

**Michael Bradley**

**By email: [request-602847-776b2200@whatdotheyknow.com](mailto:request-602847-776b2200@whatdotheyknow.com)**

Date as email

Dear Michael Bradley

## **FOI19-3394**

Thank you for your information request of 10 September 2019. I have processed your request under the Environmental Information Regulations 2004 ('EIR') as the information requested is environmental according to the definition in regulation 2 of the EIR. Section 39 of the Freedom of Information Act 2000 ('The Act') exempts environmental information from the Act, but requires us to consider it under EIR.

In your email you requested the following information:

***I would like to request information as to the estimated cost of electrifying the section of rail line from where this new HS2 line joins the national rail network at Clay Cross, North East Derbyshire to Sheffield Midland railway station ?***

I can confirm that HS2 Ltd holds the information that you have requested. However we are withholding it by virtue of Regulation 12(5)(e) (**Confidentiality of commercial or industrial information**) of EIR.

### **Regulation 12(5)(e) - Confidentiality of commercial or industrial information**

Under Regulation 12(5)(e) of the Environmental Information Regulations, we are not obliged to comply with a request if disclosing the information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. Please see <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/12/made> for the relevant legislation.

### **Public Interest Test**

All exceptions under 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 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 those for disclosure.

### **Factors supporting disclosure**

- 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.
- The public needs to understand how and why decisions have been taken and the factors taken into account by decision makers.

### **Factors supporting non-disclosure**

- Disclosure of information relating to estimated cost data would have a negative impact on HS2 Ltd's commercial position and prejudice this procurement.
- Releasing this information would undermine HS2 Ltd's ability to negotiate this and future contracts and to obtain value for money.
- Disclosure of detailed information about HS2 Ltd's negotiating position would hinder the ability of bidders to act competitively, undermining the quality of bids and ultimately stifling creativity and innovation.

### **Balance Test**

In this case there is a public interest in openness and transparency which needs to be weighed against the damage that would occur to the commercial interests of HS2 Ltd and suppliers or potential suppliers.

There is a public interest in disclosing procurement information however there is also a public interest in HS2 Ltd being able to procure the best services in order to deliver a high quality and cost effective project. As negotiations for further works on future sites are ongoing, releasing this detailed information would damage HS2 Ltd's commercial bargaining position in these negotiations.

Release of detailed estimated costings would compromise HS2 Ltd's ability to secure good value in future discussions with contractors by creating market expectations of the costs to be paid.

Therefore releasing this information would undermine HS2 Ltd's commercial bargaining position in future negotiations and adversely affect the finances for the HS2 Proposed Scheme and thus the public purse.

For these reasons we believe Regulation 12(5)(e) applies and the reasons against disclosure outweigh the public interest in releasing this information.

### **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-19-3394** 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