

13 October 2011

Dear XXXXXXXXX,

**REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000**

**For information relating to WiFi provision on CrossCountry trains.**

I am writing to confirm that the Department of Transport holds documents relating to the information you requested on 14<sup>th</sup> August 2011. It has been decided that some of this information cannot be disclosed for the reasons given below. The information that can be released is:

All correspondence regarding the provision of WiFi on CrossCountry Train services between: DfT and CrossCountry Trains in the period between August 2010 and the present (August 2011).

A copy of this information is enclosed at APPENDIX B.

The information being withheld falls under the exemption in 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 APPENDIX A to this letter sets out the exemption in full and details why the public interest test favours withholding the information.

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](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,

**Fiona Moir**  
**Rail Commercial Contracts**

## **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

## APPENDIX A

Exemptions in full	
<p style="text-align: center;">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>DfT concludes in this instance that the commercial interests of CrossCountry and/or the Department/and or the 3<sup>rd</sup> parties CrossCountry &amp; the Department is in discussions with/negotiating with 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 and /or market sensitive information about CrossCountry's business, which could prejudice the commercial position of CrossCountry and its subsidiaries, shareholders, and suppliers.</li> <li>• Weaken CrossCountry's position in negotiations with third party suppliers, thus putting them at a disadvantage as a result of a loss of competitive edge.</li> <li>• CrossCountry's position in the</li> </ul>

	<ul style="list-style-type: none"> <li>• Make it less likely that companies or individuals would provide the Department with commercially sensitive information in the future, and consequently undermine the ability of the Department to fulfil its role.</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 exemptions, and therefore to not release all of the information.</p>	