

Paul Thornton

By email: request-601381-6bc5f107@whatdotheyknow.com

Date as email

Dear Paul Thornton

FOI-19-3379-R internal review response

I am writing in response to your concerns about HS2 Ltd's handling of your request for information (our reference: FOI-19-3379) received on 06 September 2019.

Your information request was handled by Alistair Hobbs, Briefings, Correspondence and FOI Adviser. I was appointed to carry out a review as a member of the HS2 Ltd Executive team.

In your request you asked for the following information:

***The redacted HS2 report is linked off his statement at this link
<https://www.gov.uk/government/publications/hs2-ltd-chairmans-stocktake-august-2019>***

***Under the provisions of the Environmental Information Regulations,
please urgently provide the full unredacted version of the HS2 Chairman's
"Stocktake report"***

Original decision

HS2 Ltd. wrote to you on 02 October 2019 to confirm that we hold the information requested. The unredacted version of the HS2 Chairman's report that you requested was withheld under exemption Section 43(2) - commercial interests, of the Freedom of Information (FOI) Act ('the Act') as release would damage HS2 Ltd's commercial bargaining position for both current and future procurements and contracts.

Internal review request

On 08 October 2019 you contacted HS2 Ltd. to request an internal review as you were not satisfied with the original response to the above request. In that response you stated that:

*the requested information in this case falls under the provisions of the
Environmental Information Regulations specifically Regulation 2(c) and 2(e)
Clearly an internal review of the decision to withhold the requested information is
required under the correct legislative framework and I request it now.*

I also note your email of 03 November. However, it is important for me to explain up-front that we cannot comment on leaked information, nor can we comment on speculation.

Similarly, it would be highly inappropriate for HS2 Ltd. to allow unverified conjecture to influence what is released officially via an FOI request.

Information requested

The redacted parts of the report were withheld as the redacted information is commercially confidential in nature.

I note that you asserted that the use of the FOI Act is incorrect, and that consideration instead should have been made under the Environmental Information Regulations ('EIR').

Internal review

I have reviewed the decision to treat the request under the FOI Act, rather than the EIR.

The redacted information concerns the cost and programme status of the project based on greater design maturity. It makes no comment on the environmental impacts of the project nor any mitigation activities being, or to be, undertaken by HS2 Ltd. The redacted information does not, in my view, fall within r2(1)(c) or (e) of the Environmental Information Regulations ('Regulations'). Nor does such information fall within any other part of the definition of 'environmental information' set out in r2(1) of the Regulations). Therefore, I believe that the correct legislative framework for this request is the FOI Act.

Consequently, I have gone on to review the decision to withhold the information under the FOI Act (see Section 43(2) – commercial interests below).

However, if the information requested did constitute 'environmental information' under the Regulations, then it is clear to me for the reasons set out below that **Regulation 12(5)(e) - confidentiality of commercial or industrial information** of the EIR would be engaged in any event - to exempt the redacted sections of the Chairman's Stocktake report.

Section 43(2) - commercial interests

Section 43(2) exempts information where 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 redactions contain:

- information in relation to live negotiations that are presently underway between HS2 Ltd. and some of its contractors (the disclosure of which could prejudice the successful conclusion of those negotiations; **and**
- information that could impact upon live, or soon-to-be-live procurements (and hence potentially distort such procurements to the prejudice of the taxpayer).

I agree with the original response that the exception at Section 43(2) is engaged and have therefore focused my review on whether it is in the public interest to release the information.

Public Interest Test

I have reviewed the arguments made in the public interest test provided in our original response. I recognise and support the general arguments in favour of openness and

transparency. In deciding whether to uphold the original decision, I too considered that if the requested information were to be released it would damage HS2 Ltd's commercial bargaining position for both current and future procurements and current contracts, and damage the trust and confidence between HS2 Ltd. and those companies tendering for contracts, and those who are already in contract with HS2 Ltd. I am of the view that, the release of this information would prejudice the commercial interests of future providers, if identified from the response in respect of their ability to participate effectively within an open market.

Conclusion

I have therefore considered that the factors for not releasing the redacted information outweigh those for disclosure and have decided to uphold the decision provided in the original response.

I hope that this response has gone some way to address your further concerns. If you are not content with the way we have handled your review, you may take this up in writing with the Information Commissioner, please see further details below.

Please remember to quote reference number **FOI-19-3379-R** in any future communication relating to this request

Yours sincerely,

Nicole Geoghegan

General Counsel

High Speed Two (HS2) Limited

Your right to complain to the Information Commissioner

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