

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2019

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 from the Department for Transport (DfT) information about the Train Service Requirement for the Hull-Scarborough route. DfT has released some information, withholding some under sections 40(2)(personal data), 41(1) (information provided in confidence) and 43(2) (commercial interests). The complainant considered that DfT holds further relevant information.
2. The Commissioner's decision is as follows:
 - DfT originally breached section 1(1) of the FOIA as it holds further relevant information that it had not identified in its original response to the complainant. On the balance of probabilities the Commissioner is satisfied that DfT now holds no further information falling within the scope of the complainant's request.
 - DfT breached section 10(1) with regard to the additional information it identified in the course of the Commissioner's investigation.
 - DfT complied with section 10(3) of the FOIA with regard to the length of time it originally took to comply with the request.

3. The Commissioner requires DfT to take the following step to ensure compliance with the legislation:
 - If it has not already done so, release to the complainant the additional information it has now identified that it holds, that is discussed at paragraphs 47 to 51 of this notice.
4. DfT must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 March 2018 the complainant wrote to DfT and requested information in the following terms:

"Thank you for sending through copies of the development of the Train service Requirement, from the simpler Passenger Service Requirement for the Hull to Scarborough Line.

I have consulted Rail North, and they have informed me under the Freedom of Information Act that they did not form an executive function until Autumn 2015. and were not involved with the drawing up of the Train Service Requirement. Under separate cover I will send a copy of their reply.

[1] I would thus be grateful under the Freedom of Information Act if you can please send me through the background papers, notes from meetings, who attended the meetings, where and when they were held, regarding how the PSR [Passenger Service Requirement] was modified.

specific changes are, modeling the requirement on Hull, deleting conditions to be met at Scarborough and Bridlington.

Changing from all stations, to limited stop calls at Bempton and Hunmanby

Withdrawing the protection of the minimum gap between services.

[2] Why was a note made for connections at Goole to be made from Saltmarshe to reach Leeds? (and return) but no suggestion of Northern Railways and TPE [TransPennine Express] to connect at Seamer?

[3] I would be grateful if the background papers on the reason for the Saltmarsh request can now be made public, a development from the previous PSR."

6. DfT responded on 15 May 2018. It released correspondence with some personal data redacted under section 40(2) of the FOIA.
7. DfT then addressed what it said was the complainant's request for information on 'the role of Rail North in developing the train service specification'. It is not clear that the complainant had made such a request, specifically, but DfT explained how Rail North was represented before its 'executive function' was established. DfT provided some associated information which it considered the complainant might find helpful whilst acknowledging that that information fell outside the scope of the complainant's request.
8. DfT next addressed the complainant's request for information on 'meetings regarding how the Train Service Requirement (TSR) was determined in relation to Hunmanby and Bempton'. DfT confirmed that it holds no minutes for the large number of meetings that took place to develop the TSR for the Northern franchise. It said the related information it does hold – TSR tables – had been disclosed to the complainant previously and that, given the number of individual data entries in the various TSR tables, it would not have been practicable to document the rationale for each and every requirement.
9. DfT confirmed that it does not hold a single list of the dates, locations and attendees at each of the above meetings. But it had reviewed relevant electronic calendars and provided the complainant with dates when meetings were scheduled. DfT said it was possible some of these scheduled meetings did not take place and that others had taken place that were not included in the dates provided. DfT said it could not confirm who attended which meeting and which specific meeting(s) dealt with the Hull-Scarborough service. However it considered the list it had provided to be representative of the number and frequency of meetings that took place across the period and that each meeting would have been attended by DfT representatives, its external technical advisors and at least one of the transport authorities within Rail North's membership.
10. DfT said it did not hold any background papers that relate to the service specification at Hunmanby or Bempton.
11. DfT said it had identified three documents that contain extracts relating to what it described as the 'Hull-Scarborough specification'. It released this information with some material redacted under section 41(1)(information provided in confidence) and 43(2) (commercial

interests), with the public interest favouring maintaining the section 43(2) exemption.

12. With regards to what it described as 'intervals between services', DfT said that it had identified relevant extracts in 'Joint Project Board' paper. It released these to the complainant and provided some further explanation about how interval protection is maintained.
13. Finally, DfT addressed the element of the complainant's request about 'Saltmarshe'. DfT said that its search had not identified any papers which refer to the reason for the specific note about connections from Saltmarshe to Leeds via Goole. DfT said the rationale might relate to the fact that only a single daily service operates in each direction between Goole and Leeds.
14. The complainant requested an internal review on 25 May 2018. He was dissatisfied that he had not received information relating to parts (i), (ii), (iii) and (iv) of his request and disputed that DfT does not hold information relevant to these parts. He confirmed that he was content for personal data to be withheld.
15. DfT provided a review on 25 June 2018. It confirmed that it had released the following information:
 - extracts from a Northern/TPE joint project board paper relating to TSR format and approach
 - extracts from an instructions paper for amendments of the TSR
 - two sets of notes of stakeholder comments on changes to the TSR
 - a relevant option test log
 - a relevant option test result sheet; and
 - a summary of the relevant TSR changes associated with Hull to Scarborough services.
16. DfT also confirmed its position that it would not be practical to document the rationale for every requirement in the Train Service Requirement tables it had released to the complainant given the number involved - it said there are several thousand TSR entries for the latest Northern and TPE franchises. DfT said it was therefore satisfied that the request had been dealt with properly in that respect.
17. DfT said it had identified some further information relating to the background behind the move from the Passenger Service Requirement approach to the Train Service Requirement approach and it released this - an extract from a document called 'Franchise Design Policy Note 12'.

Scope of the case

18. The complainant first contacted the Commissioner on 18 July 2018 to complain about the way his request for information had been handled.
19. In correspondence dated 28 November 2018 the complainant confirmed the scope of his complaint. He referred the Commissioner to documents that comprise the new Train Service Requirement for the Scarborough to Hull train route. In the complainant's view these documents show that several revisions took place in the space of around 18 months. He considers that to produce the format of the TSR, and the alterations, there must be a 'paper trail' and it is such a 'paper trail' that he has requested. In order to understand why Hunmanby was, in his view, being treated so poorly through the new TSR, the complainant says he wanted to review the methodology underpinning the TSR so that he could check that the data and facts that DfT has relied on were correct. The focus of his complaint is therefore not on any exemptions DfT may have applied to particular information but that he considers that DfT holds further information within the scope of his request that it has not released. In his original complaint to the Commissioner the complainant also expressed dissatisfaction with the length of time it took DfT to provide a response to his request.
20. The Commissioner's investigation has focussed on whether DfT holds further information within the scope of the complainant's request and has complied with its obligations under section 1(1) of the FOIA. She has also considered whether DfT complied with its obligation under section 10 of the FOIA.

Reasons for decision

Background

21. In its submission to the Commissioner DfT has provided the following context to the request. It has explained that the complainant's request of 3 March 2018 pertains to the train service specification for the Northern rail franchise which commenced operation in April 2016. The train service specification sets out the minimum level of service to be provided by the franchisee.

PSR and TSR

22. Over time, train service specifications in franchise agreements have been presented in different formats, including Public Service Requirements (PSR – a largely verbal description of the train service to

be provided, which tends to be a very prescriptive specification leaving little flexibility for the operator to adapt the train service) and in more recent years, Train Service Requirements (which sets out the train service specification in a predominantly numerical, tabular format, which provides a greater degree of flexibility). The current Northern franchise includes a TSR, while the previous franchise included a PSR.

23. The previous PSR, and current TSR, for the Northern franchise are substantial documents. The PSR extended to some 250 pages, mostly of text; the TSR tables comprise tens of thousands of individual numerical entries, each representing the minimum number of train services to be provided between station pairs during specified periods of the day.

Responsibility for developing the train service specification

24. Within DfT, a single official (the "Specification Lead") was responsible for managing the development of the train service specification for the Northern franchise throughout the period in which the decisions referred to in the information request were taken. That individual led, and was the regular DfT participant in, a small working group which developed this train service specification. The group also included representatives from Rail North (which represented local authorities from across the north of England) and external advisors. The Specification Lead was the conduit for discussion and correspondence between the Department and other participants in the working group throughout the period during which decisions about the future train service specification were taken.
25. The Specification Lead still works for the Department and has been closely involved in responding to the complainant's request and subsequent complaint.

The complainant's original information request

26. Helpfully for the Commissioner, DfT has clarified aspects of the complainant's request. By "*modelling the requirement on Hull*", DfT has explained that the complainant is referring to the fact that, in the current TSR, the minimum number of services to be provided at Bempton and Hunmanby is specified in terms of the number of services to be provided between each of those stations and Hull. By "*deleting conditions to be met at Scarborough and Bridlington*", he is referring to the fact that the previous PSR took a different approach, in which the equivalent requirement for Bempton and Hunmanby was expressed in terms of the number of services to be provided on the route between Scarborough and Bridlington.
27. By "*changing from all stations to limited stop calls at Bempton and Hunmanby*" DfT says the complainant is drawing the distinction between

the previous PSR specification (which required a number of services to be provided between Scarborough and Bridlington with each of those services required to call at Bempton and Hunmanby) and the current TSR (which requires a higher number of services to be provided between Scarborough, Bridlington and Hull, and left discretion for a small number of those services not to call at Hunmanby and Bempton). The effect of the specification was to protect at least the pre-existing number of calls at Bempton and Hunmanby, but not to require the additional Scarborough-Hull services to call at those stations.

28. With regards to "*withdrawing the protection of the minimum gap between services*" DfT has explained that the TSR approach involved replacing a rigid PSR specification about permitted intervals between services with a less prescriptive requirement.
29. Finally, with regard to "*the rationale for including a note about connections at Goole to be made from Saltmarshe to Leeds, while not including a similar note in relation to Seamer*" DfT has explained that this is the same note that the complainant subsequently refers to as the "*Saltmarshe request*".

DfT's approach to responding to the complainant's request

30. In its submission DfT says the complainant's request was narrow in scope, in the sense that it defined very specifically the features of the PSR/TSR in respect of which he was seeking information. It says his letter of complaint dated 25 May 2018 reiterates the narrow focus of his original request.
31. In responding to the request, and in the absence of some of the specific information the complainant requested, DfT says it sought to go beyond its strict obligations under FOIA. It did so by providing information (located as part of our original searches but identified as being outside the scope of the request) and other supporting explanation (informed by the Specification Lead) that it felt could assist the complainant in understanding the overall approach it took in determining the train service specification for the Hull-Scarborough route.

Section 1 – general right of access to information held by public authorities

32. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled a) to be told if the authority holds the information and b) to have the information communicated to him or her if it is held and is not exempt information.

33. DfT's submission details the actions it has carried out to determine what information it holds that falls within the scope of the complainant's request.
34. **Searches:** In respect of electronic files, the DfT says its searches have included:
- the email account of the Specification Lead (including items both sent and received);
 - the hard drive of the laptop used by the Specification Lead during the relevant period;
 - the networked "personal" drive belonging to the Specification Lead (the Department's desktop computers are networked and have no facility to save documents to local hard drives);
 - the folders within the Department's electronic "shared drive" where files relating to the specification of the Northern franchise are stored.
35. DfT has also reviewed the paper documents within the Specification Lead's possession.
36. In relation to the electronic searches, DfT says it does not hold a record of the specific keywords that were used when dealing with the complainant's original request for information. The Specification Lead's recollection is that he would have searched for the specific locations identified in the complainant's request, and phrases such as "minimum gap" or "minimum interval". The Specification Lead notes that "interval" is the word that would normally be used in this context: "interval" rather than "gap" is used in relevant drafting in previous PSRs, TSRs and franchise agreements, for example.
37. DfT says that as a result of the Commissioner's investigation it has undertaken further electronic searches of the locations described above, using the following key words:
- Hull
 - Scarborough
 - Bridlington
 - Bempton
 - Hunmanby
 - Goole
 - Saltmarshe
 - Seamer
 - interval
 - gap

38. DfT has confirmed that it has not undertaken a keyword search for Leeds (mentioned in the complainant's request). It says that, as a major conurbation and focal point for the Northern franchise, this search would identify a very large number of documents that have no relevance to the information request. To be relevant to the element of the request that mentions Leeds, an email or document would also need to include a reference to either Goole or Saltmarshe, or both, and would therefore be identified through a search for those two terms.
39. DfT's Specification Lead has reviewed the subject lines or filenames of emails and documents identified by the searches. DfT says that the Specification Lead is best placed to identify whether such documents might contain information within the scope of the request. DfT has provided the following examples: the Specification Lead was able to quickly dismiss emails or documents relating to proposed electrification of the railway between the East Coast Main Line and Hull, or the frequency of service to be operated by a different franchisee on the route between Manchester and Scarborough. Where the title or file name of a document indicated that it might contain relevant information, or where the scope of the email or document was unclear, the email or document itself was then reviewed.
40. DfT has confirmed that it considers that these searches are likely to retrieve any relevant information for two reasons. First, in relation to the part of the request relating to the "minimum gap" between services, the electronic searches have used the most likely search terms of "interval" and "gap" (reflecting, as explained above, that "interval" is the term usually used in franchising documentation). DfT notes that the original electronic searches identified the background paper which explained (among other things) the considerations leading to the decision to adopt a different form of interval protection compared to that used in historic PSRs, and the parts of that paper dealing with interval protection were duly released to the complainant. The Specification Lead has advised that the approach to interval protection ultimately taken in the Northern specification corresponds with the approach described in this background paper. DfT says that, accordingly, there is no reason why more than one background paper would need to have been prepared on this subject, and the Specification Lead does not recall further such papers being prepared.
41. Second, in relation to the other parts of the request, the complainant identified the specific places in relation to which he was seeking information (Hull, Bridlington, Scarborough, Hunmanby, Bampton, Goole, Saltmarshe, Leeds). To fall within the scope of the request, an email or document would therefore need to include a reference to one or more of the places specified.

42. In addition to the keyword searches, DfT says it has undertaken a specific manual review of the "shared drive" folder in which papers relating to Project Board meetings were filed. This search confirmed that, as per the information released to the complainant, a background paper was drafted in relation to "intervals" for a meeting of the Project Board that was scheduled for 19 August 2014. The manual review found the folder in which that paper is located, but found no notes of that meeting.
43. **Deletion or destruction of records:** DfT says that any background papers would be stored electronically rather than on paper. It says that in 2014 and 2015 it is extremely unlikely that such papers would have been drafted, photocopied, circulated and stored in paper form, and that the Specification Lead has no recollection of background papers being circulated or stored in such a way.
44. As regards notes of meetings (and their timings, locations and attendees), DfT has acknowledged that it is more plausible that records could have been kept in either electronic or paper form. The Specification Lead advised that the meetings at which the detailed content of the TSR was developed were relatively informal in nature, in the sense that agendas and background papers were not prepared and circulated in advance. It says this is why DfT has been unable to locate records of the dates, locations or participants in meetings at which the specific issues identified in the information request were discussed.
45. As it had explained to the complainant in previous correspondence, DfT says that the output from these meetings was in the form of the TSR tables that ultimately formed part of the franchise specification and contract. The TSR tables themselves were developed and updated over a period of time by external technical advisors working on the Department's behalf, and therefore successive drafts of the TSR tables were not stored on the Department's information systems. DfT says that at critical stages, namely the issuing of the Invitation to Tender and following award of the franchise contract, the TSRs were published and the complainant has received copies of those versions.
46. The Commissioner queried DfT further about this point; whether the external technical advisors would hold relevant draft material and whether, if held, any material would be held on behalf of DfT and so, in effect, held by DfT itself.
47. DfT provided the Commissioner with a further submission on this matter dated 15 February 2019. It said that when dealing with the original request it did not believe there was any relevant information that was in scope and being held by its external technical advisors. Subsequently, and in the course of considering the Commissioner's query, it revisited

this point and asked its technical advisors to consider whether they hold any such information.

48. DfT's advisors confirmed they do hold copies of draft versions of TSR tables but have not identified any information within these drafts that fall within the scope of the complainant's request. DfT says this is to be expected as the purpose of the TSR tables is solely to stipulate requirements to be met by the train operator, not to set out the rationale for, or other background to, those requirements.
49. However, in raising this with its advisors DfT says it has also established that they do in fact hold a set of notes which document the changes they made to the TSR documents as DfT went through the process. There are small elements of these notes that fall within scope of the complainant's information request. DfT says that although it has neither asked for nor seen these notes previously, and was not until now aware of their contents, it is possible that they could be considered to be held "on the Department's behalf" within the meaning of section 3(2)(b) of the Freedom of Information ("FOI") Act 2000.
50. DfT has told the Commissioner that its due diligence in this matter has not revealed any evidence of it having commissioned technical advisors to create notes of the rationales for the detailed decisions about changes to individual entries in the TSR tables and, for the vast majority of such changes, the documents the advisors have just provided to it confirm that they did not do so. DfT says it was therefore not aware that information potentially relevant to the complainant's request might exist in their records. This is why, DfT says, it did not consider it necessary to consult the technical advisors originally.
51. DfT advised the Commissioner that it intended to write to the complainant and release this additional information with some minor redactions for junior officials' and stakeholders' names in reliance on the third party personal information exemption at section 40 of the FOI Act.
52. Returning to DfT's original submission, DfT says that the Specification Lead recalled taking manuscript notes at some of the relevant meetings, in the form of hand-written mark-ups on printed copies of the TSR tables that the technical advisors had provided. These mark-ups were limited to noting changes to the draft TSR tables as they were discussed (e.g. crossing out a number 4 and writing a 3 alongside). The purpose of taking these notes was to serve as a temporary back-up (e.g. in case of loss or corruption of the technical advisors' electronic versions of the TSR tables) and, accordingly, DfT says these were not retained beyond the end of the franchise procurement process. The Specification Lead advised that these manuscript notes would not have documented the background to or rationale for individual decisions to change (or not to

change) each specific entry in the TSR tables, and it would not have been practicable to take such notes (given the very large number of individual requirements contained in the TSR tables, as described above).

53. As the Specification Lead's manuscript notes were never intended to be part of the formal record, DfT says it does not have a specific record of their disposal, but it is likely to have been either shortly before or shortly after the publication (in February 2015) of the Invitation to Tender in which the final specification was published. There would have been no business purpose for retaining these documents beyond that date.
54. DfT says it does not have a formal policy about the retention and deletion of this particular type of record. However, given the number of individual entries within a TSR for a large rail franchise such as Northern, it is not the practice of competition teams to retain background papers or other notes relating to each decision to change (or not to change) each individual entry or note in the TSR tables. Retention of such records would normally be limited to instances where the TSR specifies a substantial increase or decrease in the overall quantum of train services to be provided at particular locations. DfT has explained that this is not the case in the present context for the following reasons:
- at Hunmanby and Bempton, the TSR required the pre-existing quantum of train services to be maintained and, although the TSR specification was expressed as services to/from Hull (rather than services between Bridlington and Scarborough as in the previous PSR), there was no risk to Hunmanby and Bempton's direct services to both Bridlington and Scarborough, because in practice a rational operator complying with the TSR would always meet the requirements at Hunmanby and Bempton by placing calls in Hull-Bridlington-Scarborough services; and
 - notes in the TSR about connections between Saltmarshe and Leeds, or at Seamer, could affect the precise times at which certain services operate, but would have no bearing on the overall quantum of services to be provided.
55. Given that the TSR specification preserved the existing quantum of services at the locations in question, DfT says it does not consider it surprising that its searches have not located a background note or other record of the matters the complainant has asked about (other than in respect of the general question of interval protection, the background note for which was released to the complainant in response to his original request).

56. **Statutory requirement to retain the information:** DfT says it recognises that Section 46 FOIA, while not directly imposing a statutory obligation, provides for a code of practice around record keeping (the "Code") to be issued and places obligations on public authorities to maintain their records in line with the provisions of the Code.
57. DfT says that paragraph 8.1 of the Code sets out a number of factors to be considered that should inform authorities' decisions about what records they are likely to need, and provides some examples. DfT does not consider that records of the specific information sought by the complainant need to be kept for the purposes described in paragraph 8.1, and accordingly it did not create those records. In particular, paragraph 8.1 refers to the need to consider:
- "The legislative and regulatory environment within which [the Authority] operate". DfT has not identified any statutory requirements which oblige it to create or retain records of the matters covered by the complainant's request, either in transport legislation or in other generally applicable legislation (such as health and safety or data protection legislation which are mentioned in the Code);
 - "The need to refer to authoritative information about past actions and decisions for current business purposes". As explained in the next section below, DfT says there is no business purpose in creating and retaining the information requested, other than the information relating to intervals between services that has already been located and released to the complainant;
 - "The need to protect legal and other rights of the authority, its staff and its stakeholders." DfT says that creating and retaining the information requested by the complainant would not assist in the protection of any such rights;
 - "The need to explain, and if necessary justify, past actions in the event of an audit, public inquiry or other investigation." DfT says that creating and retaining the information requested by the complainant does not pertain to public expenditure or the handling of an FOI request (the two specific examples given in the Code). Nor does it pertain to other matters of comparable significance, especially when it is considered that the TSR service specification protected the pre-existing quantum of train service at two stations that are of particular interest to the complainant.
58. **Business purposes:** In relation to intervals between services, which is a general issue applying across the whole of the train service specification, DfT says there is a potential business purpose for retaining

a record of the rationale for the approach taken in the Northern TSR. This would be to inform future competition teams for other franchises of the approach taken, and the rationale for that approach. DfT's position is that such a record was retained, in the extracts of the Project Board paper that it disclosed to the complainant in responding to his original request.

59. DfT has explained that, in relation to the other elements of the complainant's request, which are specific to the individual locations identified in the request, the same business purpose does not exist. While future franchise competition teams might wish to understand the approach a particular project team took to a franchise-wise issue such as the approach to specifying service intervals, DfT says it is very difficult to see that a project team working on a franchise competition in a different part of the country would benefit from information about the individual decisions taken in respect of specific stations served by the Northern franchise.
60. The complainant has confirmed that his focus is on any information DfT may hold that evidences and sheds light on revisions and alterations that were made to the proposed new TSR for the Scarborough to Hull train route – before that TSR was finalised.
61. In the Commissioner's view in its original handling of the request and its reconsideration as a result of this investigation, DfT has put considerable time and thought into considering the complainant's request and identifying what information it holds that is relevant to it.
62. The Commissioner has noted DfT's explanations in its submissions, at paragraphs 43 to 55; specifically the following:
 - The background to the TSR project started in 2014/2015, three to four years before the complainant submitted his request.
 - The Specification Lead has advised that the meetings at which the detailed content of the TSR was developed were relatively informal in nature.
 - The TSR tables were developed and updated over a period of time by external technical advisors working on the Department's behalf. Successive drafts of the TSR tables were not stored on the DfT's information systems.
 - DfT has, however, now consulted the technical advisers and additional information has been identified.

- At critical stages, namely the issuing of the Invitation to Tender and following award of the franchise contract, the TSRs were published.
 - Limited notes the Specification Lead made at some meetings were not retained beyond the end of the franchise procurement process as there was no business need to retain them.
 - Further, these notes would not have documented the background to, or rationale for, individual decisions to change (or not to change) each specific entry in the TSR tables. And it would not have been practicable to take detailed notes given the very large number of individual requirements contained in the TSR tables ie in the thousands.
63. In addition, the Commissioner considers that the searches that DfT has carried out for relevant information have been appropriate and thorough and that it has involved the most appropriate member of staff in the process of identifying any relevant information. Having considered all the circumstances of this case the Commissioner has decided that, on the balance of probabilities, DfT does not hold any further information that falls within the scope of the complainant's request and has now complied with section 1(1) of the FOIA.

Section 10 – time for compliance

64. Section 10(1) of the FOIA says that a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of a request.
65. Section 10(3) of the FOIA enables an authority to extend the 20 working day limit up to a 'reasonable' time in any case where it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption. This extension will therefore only apply to requests where the authority considers a 'qualified exemption' to be engaged; that is, an exemption that is subject to a public interest test.
66. Since section 10(3) concerns consideration of the public interest test only, the authority should have identified the relevant exemptions, and satisfied itself that they are applicable, within the initial 20 working day time limit.
67. The complainant submitted his request on 3 March 2018 (a Saturday). On 28 March 2018 DfT provided the complainant with an interim response in which it indicated that it needed further to time to consult with a third party and consider the public interest aspects of exemptions that it considered applied to some of the information it holds – the exemptions under section 41 and 43 of the FOIA. DfT provided a further

holding response on 20 April 2018 and provided its substantive response on 15 May 2018.

68. Section 43 is a 'qualified' exemptions. DfT first advised the complainant that it was relying on this exemption with regard to some of the information within 20 working days of receiving the request. The Commissioner is therefore satisfied that DfT complied with section 10(3) of the FOIA with regards to this request.
69. However, DfT breached section 10(1) with regards to the additional information it has now identified that is held on its behalf by its technical advisors and which it intends to release; DfT did not confirm to the complainant that it holds this particular information, or communicate it to him, within 20 working days of the request.

Right of appeal

70. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

71. 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.
72. 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

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