

Via Email: XXXXXXXXX

Dear XXXXXXXX,

Thameslink FOI Request: F00007930

Thank you for your request for information which we received on 25 July 2011. I am writing to confirm that the Department for Transport has now completed its search for the information which you requested.

You asked: In relation to the Thameslink tendering process for the estimated £1.4billion project to build and run carriages:

1. Which civil servants – names, rank/seniority, number – took part in the decision to award the tender to Siemens – before forwarding this decision to the Secretary of State for Transport for final ratification?

The results of the evaluation were presented to the Department's Contract Award Committee which is responsible for, and gives approval to proceed with all procurement activity associated with major procurements undertaken by the Department.

The preferred bidder decision was approved at the Contract Award Committee. The decision was then endorsed by the Board Investment Commercial sub-Committee (BICC) and was reported to the main Department for Transport Board. The recommendation then was made to the Secretary of State who gave his approval.

Throughout the whole evaluation process the identities of all bidders were anonymised in line with Departmental policy, and to eliminate any personal bias prejudicing the outcome of the competition. The Secretary of State was informed of the identity of the preferred bidder once he had given his approval.

The names of all officials below the Senior Civil Servant grade are withheld pursuant to section 40(2) of the Freedom of Information as they constitute personal information and disclosure could contravene data protection principles. We have released the names of all officials in the Senior Civil Service as they are already published in the Civil Service Year Book and therefore considered already to be in the public domain.

The following Senior Civil Servants attended relevant meetings in which the decision was made:

Contracts Award Committee:

Lucy Chadwick	Acting Director General, Major Projects and London
Michael Hurn	Acting Director, Rail & Roads Projects
John Gilbert	Deputy Director, Rail Contracts
Robin Groth	Deputy Director, Rail Sustainability - Operations
Colette Carroll	Deputy Director, Rail Contracts South
Sally Stott	Deputy Director, Corporate Finance
David J Payne	Deputy Director, Finance
Hussein Kaya	General Counsel's Office
David Clarke	Deputy Director, Rail Technical
Kate Mingay	Director, Commercial and Technical Services

Board Investment and Commercial Sub-Committee:

Clare Moriarty	Director General, Corporate Group
Lucy Chadwick	Acting Director General, Major Projects and London
Valerie Vaughan-Dick	Director, Group Finance
Kate Mingay	Director, Commercial and Technical Services
Mike Fuhr	Director, Major Projects
Christopher Muttukumaru	General Counsel
Tracey Waltho	Director of Analysis/Science
Hussein Kaya	General Counsel's Office
Michael Hurn	Acting Director, Rail & Roads Projects

Attended meeting with Secretary of State:

Natasha Robinson	Deputy Director, Principle Private Secretary
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2. How much was Siemens bid? How much was the Bombardier bid? By how much in financial terms, did the successful Siemens bid beat that of rival Bombardier?
3. To what extent was the credit rating of the Siemens bid, compared to that of Bombardier, a factor in the 'value for money' assessment?

The rolling stock procurement competition is still underway and it is therefore not possible to release details of the bids, which are commercially sensitive. The information you requested is being withheld in reliance on the exemptions in the following sections of the Freedom of Information Act 2000 (the "Act"):

- (a) section 36; where in the reasonable opinion of a qualified person, in this case the Minister of State, disclosure would inhibit free and frank advice to Ministers and the free and frank exchange of views, and would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs;
- (b) section 41, under which information obtained by a public authority is exempt if disclosure of the information to the public by the public authority would constitute an 'actionable breach of confidence'; and

- (c) section 43(2), under which information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

These exemptions apply because:

- (a) in the case of section 36, the disclosure of internal communications would inhibit the free and frank provision of advice to Ministers and the free and frank exchange of views for the purposes of deliberation in relation to the Thameslink competition, and would be likely to prejudice the effective conduct of the Department in the procurement process;
- (b) in the case of section 41, much of the information you requested is protected by the law of confidence in such a way that disclosure of it to the public by the Department would constitute an actionable breach of confidence. That information is protected in this way because it was obtained by the Department from the bidders subject to a duty of confidence and disclosure could constitute an actionable breach of confidence; and
- (c) in the case of section 43(2), disclosure of much of the information you requested would prejudice the commercial interests of the Department, Bombardier Transportation UK Ltd with VeloCity – a special purpose company comprising Bombardier Transportation (Holdings) UK Ltd, RREEF Ltd, Serco Holdings Ltd, Amber Infrastructure Group Ltd and SMBC Leasing (UK) Ltd and Siemens Plc with Cross London Trains (XLT), the consortium comprising of Siemens Project Ventures GmbH, Innisfree Ltd and 3i Infrastructure Plc (the “Consortium”).

In applying the exemption under sections 36, and 43(2) we have had to balance the public interest in withholding the relevant 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. Section 41 is an absolute exemption, and therefore not subject to a Public Interest Test (PIT).

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

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 36: prejudice to effective conduct of public affairs

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) would, or would be likely to, inhibit:

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Public interest test factors for disclosure

- The general public interest in the scrutiny and transparency of public procurement processes, including the scrutiny and transparency of relevant public expenditure and the impact on UK jobs.
- The particular public interest in the scrutiny and transparency of Thameslink procurement, which is of high value and national significance.

Public interest test factors against disclosure

- The public interest in preserving effective public administration and decision making through the free and frank provision of advice and exchange of views.
- The public interest in giving Ministers and officials space to think through the implications of particular options and undertake rigorous and candid assessments of the risks to particular programmes and projects, and to obtain expert advice as necessary.
- The public interest in preserving public and industry confidence in the ability of public authorities to protect confidential information.

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.

(This is not subject to the Public Interest test).

43(2) Commercial interests

(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).

Public interest test factors for disclosure

- The general public interest in the scrutiny and transparency of public procurement processes, including the scrutiny and transparency of relevant public expenditure and the impact on UK jobs.
- The particular public interest in the scrutiny and transparency of Thameslink procurement, which is of high value and national significance.

Public interest test factors against disclosure

- It would be likely to prejudice the ability of the Department to achieve value for money in relation to the Thameslink Programme procurement.
- The public interest in preserving public and industry confidence in the ability of public authorities to protect confidential information.
- The DfT intends to publish substantial information in relation to the Thameslink Programme procurement once contracts have been signed. That information is likely to include redacted contracts.
- Disclosure would prejudice the commercial interests of the Consortium in that it would weaken the Consortium's position in negotiations with third party suppliers.

	<ul style="list-style-type: none"> • Disclosure would be likely to reveal market-sensitive information or information of potential usefulness to the Bidders' competitors. • The public interest in achieving value for money from the Thameslink procurement. • The Thameslink procurement process is in any case subject to scrutiny within the Department for Transport, by the National Audit Office and by the Public Accounts Committee. • Disclosure could damage the business reputation of the Department and the confidence that suppliers have in it.
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Decision

The fact that the information relates to a procurement process which is ongoing, and in respect of which no contract has yet been entered into, increases the likelihood of prejudice to the procurement process, delaying the procurement exercise and possibly requiring tendering. This would lead the Department to incur greater expense and hence prejudice its own commercial interests. Further the information released would affect the bids submitted in terms of either content or price, reducing value for money achieved to date.

In view of the above, the Department is of the view that the balance of the public interest is clearly against disclosure of the relevant information.

Section 40 (2) Personal information

(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

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(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).