



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref ATISN 11431

25 August 2017

Dear ,

### Request for Information – ATISN 11431

I wrote to you on 1 August regarding your request for information. You asked for a copy of the “Train Service Requirement” document issued to bidders for the 2018 Wales and Border Rail Franchise.

I confirm we hold information captured by your request. The document you refer to is in draft form which was supplied to four authorised bidders as part of the dialogue phase of a competitive procurement process. I have concluded that all of this information is exempt from disclosure under the Section 28(1), Relations within the United Kingdom and Section 35(1)(a), formulation of Government Policy exemptions provided by the Freedom of Information Act 2000. Full reasoning for applying these exemptions is at Annex 1.

If you are dissatisfied with the Welsh Government’s handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government’s Freedom of Information Officer at:

Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or [FreedomOfInformationOfficer@wales.gsi.gov.uk](mailto:FreedomOfInformationOfficer@wales.gsi.gov.uk).

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. However, please note that the



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E&I FOI Team  
Welsh Government  
Treforest - QED Centre  
Main Avenue  
Treforest Industrial Estate  
Ponty pridd  
CF37 5YR

[EconomyandInfrastructureFOI@gov.wales](mailto:EconomyandInfrastructureFOI@gov.wales)

Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

## **Application of Exemptions**

Information which is released in response to a Freedom of Information request is disclosed to the world at large, not just the person submitting the request. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Decisions relating to non-disclosure of the draft Train Service Requirement document have been taken with due consideration of the exemptions identified under Sections 28(1) and 35(1)(a) of the Freedom of information Act 2000.

## **Section 28 – Relations within the United Kingdom**

Section 28(1) states:

*(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration*

The Train Service Requirements document contains expectations still under negotiation with the Department for Transport relating to the Welsh Government's ability to grow services. At a time when good relations and communication between the Welsh Government and the Department for Transport are essential, it is important to maintain a climate of mutual trust between the Departments that are party to the captured information. Disclosure of the information which was generated within this climate of trust would be likely to result in the same trust being eroded and a reluctance to share information which would be likely to prejudice relations between both parties on both this and other matters, particularly on this issue where the withheld information involves a subject matter which may still pertain to current and or future considerations by the Welsh Government and the UK Government.

## **Section 35 (1)(a) – Formulation of Government Policy**

Section 35(1)(a) states:

*(1) information held by a government department is exempt information if it relates to (a) the formulation or development of government policy.*

Policies and priorities in relation to the 2018 franchise are still under development as there are a number of potential changes which are still to be agreed. This is why the Train Service Requirements document currently only exists in draft form. Good government depends on being able to produce the best advice available and to discuss all the options without fear of premature disclosure. It is a relatively well established principle that Government and its agencies should be able to have a safe space for formulating and developing policy away from public scrutiny. In doing so, officials from both Administrations, together with other industry experts, partners and key stakeholders are speaking and debating freely and often exploring a variety of options in a free and frank exchange of ideas and experiences. These discussions are very much live discussions.

## **Public Interest Test**

Sections 28 and 35 are public interest tested exemptions. This means that in order to withhold information under each exemption, it has to be shown the public interest in withholding the information outweighs that in releasing it.

### **Public Interest in Favour of Disclosure**

Given the high public profile and significant expenditure associated with both the current and new rail franchise, there is a clear public interest in understanding what the 2018 franchise will mean for those members of the public who will be using the service in future and how public money is to be used to ensure Government gets the best value from the public purse. The Welsh Government recognises this public interest and acknowledges that release of this information would assist the public in this regard, in the interests of openness and transparency.

The Welsh Government also recognises that to release the draft Train Service Requirements document provided to the four pre-qualified Operator and Development Partner bidders would promote awareness of the issues currently being considered by Government. It would also go some way to enabling members of the public to scrutinise the Welsh Government and other key stakeholders on the proposed 2018 franchise.

### **Public Interest in Favour of Exemptions**

#### **Section 28 – Relations within the United Kingdom**

At a time when good relations and communication between the Welsh Government and the Department for Transport are essential, given the on-going procurement process for the 2018 Franchise, there is a clear public interest in maintaining a climate of mutual trust and confidence between the governments. To prejudice the close and effective working relationship between UK Government Departments and the Welsh Government would not be in the public interest as this would likely lead to less effective discussions.

#### **Section 35 (1)(a) – Formulation of Government Policy**

It is recognised that the public interest in withholding information is significantly reduced after a policy has been finalised and agreed. However, as outlined above, the policy in this regard is still very much still in development. The Welsh Government is of the opinion that some or all of the individuals would be less likely to engage in a free and frank manner if they thought their deliberations would be revealed. This would be likely to lead to a less strenuous and in depth exploration of options and potentially less robust and effective policies. Such prejudice would not be in the public interest.

### **Conclusion**

The procurement for the franchise is a time limited exercise. At an appropriate time after the contract has been awarded, the Welsh Government intends to publish as much detail as it is able to regarding the franchise and contract. Given this, I believe the public interest in the awarding of the franchise contract is satisfied on this matter

by information which will be placed in the public domain and which already exists in the public domain. For example, there is information on the Welsh Government website about the procurement process, which is available to view at (<http://gov.wales/topics/transport/transport-for-wales/procurement/?lang=en> and <http://gov.wales/newsroom/transport/2016/161013-rail-operator-shortlist-revealed/?lang=en>)

I am aware that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of information, or timing of the request may be relevant in determining whether to apply any of the above exemptions, or where the public interest may lie. In this case, however, the information captured is very much current information.

In conclusion, I believe the balance of the public interest falls in favour of withholding the draft Train Service Requirement document for the reasons outlined above.