



Department
for Transport

Correspondence Manager
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Web Site: www.gov.uk/dft

Our Ref: F0017118

11 April 2019

Dear [REDACTED]

Freedom of Information Act Request – F0017118

Thank you for your Freedom of Information (FOI) request of 14 February 2019. You requested the following information:

'I would be grateful if you could send me a copy of Appendix Nine of the Gibb report on the Southern Rail network, published 22 June 2017.'

Your request has been considered under the FOI Act 2000.

I wrote to you on the 13 March 2019 to advise you that we required more time to complete complex public interest test considerations with regard to qualified exemptions in the FOI Act. These are now complete and I can provide the following response.

The Department for Transport (DfT) holds the information you requested, but it is being withheld in reliance on the exemptions at section 35(1)(a) (Information relating to the formulation and development of government policy) and section 43(2) (commercial interests).

Sections 35(1)(a) and 43(2) are qualified exemptions, which means we are required to balance the public interest in disclosing the information against that for withholding it. **Annex A** to this letter sets out the exemptions in full and details why, on balance, the public interest tests favour withholding the information.

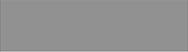
If you are unhappy with the way the DfT has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the DfT's FOI Advice Team at:

Zone D/04
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-DFT@dft.gov.uk

Please send or copy any follow-up correspondence relating to this request to the FOI Advice Team to help ensure that it receives prompt attention. Please also remember to quote the reference number above in any future communications.

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

Yours sincerely



Senior Correspondence Manager
Passenger Services

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

Section 35(1)(a): Information relating to the formulation and development of government policy.

Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to:

- (a) the formulation or development of government policy

Public Interest Test Factors for disclosure	Factors against disclosure
<ul style="list-style-type: none">- The Government's promotion of the ideal that information should be made public rather than not, and that Government should be more transparent.- Disclosure of the information relating to the recommendations relating to GTR services would allow the individual, and the public at large to see what is being considered and allow them to contribute to the process.	<ul style="list-style-type: none">- The Gibb Report Appendix 9 contains Chris Gibb's recommendations for a strategy for the future of the Thameslink, Southern and Great Northern franchise (TSGN). These recommendations cover the same ground as the Williams Rail Review, which the Secretary of State has requested look explicitly at the future of TSGN. These recommendations also cover the same ground as an internal team at the Department who are also looking at the future of TSGN. The Government needs to be able to develop ideas, to debate live issues, and to reach decisions away from external interference and distraction, which the release of the Gibb Report Appendix 9 would be likely to create.- This live policy issue is currently being formulated (as described above) and is subject to Ministerial approval, which has not yet been received. Ministers and officials need a safe space in which to formulate and develop policy using Appendix 9. As such, this clearly meets the test of government policy in development.- Ministers and officials need to be able to conduct rigorous assessments on any future policy on managing passenger services without there being premature disclosure which might close off better options. Officials would be reluctant to provide their views and advice if they felt these would be routinely placed into the public domain ahead of any final decisions or announcements on the policy.

Decision Reached

Appendix 9 of the Gibb Report is being **withheld** as, on balance, the public interest in withholding this information outweighs the factors for releasing it.

Section 43: 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	Factors against disclosure
<ul style="list-style-type: none">- Disclosure would demonstrate the seriousness with which Government regards rail issues that have an impact on the public and the efficacy with which it seeks to address those issues.- Disclosure could help to allow the individual concerned, or the public as a whole, to understand the decision making process of the DfT.- Disclosure would also contribute to the Government's wider transparency agenda, increase trust and allow the public to scrutinise discussions and decisions the Government and stakeholders make on rail matters.	<ul style="list-style-type: none">- Disclosure of the requested information would be likely to significantly weaken the competitive position of GTR for the following reasons:<ul style="list-style-type: none">- The Gibb Report Appendix 9 contains Chris Gibb's recommendations for a strategy for the future of the Thameslink, Southern and Great Northern franchise (TSGN). Whilst there has been a material improvement in GTR's industrial relations, and an agreement was reached with ASLEF, GTR are in an ongoing industrial dispute with the RMT. Disclosure of commercially sensitive information, such as the information contained within Appendix 9, would be likely to increase the risk of further industrial action.- Appendix 9 contains sensitive commercial information relating to GTR's internal organisation, the release of which would be likely to affect staff morale and, ultimately, the operational and commercial performance of the company.- The information includes specific details concerning the commercial operations of the operator. Disclosure of this information into the public domain would be likely to negatively affect the operator's negotiations with third parties.- Disclosure would be likely to prejudice

future bidding processes by undermining confidence that current and future franchise partners have in the DfT maintaining confidentiality. This, in turn, would be likely to prejudice DfT's commercial interests as it would find it harder to run the rail franchise programme without confidential analysis provided by third parties.

- The information was provided to the DfT on a strict confidential basis to assist it in its management of the franchise and disclosure of the information would be likely to damage the trust between the DfT and the operator.
- Disclosure of the requested information would be likely to weaken the DfT's negotiating position ahead of future franchise competitions.

Decision Reached

The information requested is being **withheld** as, on balance, the factors for withholding this information outweighs the factors for releasing it. The release of this information would be likely to prejudice the commercial interests of GTR, its owning group Go Ahead, and the DfT.