



Department
for Transport

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Our Ref: F0017144

18 March 2019

John Horsman

[By email: request-553605-e7ded74a@whatdotheyknow.com]

Freedom of Information Act Request – F0017144

Dear Mr Horsman,

Thank you for your request for information which was dated the 19th February 2019. You made a request for information relating to the High Speed 2 (HS2) rail project and we are dealing with your request under the terms of the Freedom of Information Act 2000 (“FoIA”). Specifically you asked to be provided with copies of the IPA and independent reports referred to in our earlier correspondence with you in letter reference 245289.

We can confirm that the Department holds the requested IPA report which examines the process through which DfT and HS2 Ltd examined Wendover Parish Council’s proposal for a mined tunnel. Having carefully considered your request it is our view that disclosure of the IPA report would otherwise prejudice the effective conduct of public affairs. Therefore the report is being withheld in reliance on the exemption at section 36(2)(c) of the FOI Act.

Section 36(2)(c) is a qualified exemption, which requires a public interest test to be conducted to consider whether on balance the information should be released or withheld. The arguments for and against disclosure are detailed in **Annex A**.

After balancing the public interest in withholding the information against the public interest in disclosure, we have concluded that the arguments for withholding the information outweigh those for disclosure.

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,

High Speed and Major Rail Projects Group

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

Section 36 - Prejudice to the effective conduct of public affairs

36.—(1) *This section applies to—*

- (a) information which is held by a government department or by the Welsh Assembly Government and is not exempt information by virtue of section 35, and*
- (b) information which is held by any other public authority.*

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(a) would, or would be likely to, prejudice —

- (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or*
- (ii) the work of the Executive Committee of the Northern Ireland Assembly, or*
- (iii) the work of the Cabinet of the Welsh Assembly Government.*

(b) would, or would be likely to, inhibit—

- (i) the free and frank provision of advice, or*
- (ii) the free and frank exchange of views for the purposes of deliberation, or*

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

Section 36 is a qualified exemption and is subject to a public interest test requiring us to balance the arguments for and against disclosure. The reasons are set out below.

The public interest arguments in favour of disclosure are:

- There is a considerable public interest in both understanding government project and programmes, and also in ensuring their success. There is also considerable public interest in ensuring successful project delivery, to budget, to ensure maximum benefits can be realised so that the public derives value for money.
- There is also a public interest in transparency and accountability so there can be public scrutiny of whether the audit process is effective.
- Disclosure of the detail of the Wendover IPA report would contribute to the Government's wider transparency agenda.
- Disclosure of the detail of the IPA report into the Department and HS2 Ltd's handling of assessing the alternative mined tunnel proposal at Wendover submitted by Wendover Parish Council, including the report itself, would increase the public and local resident's understanding of the policy area.
- Knowledge that the arguments relating to a debate will be disclosable might in fact improve the quality of those arguments. Far from inhibiting the frank provision of advice, there might be circumstances where the prospect of disclosure would enhance the quality of advice.
- As knowledge of the way government works increases, public contribution to the policy making process would become more effective and broadly-based.
- The substance of the information relates closely to a matter of public importance about which public debate would be informed by its disclosure.

The public interest arguments against disclosure are:

- Routine release of recent IPA reports would undermine the whole system of progressive audit and assurance. The IPA's key motivation is to protect their assurance system of candour and confidentiality so that government programmes and decisions made within them are properly scrutinised.
- Disclosure of this report would set a precedent that prejudices the IPA's ability to conduct future PAR audits and similar reports to the one requested in this FOI request as future interviewees would be unlikely to respond in a candid, full and frank manner for fear of their views being disclosed into the public arena so soon after reports have been completed.
- We have weighed these public interests against a stronger public interest in securing better value for money in the delivery of public services. There is a clear public interest in maintaining the integrity of the audit and assurance

process as an effective and prompt peer-review process that produces reports based on candid interviews for the benefit of programme Senior Responsible Owners.

- Effective reviews have a demonstrable value for money to the taxpayer. Reports must be prompt and based on candid interviews and full and frank disclosure from project teams. Fear of immediate publication would hamper this disclosure. It would not be in the public interest to have a weakened, less effective review.
- There needs to be a safe space in which it is possible to 'think the unthinkable' and use imagination without the fear that policy proposals will be held up to ridicule.
- Ministers and their officials need to be able to think through all the implications of particular options. In particular, they need to be able to undertake rigorous and candid assessments of the risks to particular programmes and projects.
- The decision-making process may not be properly recorded to avoid creating information which is disclosable.
- Appropriate expert advice is not sought because of the reluctance of those who might supply it to engage in a debate where their contribution might be disclosable.

On balance, we judge that the public interest in maintaining the exemption outweighs that in releasing the information.