



Mr John McGoldrick  
By email only  
request-783961-  
16d4b95d@whatdotheyknow.com

Your reference:  
Our reference: ATI2641

20 September 2021

Dear Mr McGoldrick,

Thank you for your request for information about possible toll changes on the Warburton Bridge which we received on 20 August 2020. We are dealing with your request under the Freedom of Information Act 2000 (FOIA).

I can confirm that the MMO holds information relevant to your request. This information relates to pre-application engagement on proposed changes to Warburton ridge during 2018. However, we are unable to release this information as we consider that the exemptions to disclosure under sections 41 and 42 of the FOIA apply to this. Our application of these exemptions are set out below.

### **Section 41 – Information provided in confidence**

Section 41 of the FOIA provides an exemption to the disclosure of information where this would constitute a breach of confidence. In this specific instance, given the information held by the MMO relates to pre-application contact we do not consider that there would be any expectation that such information would be subject to disclosure to a third party.

We recognise that there is a public interest in accountability and transparency in relation to the activities of public authorities, including the application and interpretation of specific law which covers the remit of such public authorities.

By way of background, the information involved relates to early engagement between the MMO and representatives of the Manchester Ship Canal Company Ltd (MSCC) on proposed changes to the operation of the Warburton bridge, including tolls being applied for under a Harbour Revision Order (HRO). Following this initial contact, which occurred during 2018, the MSCC did not pursue a formal HRO application. We consider that there would be an expectation of a 'safe space' for parties involved to consider initial engagement outside of public scrutiny, in confidence, prior to a more formal application being made. This would be to avoid public scrutiny on matters where they are still being developed and have not yet been fully formed.

We have also considered that had this initial engagement led to a formal HRO application being made to the MMO, this would have been subject to the obligations relating to

disclosure under this process. This would have included a full public consultation on any proposals and the public interest in this matter being satisfied under this process, had it been pursued.

We are therefore satisfied that there was an expectation of confidence when engaging the MMO on this matter and that the exemption applies. We also consider that on this specific occasion, given the circumstances surrounding this engagement, the public interest in maintaining the exemption outweighs the arguments in favour of disclosure.

## **Section 42 – Legal Professional Privilege**

Section 42 of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege (LPP) and this claim to privilege could be maintained in legal proceedings. We consider that the information requested is captured by this exemption to disclosure as it relates to legal advice received by the MMO regarding the interpretation of the case law referenced and its relevance to the HRO process.

Again, we recognise that there is a public interest in accountability and transparency in relation to the activities of public authorities, including the application and interpretation of specific law which covers the remit of such public authorities. These arguments are provided within our application of the public interest test below.

There is a strong public interest in maintaining the exemption as we consider that the disclosure of the withheld information subject to LPP would more likely than not adversely affect the course of justice. This is because it would involve public access to privileged information to matters which could be subject to future litigation. Disclosure of the advice would provide an indication of the arguments, strengths or weaknesses which the MMO might have, unbalancing the level playing field under which adversarial proceedings are meant to be carried out. As such, we consider that the disclosure of the information subject to LLP has the potential to adversely affect the administration of justice, including the operation of the courts and prejudice to the right of the MMO to a fair trial.

Having considered the arguments both against and for the disclosure of the information requested, we consider the public interest in maintaining the exemption to disclosure outweighs those in favour of disclosure.

## **Transport and Works Act 1992**

Within your request you also refer to an application having been made to the MMO under the Transport and Works Act 1992. I feel it is important to clarify that the MMO would not be the relevant public authority to consider approaches made under this act and this would be the Department for Transport. To clarify, no approach has been made under the Transport and Works Act 1992.

## **Information publicly available**

Under the FOIA we are also obliged to advise and assist individuals in obtaining access to information which may be available from another public authority and/or elsewhere.

We consider the following information, available to the public online, to be relevant to your request and may contain some of the information you require.

A link to Peel ports website referring to a non-statutory consultation on the Sustainable Investment plan: <https://www.warburtonollbridge.co.uk/>

The following link is to the Sustainable Investment plan PDF document, which specifically mentions at page 17 (Q13) that an application for a Transport and Works Act Order will be made to the Department for Transport. The plan also refers to an indicative timeline on page 18: <https://www.warburtonollbridge.co.uk/media/1382/wtb-sustainable-investment-plan-final-6-july-2021.pdf>

If you require any further advice or assistance, please contact me in the first instance.

Additionally, if you are unhappy with the way the MMO has handled your request for information, you can request an internal review by writing to Internal Reviews at the MMO, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH or e-mail [accesstoinformation@marinemanagement.org.uk](mailto:accesstoinformation@marinemanagement.org.uk).

If you remain dissatisfied with the handling of your request or complaint, you have a right to appeal at the ICO, Wycliffe House, Water Lane, Wilmslow, SK9 5AF. Tel 0303 123 1113 or <http://www.ico.org.uk/complaints>.

There is no charge for the internal review or making and appeal to the ICO.

Yours sincerely



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