

Attachment B – FOI17-1805 – Public Interest Test

FOI17-1805:	<ol style="list-style-type: none"> 1. I wish to request the publication of Part One of Annex 4 of the HS2 Development Agreement, titled 'Baseline delivery schedule for Phase One', as amended on 17th July 2017. 2. I wish to request the publication of all redacted parts of the HS2 Development Agreement, as amended on 17th July 2017. 3. I wish to request the publication of all redacted parts of original HS2 Development Agreement, as signed on 8th December 2014.
Date:	25 August 2017
FOI Act Section 43(2): Commercial interests EIR: regulation 12(5)(e): Commercial confidentiality	
Factors supporting disclosure	Factors supporting non-disclosure
<ul style="list-style-type: none"> • Compliance with FOIA and EIR public authority obligations to be transparent, to assist information applicants with their requests for information and to release relevant information to the public in a timely manner as outlined in HS2 Ltd's publication scheme; • There is also public interest in transparency and accountability to ensure that public funds are being used effectively and that the department is getting value for money in the goods and services it purchases and/or the projects it funds. 	<ul style="list-style-type: none"> • Information withheld under this exemption / exception relates to cost and schedule data. In this case HS2 Ltd considers that disclosure of the withheld information would cause harm to and impact upon its commercial position and prejudice future procurements. Disclosure of this information would also undermine HS2 Ltd's ability to negotiate future contracts and to get value for money. This would be to the detriment of the project and the public interest in seeing that HS2 is developed with the best advice and services, and at favourable and competitive rates. • The procurement process for the construction of HS2 and delivery of rolling stock is underway and releasing information on the delivery schedule and forecast costs would undermine HS2 Ltd's ability to negotiate competitive rates because potential suppliers would adjust their bids accordingly. Thus reducing the possibility of securing value for money for the taxpayer. • Publishing the Baseline Cost Model for Phase One would provide information on estimated costs as well as the contingency that HS2 holds in the budget. This would be likely to adversely affect incentives on suppliers to release efficiencies and reduce costs.

	<ul style="list-style-type: none"> • Disclosure of information on the third parties that hold Protective Provisions Agreements would inform the market of which companies or organisations we have and have not formalised agreements with. That information would be likely to affect the commercial position of those companies that we have not yet entered into agreement with. • HS2 Ltd has a duty to ensure that the competitive position of companies in their particular market is not disadvantaged. Releasing detailed information about HS2 Ltd's operational delegations would reveal information about the negotiating position. Suppliers could use this information when submitting bids during the procurement process. This would hinder the ability of suppliers or bidders to act competitively within the market. Internal processes that allow such suppliers to create and maintain a competitive advantage would be lost as they become public knowledge, creating unfair competition and stifling innovation and creativity.
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<p>Conclusion: The information requested relates to the commercial interests of HS2 Ltd therefore exemption at Section 43(2) of the FOI Act can be considered.</p> <p>Under ICO guidance we understand that we must consider whether it is reasonable in all circumstances to withhold this information before considering whether there is a public interest in disclosing it. We appreciate there is public interest in the general principles of accountability and transparency. However this needs to be weighed against the public interest in avoiding any unwarranted prejudice to commercial interests of HS2 Ltd.</p> <p>On balance we do not find any significant public interest value so as to outweigh the prejudice that would be caused to Hs2 Ltd or potential bidders' commercial interests in a highly competitive infrastructure industry. Disclosure of the withheld information would cause harm to and impact upon HS2 Ltd's commercial position and prejudice future procurements. This would be to the detriment of the project and the public interest in seeing that HS2 is developed with the best advice and services, and at favourable and competitive rates. We therefore consider that the public interest in maintaining the exemption outweighs the public interest in disclosure of the withheld information.</p>	