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Our Ref: F0020462

Date: 09 March 2022

Dear Mr McGoldrick,

### **Freedom of Information (FOI) Act Request reference number F0020462**

I am replying to your request, received on 15 February 2022, for an internal review of our response to your FOI request. You had asked for:

*“ Can DFT provide any information it holds with the toll operator or anyone acting for them on possible changes to the tolling of the Warbuton Road bridge”*

We had refused some of your request with reliance on section 41 of the FOI Act as it was felt that the information was provided in confidence.

Your request for a review has been passed to me to deal with, as I had no involvement in the handling of your original FOI request. In reaching my decision I have carefully considered your arguments as to why the information should have been disclosed and have sought further information from the Transport Infrastructure Planning team who made the decision to withhold the information.

### **Findings**

Section 41 provides a level of assurance to third parties that where information they provide is confidential, it won't be released by public bodies. Information provided to public bodies by third parties (including other public authorities) that is confidential in nature. While this is an absolute exemption, meaning a public interest test is not generally required, consideration of the public interest is very different to the normal public interest test. For Section 41, there will have to be a very strong public interest to justify breaking confidentiality.

Section 41 requires that the information in scope was obtained from a third party. In the withheld information in this instance was provided by Bircham Dyson Bell Solicitors (BDB), who act on behalf of the Manchester Ship Canal Company Limited. Section 41 requires the disclosure by the Department to constitute an actionable breach of confidence by whomever provided the information. The information must therefore carry the necessary quality of confidence. In my opinion, the information does have the necessary quality of confidence and therefore the exemption is engaged.

Within the withheld information, there is correspondence from the Department to BDB. However, this has been withheld on the premise that these responses would reveal the content of the information that has been provided by BDB.

I am satisfied that the withheld information is not trivial, nor is it publicly available. Were the Department to release the withheld information, BDB would be likely to institute legal proceedings on the grounds of breach of confidence. There are grounds within which confidential information may be disclosed, namely:

- Where the third party to whom the duty of confidentiality is conferred consents to disclosure
- Disclosure is required by law
- There is an overriding public interest in disclosure

In the context of your request, no consent has been provided. Disclosure of the information is not required by law. This now leaves the question of whether there is an overriding public interest in disclosing the information. In considering this, you should be aware that courts generally take the view that the grounds for breaching confidentiality must be valid and very strong and therefore the duty of confidence should not be taken lightly. While I appreciate there may be a general public interest in toll operation and resultant charges and income, information provided by third parties in confidence is done so with an expectation that this confidence is maintained. Disclosure would be likely to discourage third parties engaging with the Department and not provide full information if there were not a degree of certainty that such confidences would be upheld. There is a weighty public interest in maintaining the free flow of information to the Department so that it can effectively carry out its statutory functions. This free flow of information should not be fettered.

You have asked that within some of the redacted information, it is made clear who the correspondence was between. Having reviewed the redacted information, it is reasonable to disclose the organisations that the correspondence was between. I note, however, that details of who the correspondence was between has already been provided to you at the annex of the response letter dated 23 December 2021.

With regard to document 5, the Transport Infrastructure Planning Unit has confirmed the appendix refers to a letter from the MMO to lawyers acting on behalf of Manchester Ship Canal Company Limited. This is the same letter from the MMO as set out in document 4 which has not been released due to Section 41 of the FOI Act.

I have also been informed that the Transport Infrastructure Unit and the Transport And works Act Unit are the same unit with the same personnel.

## **Summary**

Taking into account all the relevant circumstances, I am satisfied that the original responders were correct in applying Section 41 of the FOI Act to the information that was withheld with regards to your request.

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: <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>

Yours sincerely

Information Rights Team