



**Date issued:** 30 July 2019

**Transport for Wales subsidy profile**

Thank you for your Freedom of Information (FOI) Act request of 12 July 2019. You requested the following information:

**Details of the subsidy profile paid to Keolis Amey Wales, trading as Transport for Wales Rail Services for their operation of the Wales and Borders rail franchise.**

I am writing to confirm that your request has been considered under the Freedom of Information Act 2000 (the Act) and that Transport for Wales (TfW) has completed its search for the information.

The information you requested for the financial year 2018-19 is provisionally scheduled for publication in October this year at the link below. The information is therefore being withheld at this time in reliance on the exemption at section 22 of the Act which covers information intended for future publication. Annex A to this letter sets out the exemption in full and details why the public interest test favours withholding the information at this time.

<http://dataportal.orr.gov.uk/statistics/finance/rail-investment-and-subsidies/government-subsidy-per-passenger-kilometre-by-train-operating-company-table-17/>

Please be advised that information relating to future contracted payments for the Wales and Borders rail franchise run by Transport for Wales Rail Services is being withheld in reliance on the exemption at section 44 (prohibitions on disclosure) of the Act. Section 44 provides an absolute exemption where disclosure of the information is “prohibited by or under any enactment.” The relevant enactment here is section 145 of the Railways Act 1993, which prohibits the disclosure of information 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.” The information “has been obtained under or by virtue of any of the provisions of this Act,” including sections 23 to 31 of the Railways Act. These sections establish the Welsh Minister’s duties with respect to the rail franchising system and the requirements that rail franchisees may be subject to under their franchise agreements. As the information is prohibited from disclosure under section 145 of the Railways Act 1993, it is also exempt from disclosure under section 44(1)(a) of the Freedom of Information Act 2000.

If you have any queries, please do not hesitate to contact Transport for Wales.

Yours sincerely

Transport for Wales



**Annex A**

**s22 Information intended for future publication**

(1) Information is exempt information if -

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

<b>Factors for disclosure</b>	<b>Factors against disclosure</b>
- the general public interest in disclosure for the scrutiny and transparency of Transport for Wales decisions related to public procurement.	- for Transport for Wales to be able to carry out its role effectively, its contractors such as Transport for Wales Rail Services must feel that they can disclose commercial information to Transport for Wales without risk that this information will be disclosed prematurely to the public or competitors.
- the Welsh Minister’s promotion of the ideal that information should be made public rather than not, and that Welsh public authorities should be more transparent.	- it is important that the Transport for Wales can consult with its contractors about the information before it is published. If contractors do not have confidence that Transport for Wales will protect information which is deemed commercially sensitive, they would be likely to be reticent to provide information that they are not obliged to, under the terms of the Grant Agreement with Welsh Ministers as managed by Transport for Wales.
- disclosure of the information could help to allow the individual concerned, or the public as a whole, to understand the decision-making process of public authorities.	- publishing the financial information for the first time on ORR’s website will allow everyone to see it at the same time and provide a clear and consistent approach.
	- TfW staff time would be better spent compiling and verifying the information in readiness for publication as opposed to dealing with piecemeal requests and avoid misinterpretation and confusion



**Decision**

The financial information you have requested is being withheld at this time as it is intended for future publication. On balance the public interest in withholding this information until formal publication outweighs that for disclosure now.