



## Department for Transport

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Joe Rukin

[By email:

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**Our Ref: F0015048**

25 August 2017

Dear Mr. Rukin,

Thank you for the 3 information requests you made to the Department on 28 July 2017 concerning the HS2 Development Agreement. These have been considered under both the Freedom of Information Act ("FoIA") (2000) and the Environmental Information Regulations ("EIR") (2004). I can confirm that the Department holds all the information you have requested.

I have considered your request for the publication of all redacted parts of the HS2 Development Agreement signed in 2014 and the subsequent version (updated in 2017), including the 'Baseline Delivery Schedule for Phase One'. Following this request, I am disclosing Annex 6 to the Development Agreement (2014 version), the "Non-Routine Advice and Policy Support Functions Table". This Annex was previously redacted from the Development Agreement when it was published in December 2014, on the basis of section 35 (Formulation of Government Policy etc.) of the FoIA and 12(4)(d) (incomplete material) of the EIR. However, this is no longer the case, therefore I have attached this as Annex A to this letter.

The following sections of the Development Agreement that you have requested to be published are being withheld in reliance on the exemption in section 43(2) (Commercial Interests) of the FoIA because publishing such information would prejudice the commercial interests of the Department for Transport and HS2 Ltd (and ultimately the taxpayer):

- Budget Envelope Definition (2017 version only)
- Protective Provisions Agreements
- Baseline Delivery Schedule for Phase One
- Baseline Cost Model for Phase One
- Budget Envelopes and Target Prices (2017 version only)
- Operational Delegations Letter

Alternatively, should this information be considered environmental information under the EIRs, this information is being withheld in reliance on the exception at regulation 12(5)(e) (commercial confidentiality) of the EIRs. These exemptions / exceptions require a public interest test to be conducted. This is set out in the attached Annex B to this letter.

In keeping with the spirit and effect of the FoIA, all information is assumed to be releasable to the public unless exempt. A copy of this response and the information provided may now be published on the [www.gov.uk](http://www.gov.uk) web-site.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's FOI Advice Team at:

Zone D/04  
Ashdown House  
Sedlescombe Road North  
Hastings  
East Sussex TN37 7GA  
E-mail: FOI-Advice-Team-DFT@dft.gsi.gov.uk

Please send or copy any follow-up correspondence relating to this request to the FOI Advice Team to help ensure that it receives prompt attention. Please also remember to quote the reference number above in any future communications.

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

Yours sincerely,

Philip Haslam

## **Your right to complain to DfT and the Information Commissioner**

You have the right to complain 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. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

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 A – Disclosed information from the Development Agreement (2014 version):  
“Non-Routine Advice and Policy Support Functions Table”**

**ANNEX 6 : NON-ROUTINE ADVICE & POLICY SUPPORT FUNCTIONS TABLE**

This Annex sets out the Non-Routine Advice & Policy Support Functions Table as at the date of this Agreement.

Work package	Description of Task	Date added
<b>1. Phase One</b>		
<b>1.1 Old Oak Common Programme Review</b>	HS2 Ltd shall undertake a detailed review of the ‘Old Oak Common Build Programme’, to establish the viability of the proposal to retain a residual First Great Western facility for a period of time beyond December 2016.	December 2014
<b>1.2 Support for HAL negotiations</b>	HS2 Ltd shall support the Department for Transport (“ <u>DfT</u> ”) negotiations with Heathrow Airport Ltd (“ <u>HAL</u> ”) to reach a commercial settlement for the relocation of the Heathrow Express (HEX) depot to Langley. HS2 Ltd shall provide technical and commercial input to evaluate project options to support the DfT negotiations.	December 2014
<b>1.3 Advice on WCML Link</b>	<p>HS2 Ltd are remitted to work with Transport for London (“<u>TfL</u>”) and Network Rail to carry out additional feasibility work for the WCML – Crossrail Link. WCML – Crossrail Link project would create a link between the Great Western Main Line (“<u>GWML</u>”) and the West Coast Main Line (“<u>WCML</u>”) which would enable a number of Crossrail services to be extended to destinations on the WCML. The additional studies will include reviewing and developing stabling locations, station works and turnback options at Old Oak Common and at Watford Junction.</p> <p>In order to facilitate this, a revised set of Requirements, as agreed by the Old Oak Common Joint Sponsor Board, and initial high level demand modelling from TfL, will be provided. As part of the overall work programme, DfT, TfL and Network Rail will be developing: a business case (led by DfT); more detailed demand modelling (led by TfL); and a review of the train service specification (led by Network Rail).</p> <p>The final agreed report should be issued by 12th December 2014.</p>	December 2014

Work package	Description of Task	Date added
<b>1.4 Rolling Stock procurement decisions</b>	<p>HS2 Ltd shall provide advice to the SoS by way of a 'Rolling Stock and Depots Strategy', to support the SoS decisions on rolling stock and depots procurement, on:</p> <ul style="list-style-type: none"> <li>the potential for private finance of rolling stock and depots, in whole or in part;</li> <li>the cost and operational efficiencies or procuring one versus two types of train;</li> <li>the optimal fleet compositions in light of the Phase Two scope;</li> <li>sensitivity to Royal Assent timings for Phases One and Two;</li> <li>phasing scenarios for the fleet introduction for Phases One and Two;</li> <li>the optimal trade-off between journey time, maximum speed and demands for the Railway's services; and</li> <li>dwell time and platform height considerations.</li> </ul>	December 2014
<b>2. Development of Phase Two</b>		
<b>2.1 Phase Two consultation responses and design refinement</b>	HS2 Ltd should work with Network Rail to prepare advice to the SoS, as part of his consideration of the consultation responses on Phase Two, on potential refinements to the proposals for Phase Two and options to reduce the cost.	December 2014
<b>2.2 Crewe acceleration</b>	HS2 Ltd should work with Network Rail to prepare initial advice, in 2014, on the section of the Railway route between the West Midlands and Crewe and the feasibility for accelerating its construction to allow completion by 2027. HS2 Ltd should work with Network Rail in preparing this advice. HS2 Ltd should engage with stakeholders to ensure the evidence used and the options being developed are widely understood and accepted.	December 2014
<b>2.3 Crewe Hub</b>	HS2 Ltd should work with Network Rail to prepare advice, in 2014, on the feasibility of building a hub station at Crewe, including the benefits that could be delivered to the region and the cost implications to the Project for the connection into such a hub station. HS2 Ltd should engage with stakeholders to ensure the evidence used and the options being developed are widely understood and accepted.	December 2014
<b>3. Future Development</b>		

Work package	Description of Task	Date added
<b>3.1 Routes Between Northern England and Scotland</b>	<p>HS2 Ltd shall work with Network Rail, DfT and Transport Scotland to find a targeted package of high speed and upgrade improvements that could produce a positive outcome for northern England and Scotland, as well as be deliverable within DfT cost pressures and the wider HS2 Programme. The work shall also examine how a series of localised interventions could together incrementally build over time towards a longer term vision, for say a 3hr journey from London to Edinburgh and Glasgow.</p> <p>This work shall be delivered by the end of 2014 and is estimated to cost approximately £350,000.</p>	<p>December 2014</p>

## **Annex B – Public interest test – release of HS2 Development Agreement**

### **Exemption 43 of the FoIA in full**

1. Information is exempt information if it constitutes a trade secret.
2. **Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).**
3. The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

### **Exception 12(5)(e) of the EIR**

A public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest

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### **Public interest test factors for disclosure**

The factors in favour of publishing the redacted parts of the Development Agreement are that this would:

- Promote accountability and transparency in the spending of public money. Releasing detailed cost and schedule would reassure the public that tight controls are being placed on the programme and that it is on a trajectory to be completed within the overall budget allocation and on time.
- Reassure the public that the DfT promotes accountability and transparency for decisions that it takes and that the Development Agreement does not include any information that contradicts recent announcements.
- Promote accountability and transparency of HS2 Ltd

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### **Public interest test factors against disclosure**

The factors against publishing the redacted parts of the Development Agreement concern the effect of disclosure of commercially sensitive confidential information:

- Detailed cost and schedule information is redacted as the construction of the railway and delivery of the rolling stock will be undertaken by private suppliers, to be determined by competitive procurements, some of which are underway for Phase One. The HS2 Development Agreement contains the Department for Transport and HS2 Ltd.'s view of the cost of various assets and delivery schedule which has been developed for planning purposes. Releasing this information to the market could affect the outcome of this procurement by causing suppliers to adjust their bids. The best value for money for the tax payer is achieved when cost and schedule are determined as the outcome of competitive process.
- Publishing the risk provision and annualised budgets would allow the market to understand how much contingency is held by the Department and HS2 Ltd. Some of the procurements, such as the Main Works Civils Contracts, are two stage contracts such that the winning bidder conducts design work before a Target Price is formally agreed. Releasing information on how much contingency is held could affect the incentives on suppliers to realise efficiencies and bear down on costs.

- During construction of the railway various third parties will be affected by the construction works. Where appropriate, the Secretary of State has entered into Protective Provisions Agreements (“PPAs”) with affected third parties. Informing the market of who we have, and have not, entered into these agreements with may affect the commercial position of those companies we have not yet entered into an agreement with.
- Publishing a detailed breakdown of HS2 Ltd’s operational delegations from DfT would reveal information to the marketplace about the negotiating position of HS2 Ltd. Suppliers could use this to inform their bids during the procurement process, which could result in a worse outcome for the taxpayer during the procurement process.

### **Decision**

To release the un-redacted Development Agreement (either the version published in December 2014 or July 2017) would damage the commercial position of HS2 Ltd and the Department for Transport, resulting in value for money for the UK taxpayer being jeopardised.