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Department for Transport  
Great Minster House  
Zone 3/25  
76 Marsham Street  
London  
SW1P 4DR

Direct Line: 020 7944 xxxx

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

19 July 2007

Dear xxxx

## **REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000 (THE "ACT")**

Thank you for your email of 17 July 2007. You requested information under the Act, namely copy of the Invitation to Tender ("ITT") that the Department for Transport issued to bidders for the East Midlands rail competition.

I am writing to advise you that the Department holds information that is relevant to your request but regret to inform you of our decision not to disclose this information at this present time.

ITTs have and will be published on the DfT web site at the following web address - <http://www.dft.gov.uk/pgr/rail/passenger/invitationtotender/>

The information you requested is being withheld in reliance on the exemption in Section 22 of the Act (information intended for future publication) because the Department has a settled, published policy not to disclose ITTs until the conclusion of each rail competition and following the placing of the relevant franchise agreement on the Secretary of State's Public Register of Franchise Agreements. The publication process for the ITT and the Public Register franchise agreements will commence after the new franchise has commenced operation. The attached Annex A to this letter sets out the Section 22 exemption in full.

Section 22 is a qualified exemption. This means that the Department, having identified the exemption, has to consider whether the public interest in maintaining the exemption (and not disclosing the ITTs) outweighs the public interest in disclosing the requested information.

In determining the competing public interest considerations, the Department evaluated the nature of the prejudice (including its likelihood and magnitude) against the need for public bodies to exercise their statutory functions in a visible way.

In considering the public interest value in releasing unredacted ITT we have considered whether disclosure of the requested information might bring about adverse, unintended results, which would not be in the public interest. Information contained in ITT is highly market sensitive and to disclose may prejudice the economic interests of the Department and/or a bidders commercial interests. There is, therefore no overriding public interest in providing the information you seek.

Weighing all these matters up, it is my opinion that the public interest in maintaining the Section 22 exemption, and therefore not disclosing the ITT, at this juncture is overriding.

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. Please see attached details of the Department's complaints procedure and your right to complain to the Information Commissioner at Annex B.

Yours Sincerely

xxxx  
Freedom of Information Coordinator  
Rail Procurement

## **Annex A**

### **Information intended for Future Publication**

22 (1) Information is exempt information if –

- (a) the information is held by a public authority with a view to its publication, by the authority or some other person, at some date in the future (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with the section 2(1)(a) would involve the disclosure of the information (whether or not already recorded) which falls within subsection (1).

## **Annex B**

### **Your right to complain to the Department and the Information Commissioner**

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 Department 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