

Graeme Amis

Email: request-603957-51d0b326@whatdotheyknow.com

Date as email

Dear Graeme Amis

FOI-19-3408

Thank you for your information request of 19 September 2019. Your request has been considered under the Freedom of Information (FOI) 2000 Act ("the Act").

In your email you requested the following information:

Please provide:

- 1. Any ARAC minutes for meetings that have taken place subsequent to 5th March 2019 - I understand if you do not wish to provide the minutes for meetings that have taken place within the last 3 months as they are due for future release.***
- 2. Specific explanations of any redactions in those minutes.***

We wrote to you on 14 October to inform you that we required more time to consider the public interest tests for the information you have requested.

Response

Under the Act you have the right to:

- know whether we hold the information you have requested
- be provided with that information (subject to any exemptions under the Act which may apply).

I can confirm that HS2 Ltd. holds the information that you have requested.

The latest ARAC minute are now online and can be found at <https://www.gov.uk/government/organisations/high-speed-two-limited/about/our-governance#audit-and-risk-assurance-committee>.

Some of the information within both the May 2019 and June 2019 ARAC minutes has been withheld under Sections 36 (Record of the qualified person's opinion), and 40 (Personal Information) of the Act.

May 2019 ARAC minutes:

- p.1 - all redacted under Section 40(2) of the Act
- p.4 - all redacted under Section 40(2) of the Act
- p.5
 - 9.4 - redacted under Section 40(2) of the Act
 - 9.5 - redacted under Section 40(2) of the Act
 - 9.6 - redacted under Section 36(2)(b)(ii) of the Act

June 2019 ARAC minutes

- p.1 - all redacted under Section 40(2) of the Act
- p.5
 - 9.2 - redacted under Section 36(2)(b)(ii) of the Act
- **Section 36 of the Freedom of Information Act – Record of the qualified person’s opinion**

Section 36 of the Act exempts information if, in the reasonable opinion of a ‘qualified person’, disclosure would (or would be likely to) inhibit the exchange of views or otherwise prejudice the effective conduct of public affairs (section 36(2)(b)(ii)). The legislation is available via the following link: <http://www.legislation.gov.uk/ukpga/2000/36/section/36>.

Section 36(b)(ii) - Free and Frank exchange of views for the purposes of deliberation

Release of the redacted information in the ARAC minutes would lead to public scrutiny that would in turn inhibit the ability of HS2 Ltd. Executive/Board members to express themselves openly, honestly and completely.

Public authorities need the space to “think in private” and to safeguard the space needed for internal deliberation and the decision-making process. Therefore, release of such information would cause unfair public interference - that would inhibit the ability of HS2 Ltd. to make quality decisions as public authority, about the future of the HS2 Project.

Qualified Person

The exemption requires that the qualified person for the public authority must give their reasonable opinion that the exemption is required. In the case of HS2 Ltd, our qualified person is our Chief Executive Officer and he has confirmed that in his reasonable opinion section 36(2)(b)(ii) is engaged.

Public interest test

Section 36 is subject to a Public Interest Test which means that we need to consider whether “in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information”. We have weighed up the benefits to the public of releasing the information against the factors for not releasing it.

Public interest in disclosure

There is a general public interest in the disclosure of information to ensure transparency and visibility of public bodies being held to account regarding decisions made and use of funds. The public needs to understand how and why decisions have been taken and the factors considered by decision makers. There is a public interest in transparency and accountability so that there can be public scrutiny of whether the assurance process as an effective, particularly in major programmes like HS2.

Public interest in maintaining the exception

It is vital for HS2 Ltd. to be able to exchange views on information that is live and has yet to be decided, without public scrutiny and interference. Public scrutiny of the ARAC redacted information at this time, would inhibit the ability of HS2 Ltd. to discuss matters in a free and frank manner, and therefore it would hinder the ability of HS2 Ltd to make quality decisions, about the future of the HS2 Project.

Balance Test

On balance we have considered that the public interest to maintain the exemption, outweighs the considerations to disclose the redacted information.

All other redacted information in both sets of minutes is being withheld under Section 40 of the Act

▪ FOIA Section 40(2) - Personal Information

Section 40(2) of the Act provides an exemption from the right to information if it is personal data as defined in the Data Protection Act. A public body should not disclose information under the FOI Act if

- it is the personal data of the requestor; or
- it is the personal data of someone else; and
 - disclosure would contravene the data protection principles;
 - disclosure would contravene an objection to processing; or
 - the data is exempt from the right of subject access.

Further information on section 40 is available via the following link:

<http://www.legislation.gov.uk/ukpga/2000/36/section/40>.

The information you have requested is the personal data of another person. Section 40(2) of the Act provides that information relating to third parties is exempt information, if among other things, the release of the information requested would breach the requirements contained under the first data protection principle. In this case release of the information would not be lawful or fair.

There is a wider legitimate interest for transparency but placing this information in the public domain would lead to an unwarranted level of interference with the person's privacy. It is not needed for us to consider the necessity for disclosure and, in this case, there is no pressing need for us to disclose the information. Therefore, a further balancing test is not required.

Right to Review

If you are unhappy with the way we have handled your request or with the decisions made in relation to your request, you may complain in writing to HS2 Ltd at the address below. Please also see attached details of HS2 Ltd's complaints procedure and your right to complain to the Information Commissioner.

Please remember to quote reference number **FOI-19-3408** in any future communication relating to this request.

Yours sincerely

Alistair Hobbs

Briefings, Correspondence and FOI Adviser
High Speed Two (HS2) Limited

Your right to complain to HS2 Ltd and the Information Commissioner

You have the right to complain to HS2 Ltd. within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

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:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF