



Department
for Transport

Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR
Tel: 0300 330 3000

Web Site: www.gov.uk/dft

Our Ref: F0012243

Mr Joe Rukin
[By email: request-261592-
f58d928a@whatdotheyknow.com]

12 June 2015

Dear Mr Rukin,

Freedom of Information Act Request – F0012243

I am writing regarding your request for information, which I received on 1st April 2015. In that request, you asked us for:

“All details, documents and correspondence HS2 Ltd have relating to all opinion polls conducted or commissioned since May 2013 on the behalf of HS2 Ltd or the DfT relating to HS2”.

We have assumed that when you say “correspondence HS2 Ltd have” you actually mean the Department for Transport (DfT).

I should explain that in answering your request, we have focussed on those members of DfT staff who have been most closely connected with HS2 Ltd on the opinion research. A more extensive search would certainly have meant that we would have been unable to answer your request on grounds of cost. Section 12 of the Freedom of Information Act provides that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

I also note that in your email of 30 April, you stated that you consider that your request falls under the Environmental Information Regulations (EIR). However, the information you requested concerns opinion research and we do not consider that it falls within the definition of “environmental information” in Reg. 2 EIR. For that reason we have continued to consider your request under the Freedom of Information Act.

As you will recall, we wrote to you on 29 April, explaining that we needed to extend the timeline for our response by 20 working days in order to carry out the public interest test. At the conclusion of the additional 20 working days, we wrote to you again (on 1 June), explaining that we required a further extension of 10 working days to conclude the public interest test assessment.

I do of course regret that we have needed these extensions to the original response deadline. I also note the views expressed in your email of 29 April 2015. However, when we consider that a qualified exemption applies to information you are requesting, it is necessary for the public interest test to be carried out before a response can be provided to your request. We do, of course, aim to make all decisions within 20 working days wherever possible.

However, I can now confirm that the public interest test considerations have been completed and I can provide the following response.

As we confirmed in our letter of 29 April, the Department does hold information relevant to your request, consisting of a number of documents and emails exchanged in the time frame specified. Copies of seven emails dated 16 October 2013, 6 November 2013, 7 and 10 February 2014, 4 November 2014, and 10 December 2014 are being disclosed with this reply at Annex B. Note that we have redacted the names of officials who are not member of the Senior Civil Service.

The remaining information is being withheld as we have engaged the exemption section 35(1)(a) - formulation or development of government policy; and 40(2)&(3) – third party personal information. Section 35(1)(a) is a qualified exemption, which means we are required to balance the public interest in disclosing the information against the public interest in withholding it. The attached Annex A to this letter sets out the exemption in full and the public interest test arguments for and against disclosure and details why the public interest test favours withholding the information.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's FOI Advice Team at:

Zone D/04
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-DFT@dft.gsi.gov.uk

Please send or copy any follow-up correspondence relating to this request to the FOI Advice Team to help ensure that it receives prompt attention. Please also remember to quote the reference number above in any future communications.

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

Yours sincerely,

Meera Nayyar

Your right to complain to DfT and the Information Commissioner

You have the right to complain 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. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

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

Annex A

Public Interest Test

PUBLIC INTEREST TEST APPLIED TO F0012243: DETAILS, DOCUMENTS AND CORRESPONDENCE HS2 LTD HAVE RELATING TO ALL OPINION POLLS CONDUCTED OR COMMISSIONED SINCE MAY 2013 ON THE BEHALF OF HS2 LTD OR THE DFT RELATING TO HS2.

| Exemption in full |
|---|
| <p>35 Formulation of government policy, etc</p> <p>(1) Information held by a government department or by [the Welsh Assembly Government] is exempt information if it relates to—</p> <p>(a) <i>the formulation or development of government policy,</i></p> <p>(b) <i>Ministerial communications,</i></p> <p>(c) <i>the provision of advice by any of the Law Officers or any request for the provision of such advice, or</i></p> <p>(d) <i>the operation of any Ministerial private office.</i></p> <p>(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded—</p> <p>(a) <i>for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or</i></p> <p>(b) <i>for the purposes of subsection (1)(b), as relating to Ministerial communications.</i></p> <p>(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).</p> <p>(4) In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.</p> <p>(5) In this section—</p> <p>“government policy” includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of [the Welsh Assembly Government];</p> <p>“the Law Officers” means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland[, the Counsel General to the Welsh Assembly Government] and the Attorney General for Northern Ireland;</p> <p>“Ministerial communications” means any communications—</p> <p>(a) <i>between Ministers of the Crown,</i></p> <p>(b) <i>between Northern Ireland Ministers, including Northern Ireland junior Ministers, or</i></p> <p><i>[(c) between members of the Welsh Assembly Government],</i></p> |

and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of [the Cabinet or any committee of the Cabinet of the Welsh Assembly Government];

“Ministerial private office” means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or [any part of the administration of the Welsh Assembly Government providing personal administrative support to the members of the Welsh Assembly Government];

“Northern Ireland junior Minister” means a member of the Northern Ireland Assembly appointed as a junior Minister under [section 19](#) of the Northern Ireland Act 1998.

Public interest test factors for disclosure

Public interest test factors against disclosure

There is a clear public interest in the information relating to the formulation and development of Government policy surrounding Hs2. The Department should be open, honest and transparent which allows the public to scrutinise the department’s actions and see public money is being used effectively.

The Department supports the publication of research to make the results available to a wide range of audiences including other researchers, academics, interest groups and the general public in line with the requirements of the Departmental publication scheme. Publication also serves to meet many of the principles under wider government research guidelines.

Disclosure of information linked to the formulation and development of Government policy would contribute to the Government’s wider transparency agenda. Greater transparency of the polling information makes Government more accountable to the electorate and increases trust that the Department is working effectively.

Disclosure of information linked to the formulation and development of government policy would compromise the safe space within which ministers and officials can freely consider policy options. Well thought out and well considered policy in its formulation stage is likely to result in the effective use of public money. Premature disclosure would compromise this process and the good and effective use of taxpayer’s money.

Disclosure of information linked to the formulation and development of government policy ahead of decisions being made may lead to misinterpretation of information or the misleading of the public into thinking decisions have been made. This carries a risk of unnecessarily blighting areas and again may have potentially negative implications for taxpayers and individuals living along or near the line of route.

Disclosure of information linked to the formulation of policy, for both Phase One and Phase Two of the programme, would compromise the ability of ministers and officials to conduct candid risk assessments of the programme and the pros/cons of the policy. This carries the risk better options are closed off as a result of premature disclosure.

Advice should be broad based and there may be a deterrent effect on both external experts and companies who might be reluctant to provide their advice and services in the event that it is disclosed.

Decision

As part of the consideration process, details, documents and correspondence for both Phase One and Phase Two of the programme were considered separately due to being at different stages of the decision making process. However after due consideration, section 35 1 (a) would be applicable to all material.

Whilst it is recognised that conditional decisions have been taken for Phase One, the hybrid Bill is still progressing through the Select Committee and is awaiting Royal Assent. Therefore the entire policy is still being formulated in that it is subject to change as requested by the Select Committee and prior to Royal Assent. Phase Two decisions are yet to be taken and therefore also would be exempt according to section 35 1 a.

On balance the public interest arguments for withholding the information outweigh those for disclosure. The overall effect of releasing information linked to the formulation and development of policy for HS2, would compromise the space within which ministers and officials are able to discuss policy options and delivery, freely and frankly. To ensure that taxpayer's money is used well and effectively, the preservation of that safe space during the formulation and development phase is paramount in this instance.

Annex B

Item 1

From: David Prout
Sent: Tuesday, 2 December 2014 17:58
To: xxx
Cc: xxx; Jonathan Sharrock; xxx; xxx, xxx
Subject: further to the IPSOS Mori presentation

Will do. We've already asked for something similar from the company, as there's a question about publishing.

We'll chase so gets done before Xmas.

xxx

From: David Prout
Sent: Tuesday, 2 December 2014 17:58
To: xxx
Cc: xxx; Jonathan Sharrock; xxx; xxx; xxx
Subject: further to the IPSOS Mori presentation

xxx, there is some good news in the IPSOS Mori work. It would be good if the SoS could drop a short note with some good graphics and an easy to understand story to let them know about progress since this time last year xxx.

Could you and xxx do a first draft for me and xxx to look at, please. D

David Prout
Director General for High Speed 2
Great Minster House
33 Horseferry Road
London SW1P 4DR

Item 2

From: xxx
Sent: Friday, 7 February 2014 17:15
To: xxx, Wendy Fielder
Subject: Latest Firefish/Ipsos Mori polling

xxx/Wendy

xxx may have already briefed you, but just wanted to let you know I went to the briefings on the latest Firefish/Ipsos Mori HS2 polling on Weds so let me know if you want a read out next week.

Unfortunately the slides are only available in hard copy (xxx – don't forget, copy in 5L filing cabinet!) so I can't circulate anything.

xxx

Item 3

From: xxx
Sent: Tuesday, 4 November 2014 18:15
To: xxx,
Subject: Latest polling

Hi xxx

Are the Sept polling figures in yet? I could really do with getting hold of them this week.

xxx
xxx

Item 4

From: xxx
Sent: Monday, 10 February 2014 11:27
To: xxx,
CC: xxx xxx
Subject: RE: 2nd Wave Polling Data

Thanks, xxx. I'm getting hold of the material that emerged last week. And we'll sort a briefing idc.

xxx
xxx
xxx
xxx
xxx
xxx

From:xxx
Sent:07February201415:04
To:xxx
Cc:xxxxxxx
Subject: 2nd wave polling data

Hi xxx,

Welcome back! There don't seem to be any arrangement in place for the Directors to see the output from the second wave of polling data. Please could you let me know how this data is going to be fed back to them? It has cropped up because of a milestone in the hub.

Thanks

xxx

Item 5

From: xxx
Sent: 16 October 2013 17:38
To: xxx; xxx; xxx
Subject: RE Latest HS2 polling

No, 'fraid not.

-----Original Message-----

From: xxx
Sent: 16 October 2013 17:30
To: xxx; xxx; xxx
Subject: Latest HS2 polling

Hi - have you seen/got the results? xxx seems to have been rather selective in sharing....

Ta
xxx

Item 6

From:xxx
Sent:06November201313:33
To:xxx,xxx,xxx
Subject: RE: Polling

Thanks. We need to encourage xxx to share this routinely every time it comes in. It would good to know whether it has shared this within HS2 Ltd. xxx certainly didn't seem ware of it.

xxx

From:WendyFielder
Sent:06November201313:10
To:xxx,xxx,xxx
Subject: FW: Polling

Wendy Fielder

From:xxx
Sent:25October201312:56
To:WendyFielder
Subject: Polling

Hi Wendy,
xxx requested I send this to you.

Kind regards,
xxx

Item 7

From:xxx
Sent:10December201417:04
To:xxx
Subject: Polling sub - first draft

xxx - Can I get your feedback on this tomorrow? I'm not about much in the second half of next week so need to get finalised sooner rather than later. xxx

..

From:xxx
Sent:08December201417:12
To:xxx
Subject: Polling sub - first draft

Hi xxx

This still needs a little work, but wanted your thoughts on whether the attached is along the right lines. Have also included the annexes so you can see the full suite of what I'm proposing to give the SoS.

This will need to go to xxx next to check, then DP and xxx.

Grateful for your thoughts.

xxx

xxx
xxx