



Department  
for Transport

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Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)

Our Ref: F0020680

4 February 2022

Ms Emily Yates

[By email: [REDACTED]]

Dear Ms Yates,

### **Freedom of Information Act Request – F0020680**

Thank you for your Freedom of Information (FOI) request of 14 January 2022. You requested the following information:

***'I wish to request a copy of the terms, members and scope of the review recently undertaken into the Southeastern franchise by LSER's two owning groups, the Go-Ahead Group and Keolis. This information was referred to in Parliamentary question UIN 58963. Please also include the names and roles of other parties working on that review; for example, the Go-Ahead Group's auditors, Deloitte. Please also let me know who authored the terms and scope of this review, as it is unclear whether this was the DfT or the owning groups themselves. Please provide information on the expected timeline for the conclusion of this review, and the projected timeline and actions that will be taken as part of the DfT's own review of the material. Please include the terms and scope of the DfT review as well as more information on the range of penalties available to them. Please also include more information about the review team on the DfT side, and which civil servants will be leading this process. For both owning group and DfT reviews, please also provide more information on the terms and scope of any investigation into Govia Thameslink Railway.'***

I am writing to let you know that your request has been considered under the FOI Act 2000 and that the Department has completed its search for the information. I can confirm that the Department does hold information that falls within the scope of your request. I will set out in order below a response to your points.

***'I wish to request a copy of the terms, members and scope of the review recently undertaken into the Southeastern franchise by LSER's two owning groups, the Go-Ahead Group and Keolis....***

***Please include the terms and scope of the DfT review as well as more information on the range of penalties available to them.***

***For both owning group and DfT reviews, please also provide more information on the terms ..... of any investigation into Govia Thameslink Railway....***

***Please also include the names and roles of other parties working on that review; for example, the Go-Ahead Group's auditors, Deloitte.....***

***Please also include more information about the review team on the DfT side, and which civil servants will be leading this process.....'***

The requested information about the terms, members and scope of the review undertaken by London South Eastern Railway's (LSER's) owning groups (including any review into Govia Thameslink Railway) is being withheld in reliance on the exemption at section 41(1) – Information provided in confidence – of the FOI Act 2000 (for the full text of the exemption please see **Annex A**). The relevant information was shared with the Department under a duty of confidence. It is not in the public domain. Any of the persons referred to in this information would reasonably be able to take some form of legal action against the Department for breach of confidence if we disclosed it and stand a reasonable chance of winning. Section 41 is an absolute exemption under the Act, and we are therefore not required to carry out a public interest test.

The information that you have requested, the copy of the terms and scope of the reviews by the owning group and the Department is further being withheld in reliance upon the exemption at section 43(2) – prejudice to commercial interests (for the full text of the exemption please see **Annex B**). Disclosure of the information requested would compromise or prejudice the commercial position and interests of LSER, its owning groups and the Department.

As section 43(2) is a qualified exemption, we are required to balance the public interest in disclosing the information against that for withholding it. **Annex B** to this letter also details why, on balance, the public interest test favours withholding the information.

With regard to the civil servant that will be leading the review, this is Tim Rees, Deputy Director of the Passenger Services Directorate.

The Department's junior officials (that is staff below the senior civil servant grade) and those of external stakeholders have been withheld in reliance on the third party personal information exemption at section 40(2)&(3) of the FOI Act 2000 (see **Annex C** for the full text of the exemption). These individuals are not in public facing roles and therefore have a reasonable expectation that their names will not be placed into the public domain. To do so would be unfair and would contravene current data protection legislation. Section 40 is an absolute exemption.

***'...Please provide information on the expected timeline for the conclusion of this review, and the projected timeline and actions that will be taken as part of the DfT's own review of the material....***

The owning group review has concluded. The Department's review of the material is ongoing. The Department has not yet reached any decisions on any further actions that will be taken following its review.

***'Please include ..... more information on the range of penalties available to [the DfT] [sic]....'***

With regard to the range of penalties available, under section 21 of the FOI Act (for the full text of the exemption see **Annex D**), we are not required to provide information which is already reasonably accessible to you. The information you have requested can be found at sections 57A to 58 of the Railways Act 1993, at the following link:

<https://www.legislation.gov.uk/ukpga/1993/43>

### **Appeals procedure**

If you are dissatisfied with the way we have responded to or handled your request, you have the right to ask for an internal review. This should be submitted within two calendar months of the date of this letter and addressed to the FOI Advice Team at:

[FOI-Advice-Team-DFT@dft.gov.uk](mailto:FOI-Advice-Team-DFT@dft.gov.uk)

Please remember to quote the reference number above in any future communications. If you ask for an internal review and are still not content with the outcome, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted via their online form:

<https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>

Yours sincerely

**Steven Burton**  
**Senior Correspondence Manager – Passenger Services**

## **Annex A**

### **Section 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.

Information provided by franchisees and their parent companies, in which the Department agrees to keep their information confidential, is covered by the Department's general confidentiality provisions.

**Section 41 is an absolute exemption and therefore does not require a public interest test.**

## **Annex B**

### **Section 43 – Prejudice to 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**

| <b>Factors for disclosure</b>  | <b>Factors against disclosure</b>   |
|--|---|
| <ul style="list-style-type: none"><li>- Disclosure could help to allow the individual concerned or the public as a whole to understand the basis on which a review was carried out.</li><li>- Disclosure would also contribute to the Government's wider transparency agenda, increase trust and allow the public to scrutinise commercial decisions the Government makes on rail matters.</li></ul> | <ul style="list-style-type: none"><li>- Disclosure of the requested commercially sensitive information would be likely to significantly weaken the competitive position of the owning group bidders for future franchises as well as the Department.</li><li>- Release of financial and commercial material used to determine the terms and scope of the review would expose the Department's internal decision-making processes, and the factors and financial assumptions it takes into account in making commercial decisions.</li><li>- Release of this commercially sensitive information would be likely to compromise the Government's negotiating position for future competitions which would again harm the Department's ability to secure the optimum bid from the market and therefore secure the best offer for passengers.</li><li>- The information was provided to the Department in strict confidence and on the assumption that it would not be published. Disclosure of the information would be likely to damage the trust between the Department and franchisees. This would be likely to have an adverse effect on their owning groups' willingness to bid for future franchises and on the value for money</li></ul> |

which can be achieved through future competitions.

**Decision Reached**

The information requested is being **withheld** as on balance the factors for withholding this information outweigh the factors for releasing it. The release of this information would be likely to prejudice the commercial interests of LSER, LSER's owning groups and other subsidiary companies and the Department.

## **Annex C**

### **Extract – Section 40 Personal Information Exemption.**

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which does not fall within subsection (1), and

(b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

(a) would contravene any of the data protection principles, or

(b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that—

(a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or

(b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

## **Annex D**

### **Section 21 – Information accessible to the applicant by other means**

**(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.**

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

**Section 21 is an absolute exemption and therefore does not require a public interest test.**