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Dear xxxx

19 MAY 2006

FOI Request F0001988

I apologise for the delay in replying to your FOI request of 14 February 2006 in which you requested correspondence between the Secretary of State or Transport Ministers and Treasury Ministers concerning government policy on additions to the Network Rail Regulatory Asset Base. You believed that one such exchange took place in January 2005. In my letter of 10 March 2006, I said that the Department holds the information requested. The Department has decided that most of this information can be disclosed, but that some cannot be disclosed for the reasons given below. The information that can be released is:

- A letter dated 28 January 2005 with redactions from Alistair Darling to Paul Boateng;
- A letter dated 10 February 2005 with redactions from Alistair Darling to Paul Boateng; and
- A letter dated 14 February 2005 with redactions from Dawn Primarolo to Alistair Darling.

A copy of the information is attached at Annex A.

The information you requested is subject to qualified exemptions under the following sections the Freedom of Information Act 2000:

- Sections 35(1)(a) and 35(1)(b) because the information relates to the formulation or development of government policy and to Ministerial correspondence; and
- Section 43(2) because disclosure of the information would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Annex B to this letter sets out the exemptions. When a qualified exemption applies to the information, the public interest test needs to be considered. Under section 35(1)(a) and (b):-

Factors for disclosure	Factors against disclosure
<ul style="list-style-type: none"> • There is a general public interest in disclosure • Transparency of government process • Accountability for government policy 	<ul style="list-style-type: none"> • Preservation of Ministerial space to formulate policy • Open debate between Ministers with potentially different views about policy issues • Collective responsibility for government policy

Having applied the public interest test, the persuasive argument against disclosure is preservation of Ministerial space to formulate policy which outweighs the factors for disclosure. In this case, your interest in disclosure has to be weighed against the impact on the ability of Ministers to formulate policy efficiently in future. If, as a result of disclosure in this case, Ministers decided not to record policy discussions in letters, then there would be an impact on efficient policy making. It is considered that the case against disclosure outweighs the case for disclosure in this instance.

Under section 43(2):-

Factors for disclosure	Factors against disclosure
<ul style="list-style-type: none"> • Transparency in the accountability of public funds 	<ul style="list-style-type: none"> • Where disclosure would, as a consequence, make it more difficult for individuals to be able to conduct commercial transactions.

Having applied the public interest test, the argument against disclosure outweighs the factor for disclosure. In this case, your interest in disclosure is outweighed by the potential impacts on the ability of an organisation to conduct commercial transactions. Therefore, the information is being withheld.

There is information in the public domain which you may find helpful. The Office of Rail Regulation's document 'Policy framework for investments: conclusions' was published in October 2005 and sets out the process for funding and delivery of enhancements to Network Rail's network. ORR is also preparing its 'Guidelines for Investment' which will set out how investment may be logged against Network Rail's RAB. ORR has stated that this document is expected to be published soon.

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 by writing to me at the above address. Annex C contains details of the Department for Transport's complaints procedure and your right to complain to the Information Commissioner. If you have any queries about this letter, please do not hesitate to contact me.

Yours sincerely,
xxxx

Letter from Alistair Darling MP to Paul Boateng MP dated 28th January 2005 with redactions under section 35(1)(a) of the FOI Act.

RAIL INVESTMENT AND ADDITIONS TO NETWORK RAIL'S REGULATED ASSET BASE (RAB)

I am writing to seek your agreement to allowing Network Rail, exceptionally, to commit to funding through their RAB three additional investment schemes involving enhancement of the network - King's Cross station modernisation, the scheme promised in the Rail White Paper to provide NR with additional resources to undertake minor projects, and statutory requirements such as implementation of the Disability Discrimination Act. There is a compelling case for each of these, notwithstanding the pressing need to contain rail costs. This proposal is subject to confirmation that the costs are containable within the Department's rail budget, on which I shall write separately to you shortly.

Officials here have briefed your officials on our proposed approach to using the RAB for additional investment in exceptional cases, and on these investment schemes in particular. In essence, the rationale for each scheme is as follows:

The existing concourse at NR's King's Cross station is a temporary structure whose design life and planning permission have expired; renewal and expansion to cope with growth in demand are urgently required. The Department is already funding directly a major upgrade of the London Underground station alongside the CTRL works at St Pancras. There is a window of opportunity to take forward both schemes in a more efficient and integrated way which would deliver a more cost-effective solution. The cost to NR would be around £200m, implying an additional return of around £20m a year from 2009.

The small scheme discretionary funding pot for NR would meet a specific White Paper commitment (at para 4.3.22) to give NH funding to take forward small schemes without the need for approval for Government. Officials have worked up with NR, ORR and other industry players a framework which would allow NR to spend up to £50m a year, starting in the coming financial year, on worthwhile enhancement schemes of up to £5m. The costs would be rolled up and added to the RAB at the next periodic review, so there would be no immediate impact on rail costs. After 2009, NR would need an additional return of around £20m a year.

Implementation of mandatory requirements, and in particular the Disability Discrimination Act (DDA) in respect of station access. The SRA have with NR developed plans to minimise the cost of implementation as far as practicable, consistent with being able to demonstrate compliance with the DDA. This was discussed with your officials in the run up to SR04, and some 20% of the cost was provided for in SRO4 on the basis that the remaining 80% would be funded via the RAB. Total proposed spend on the fund is around £150m over the next 4 years, so the cumulative extra return required by NR would be around £15m a year.

I fully recognise and support the concern that the priority for the industry should remain achievement of the cost reductions required by ORR. I will make clear to the industry, and in any public announcements about the go-ahead for these projects, that these are exceptional cases which do not alter the paramount need to get costs under control.

Both you and I will also, naturally, be concerned that these proposals are affordable within my existing budgets. Officials are currently updating rail budget plans and I expect to write to you within the next week with a comprehensive breakdown of rail costs confirming that these additional schemes are affordable.

Subject to that, I would be grateful for your agreement to proceed.

Letter from Alistair Darling MP to Paul Boateng MP dated 10th February 2005 with redactions under section 35(1)(a) of the FOI Act.

RAIL INVESTMENT AND ADDITIONS TO NETWORK RAIL'S REGULATED ASSET BASE (RAB)

I wrote to you on 28 January as a first step in seeking your approval to place a limited number of additional enhancement projects on Network Rail's RAB. I said that I would write further confirming the affordability of these proposals.

We have been conducting a comprehensive update of our rail budget plans. This includes not just these proposals but all other relevant factors, including latest trends in SRA budgeting and forecasting; and recent discussions with the Rail Regulator of which you are aware.

My officials and yours have shared detailed discussions on the new budget which demonstrates that these enhancement proposals, which were largely reflected in our initial rail allocation of the SR04 settlement remain affordable. Whilst within each of the Spending Review years, the position varies from headroom to pressure, it is clear that the scale of such variation against the baseline of affordability can be accommodated.

Once again, our officials have discussed these proposals in detail.

I look forward to your approval of the enhancement proposals.

Letter from Dawn Primarolo MP to Alistair Darling MP dated 14th February 2005 with redactions under sections 35(1)(a), 35(1)(b) and 43(2) of the FOI Act.

Rail Investment and Additions to Network Rail's Regulated Asset Base (RAB)

Thank you for your letters of 10 February and 28 January to the Chief Secretary covering your proposals for financing certain rail enhancements. I am responding as the duty Minister.

Clearly, it is vital that your department can demonstrate that the funding implications of rail proposals can be absorbed within the rail budget that emerged from the resource allocation process that you went through following the spending review. I welcome the progress that has been made on this issue

As you mention in your second letter, your officials have shared your plans that make these new proposals affordable within the rail budget that you set. As you are prepared to follow through with these plans, I am giving my agreement to your proposals for funding the Kings Cross station development, the mandatory measures arising primarily from the Disability Discrimination Act, and, in principle, to the small pot for minor enhancements.

Furthermore, it would be imprudent, and would send the wrong message to the industry, to encourage further discretionary enhancements if the industry fails to deliver on its key challenge of getting costs under control.

I am copying this letter to Tony McNulty.

FOI Act

Extract from section 35 of the Freedom of Information Act:

1. Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-
 - a. the formulation or development of government policy,
 - b. Ministerial communications,
 - c. the provision of advice by any of the Law Officers or any request for the provision of such advice, or
 - d. the operation of any Ministerial private office.

Extract from section 43 of the Freedom of Information Act:

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).

DfT's Complaints Procedures

You have the right to complain 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