

- **Section 36 - Prejudice to the effective conduct of public affairs**

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 free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. See - sections 36(2)(b)(i) and (ii). I have included a link to the relevant legislation below:

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

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.

Factors supporting 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 the use of public funds.
- The public needs to understand how and why decisions have been taken and the factors considered by decision makers.

Public interest in maintaining the exception

- Public authorities need the space to "think in private" and there is a need to safeguard the space required for internal deliberation and decision-making. HS2 Ltd is mindful that this safe space needs to be preserved to allow officers to provide free and frank views about risks and mitigation. This allows officers to develop ideas, debate live issues and reach decisions away from external interference, distraction, undue scrutiny or otherwise disruptive activity.
- A draft document is by its nature an unfinished form of that document and therefore is still being developed at the time of drafting.
- Officials need the space to develop ideas and debate issues in a free and frank manner.
- If such information was routinely made public there is a risk that officials could come under political or public pressure not to challenge ideas in the formulation of policy, thus leading to poorer decision making, which would more broadly have detrimental effect on the project.

Balance Test

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

Release of the redacted information would lead to public scrutiny that would in turn inhibit the ability of HS2 Ltd officials 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 unwarranted public interference that would inhibit the ability of HS2 Ltd to make quality decisions about the future of the HS2 Project.

Therefore, in this instance, at this time, the information has been withheld.

- **Section 40(2) - Personal Information**

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 because 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.

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

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

- **Section 43(2) - Commercial interests**

Section 43 of the Act exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any person (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>.

Factors supporting disclosure

- Disclosure of data to encourage transparency and accountability regarding the use of public funds.

Factors supporting non-disclosure

- The information is relevant to live or upcoming procurements which, if published, could jeopardise the fair and equal competition between bidders.
- Some of the information is relevant to costs for specific works, which if published, would reduce HS2 Ltd's capacity to negotiate future contracts. The release of further individual costs could compromise HS2 Ltd's ability to secure good value

in their future discussions with contractors by creating market expectations in key rates and allowances.

Balance Test

While we acknowledge the public interest in being open and transparent, placing the information in the public domain at this time would undermine HS2 Ltd's commercial position by weakening its ability to negotiate effectively.

The information relates to legitimate economic interests and releasing the information would undermine HS2 Ltd's commercial bargaining position in both current and future negotiations and adversely affect the finances for the HS2 Project and thus the public purse. It is in the public interest to protect HS2 Ltd's ability to secure the best value outcome for the taxpayer.

Therefore, in this instance, at this time, the information has been withheld.