

Mr Joe Rukin

Via email: [request-421636-7b5970e2@whatdotheyknow.com](mailto:request-421636-7b5970e2@whatdotheyknow.com)

25 August 2017

Dear Mr Rukin,

**FOI17-1805**

Thank you for your five information requests dated 28 July which we received on 31 July. Your requests have been considered under the Freedom of Information Act 2000 ('the FOI Act') and the Environmental Information Regulations ('EIR').

In your emails you requested the information below. Please note that I have numbered your requests for ease of reference.

1. I wish to request the publication of Part One of Annex 4 of the HS2 Development Agreement, titled 'Baseline delivery schedule for Phase One', as amended on 17th July 2017.
2. I wish to request the publication of all redacted parts of the HS2 Development Agreement, as amended on 17th July 2017.
3. I wish to request the publication of all redacted parts of original HS2 Development Agreement, as signed on 8th December 2014.
4. I wish to request the publication of all reports on HS2 produced by the Infrastructure and Projects Authority conducted since it took over the responsibilities of the Major Projects Authority.
5. I wish to request the publication of the report on HS2 which was conducted by Sir Jeremy Heywood, which believe to have taken place around May 2016.

**Questions 1-3 – HS2 Development Agreement**

I can confirm that HS2 Ltd holds information related to this part of your request. I have attached Annex 6 of the 2014 Development Agreement: Non-Routine Advice and Policy Support Functions Table at [Attachment A](#).

The remaining redacted sections of the 2014 and 2017 versions of the Development Agreement have been withheld under section 43(2) of the FOI Act – commercial interests. The withheld information comprises:

- Definition of "Budget Envelope" (2017 version only)
- Protective Provisions Agreements
- Baseline Delivery Schedule for Phase One
- Baseline Cost Model for Phase One
- Budget Envelopes and Target Prices (2017 version only)
- Operational Delegations Letter

### **FOI Act Section 43(2) - Commercial Information**

Section 43(2) of the FOI Act, Commercial Information, allows public authorities to refuse a request for information if it is likely to prejudice the commercial interests of any person. (A person maybe an individual, a company, the public authority itself or any other legal entity). The legislation is available via the following link: <http://www.legislation.gov.uk/ukpga/2000/36/section/43>.

The withheld information relates to cost and schedule data which would cause harm to and impact upon HS2 Ltd's commercial position and prejudice future procurements if it were disclosed. This would be to the detriment of the project and the public interest in seeing that HS2 is developed with the best advice and services, and at favourable and competitive rates. The HS2 Development Agreement contains information that has been developed for planning purposes. If this information were released it would undermine HS2 Ltd's ability to negotiate competitive rates because potential suppliers would adjust their bids accordingly. This would have a negative effect on the value for money that HS2 would be able to achieve and ultimately could result in a worse outcome for the taxpayer.

### **Environmental Information Regulations 2004**

HS2 Ltd considers that the withheld information relates to the planning and governance of the project and therefore does not fall within the definition of environmental information as per the definition given under Regulation 2(1) of the EIR. However, should this information be considered to be environmental then the exception at regulation 12(5)(e) of the EIR for commercial confidentiality would be engaged.

### **Public Interest Test**

Section 43 of the FOI Act and regulation 12(5)(e) of the EIR are subject to a Public Interest Test (PIT) which means that we need to consider whether *"in all circumstances of the case, the public interest in maintaining the exemption / 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. We consider that the factors for not releasing the information outweigh that for disclosure. Please see Attachment B for full details of our consideration.

### **Question 4 – HS2 IPA PARs**

HS2 Ltd does not hold a copy of any Project Assessment Reviews (PARs) conducted on HS2 by the Infrastructure and Projects Authority (IPA) since 2016 when the IPA was formed.

### **Question 5 – "report on HS2 which was conducted by Sir Jeremy Heywood"**

HS2 Ltd does not hold information related to this request.

### **EIR – Regulation 12(4)(a) – No information**

Should the information be considered to be environmental, I confirm that where we have stated that we do not hold the information we are relying on EIR exception 12(4)(a) which is subject to a public interest test. However, the Information Commissioner's Office recognises that it can be impossible to do a meaningful public interest test (PIT) if the information is not held. As such, a PIT has not been carried out. The following link sets out regulation 12(4)(a) in full: <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/12/made>.

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 **FOI17-1805** in any future communication relating to this request.

Yours sincerely,

**Jane Ivey**  
Freedom of Information Manager  
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