

Anthony Chapman

Via email: request-127566-a171464d@whatdotheyknow.com

HS2 Limited
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Tel: 020 7944 4908

27 September 2012

REQUEST FOR INFORMATION

Reference: FOI12-472

Dear Mr Chapman,

I am writing regarding your request for information received 30 August 2012. Your request has been considered under the Environmental Information Regulations 2004.

In your email, you requested the following information, the responses for which have been referenced accordingly:

Please send me copies of all correspondence with the NFU in 2012 relating to the early access agreement for survey purposes.

In regards to your question above please be advised that we do hold this information. Please see the attachments to the email dated 27 September which you received with this letter.

Please note that data considered being of a personal nature or information that would enable the public to identify individuals has been redacted in reliance on the EIR exception in regulation 13 which relates to personal data. Annex 2 sets out the regulation in full.

Reliance on the EIR exception in regulation 13 is subject to the public interest test (PIT). This means that HS2 Ltd has to consider whether the public interest in maintaining the exception (and not disclosing all or any part of the information) outweighs the public interest in disclosing the information. Annex 3 sets out the public interest test in full

In determining the public interest, HS2 Ltd evaluated the impact of not releasing the information (including its likelihood and magnitude) against the need for public bodies to exercise their functions in a visible way. In this case it is clear that Data Protection and privacy rights will be breached and therefore HS2 Ltd cannot release the correspondence until the personal information has been redacted.

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 above address. Please also see attached details of HS2 Ltd's complaints procedure and your right to complain to the Information Commissioner (See Annex 1).

Please remember to quote reference number **FOI12-472** in any future communication relating to this request.

Yours sincerely

Wayne Elliott
Freedom of Information

Annex 1

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

Annex 2

EIR Exceptions

12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

13.—(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(2) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—

(i) any of the data protection principles; or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A (1) of the Data Protection Act 1998(1) (which relate to manual data held by public authorities) were disregarded.

(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that—

(a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded; or

(b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of that Act.

HS2 Ltd Public Interest Tests

FOI12-472:	Please send me copies of all correspondence with the NFU in 2012 relating to the early access agreement for survey purposes	
Date:	25 September 2012	
EIR Exception Regulation 13: Personal Information		
Factors supporting disclosure		Factors supporting non-disclosure
<div>1) HS2 Ltd have a statutory responsibility to release information to the public in a timely manner as outlined in HS2 Ltd's publication scheme;</div> <div>2) To release the information would help to promote accountability and transparency in Government decision making.</div>		<div>1) Disclosure of information relating to individuals would be breaching Data Protection rights and be an invasion of the individuals' privacy and there is no pressing social need for the personal data to be revealed.</div>
Conclusion: The decision to withhold the information is upheld; in light of the argument for withholding outweighing those in favour of disclosing it. In this case, releasing personal information will breach the Data Protection Act and rights of privacy. Releasing the personal data would not add to the information within the correspondence.		

