bids submitted in future competitions.
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Decision

The public interest in disclosure to the public of information from bids received by the Department is outweighed by the public interest in withholding it due to the resulting prejudice to the commercial interests of the bidders and detrimental effect on competition for rail franchises as set out above.