

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 August 2023

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

#### **Decision (including any steps ordered)**

---

1. The complainant has requested cost information relating to the national rail network. The Department for Transport ("the DfT") refused to provide the information, citing section 44(1)(a) (prohibitions on disclosure) of FOIA.
2. The Commissioner's decision is that section 44(1)(a) applies and therefore the information must be withheld.
3. The Commissioner does not require further steps.

#### **Request and response**

---

4. On 3 April 2023, the complainant requested:  
"Can you provide details of information held by the department on the profit/loss or revenue/cost ratio of the national rail network at a service group or route level."
5. The DfT responded on 28 April 2023, it refused to provide the information citing section 41 (information provided in confidence), a position the DfT upheld on 8 June 2023 at internal review.

## Scope of the case

---

6. The complainant contacted the Commissioner on 8 June 2023 to complain about the way their request for information had been handled. They disputed the DfT's application of section 41.
7. During this investigation, the DfT wrote to the complainant and cited two further exemptions, section 44(1)(a) and section 43(2) (commercial interests).
8. The DfT explained to the Commissioner that, out of three exemptions applied, it considered section 44(1)(a) to be the most appropriate. Therefore, the Commissioner will first consider the DfT's application of section 44(1)(a) first. Depending on his findings, he may then go onto consider either, or both, section 41 and section 43(2).

## Reasons for decision

---

### Section 44 – statutory prohibitions on disclosure

9. Section 44 of FOIA states that:

“(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it

- a) is prohibited by or under any enactment,
- b) is incompatible with any retained EU obligation, or
- c) would constitute or be punishable as a contempt of court.”

### Is disclosure of the requested information prohibited by or under any enactment?

10. Information is exempt under section 44(1)(a) if its disclosure would breach any of the following:

- i. primary legislation (an Act of Parliament);
- ii. secondary legislation (a Statutory Instrument).

11. Looking at section 145(1) of the Railways Act 1993, it says:

“Subject to the following provisions of this section, no information with respect to any particular business which—

- (a) has been obtained under or by virtue of any of the provisions of this Act; and

- (b) relates to the affairs of any individual or to any particular business.

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.”

12. The DfT has explained:

“The Department receives detailed financial information from train operators in Management Accounts, Financial Templates and Annual Business Plan submissions pursuant to the terms of the contracts we have in place with these operators. These contracts are entered into in pursuant to the Department’s role as the ‘appropriate franchising authority’ or ‘relevant franchising authority’ (as applicable) under the Railways Act 1993<sup>1</sup>.”

13. The above is enough to satisfy the Commissioner that the information being requested in this instance, i.e. profit and loss and revenue information at a service or route level, is provided to the DfT in its capacity as the appropriate/relevant franchising authority. This means the information has been obtained under or by virtue of a provision of the Railways Act 1993 and relates to the businesses of the individual franchisees.
14. The DfT has drawn the Commissioner’s attention to two of his previous decisions<sup>2</sup> in which section 44(1)(a) has been applied to similar information and in similar circumstances.
15. The Commissioner concurs with the DfT that the requested information is exempt from disclosure in accordance with section 145(1) of the Railways Act 1993.
16. When considering section 44(1)(a), a public authority has discretion as to whether use any gateways to disclosure or exceptions to the relevant prohibition, so that it might disclose information requested under FOIA. However, the Commissioner cannot question the public authority’s decision to either enact, or not, that gateway.
17. Looking at the gateways that exist within section 145 of the Railways Act 1993, and also looking at the DfT’s explanation in relation to IC-177514-T4C0, the Commissioner is satisfied that no gateways apply in this instance.

---

<sup>1</sup> [Railways Act 1993 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1993/44)

<sup>2</sup> [FS50743381](#) and [IC-177514-T4C0](#)

18. Furthermore, the Commissioner notes that the wording in section 44(1)(a) states which refers to disclosure "otherwise than under this Act" means that FOIA itself cannot provide an exemption from a statutory prohibition.
19. The Commissioner is satisfied that section 44(1)(a) of FOIA is engaged by virtue of section 145 of the Railways Act 1993. As an absolute exemption, there is no public interest to consider; the information is exempt from disclosure.
20. With the above in mind, the Commissioner doesn't need to go onto consider the DfT's application of either section 41 or section 43(2).

## Right of appeal

---

21. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## Signed

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**