

**P McCoy**

**Email:** [request-607014-1391df22@whatdotheyknow.com](mailto:request-607014-1391df22@whatdotheyknow.com)

Date as email

Dear P McCoy

**FOI-19-3419**

Thank you for your information request of 06 September 2019. Your request has been considered under the Freedom of Information (FOI) 2000 Act ("the Act").

In your email you requested the following information:

***Further to your Chairman's stocktake publication of 3 September, please release an unreacted version. If that is not possible, please explain the type of information redacted and the reason(s) for redaction.***

## **Response**

Under the Act you have the right to:

- know whether we hold the information you requested
- be provided with that information (subject to any exemptions under the Act which may apply).

I can confirm that HS2 Ltd holds the information that you have requested.

We are refusing to release the redacted parts of that report under Section 43(2) (**Commercial interests**), of the Act

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

Section 43(2) 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>.

Under the Act, Section 43 is subject to a Public Interest Test which means that we need to consider whether *"in all circumstances of the case, the public interest in maintaining the 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.

HS2 Ltd considers the redacted information to be commercially confidential and furthermore that the release of this information would cause harm to our commercial interests. We also consider that disclosure of detailed information would prejudice our commercial interests in respect of our ability to negotiate future contracts for similar work.

### **Public interest in 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 use of funds

### **Public interest in maintaining the exception**

The information relates to legitimate economic interests;

- some of the information is relevant to live procurements (which, if published, could jeopardise the fair and equal competition between bidders);
- some of the information is relevant to future negotiations that will likely be conducted in 2020 with the South Construction Partners (which, if published, could jeopardise the outcomes of such negotiations);
- other information is relevant to upcoming procurements (which, if published, could jeopardise the fair and equal competition between bidders).

Release of this information would damage HS2 Ltd's commercial bargaining position for both current and future procurements and contracts.

There is a public interest in HS2 Ltd being able to maintain the trust and confidence with tenderers in order to negotiate for favourable contracts and rates in future. Releasing this information may damage the trust such companies place in HS2 Ltd as a client and may discourage them from tendering in future.

We further consider that the information sought would, or would be likely to, prejudice the commercial interests of the potential providers if identified from the response in respect of their ability to participate effectively within an open market.

### **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.

### **Right to Review**

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 **FOI-19-3419** in any future communication relating to this request.

Yours sincerely

**Alistair Hobbs**

Briefings, Correspondence and FOI Adviser

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