



# Department for Transport

Mr Joe Rukin

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Our Ref: F0015131

23 November 2017

## Freedom of Information Act Request – F0015131 – Internal Review

Dear Mr Rukin,

I am writing with regard to your two FOI requests which you originally made to the Department for Transport on the 28<sup>th</sup> July 2017. Your requests sought copies of certain reports concerning High Speed Rail. Specifically you asked the Department:

***I wish to request the publication of all reports on HS2 produced by the Infrastructure and Projects Authority conducted since it took over the responsibilities of the Major Projects Authority.***

***I wish to request the publication of the report on HS2 which was conducted by Sir Jeremy Heywood, which I believe to have taken place around May 2016.***

On 25 August 2017 you received notification that DfT required additional time to consider the balance of public interest in relation to your requests, and specifically in relation to the exemption at section 35(1)(a) of the FOI Act concerning formulation or development of government policy. You were advised that you would receive a full response by 25 September 2017.

On 21 September 2017, prior to receiving a full response to your request, you wrote to express your dissatisfaction with the handling of these two requests, writing:

***I hereby request an internal review, which I make both under the FOIA and EIRs.***

***I hope that following the recent tribunal rulings on Ewing/Rukin (No. 2) EA/2016/0278 and EA/2017/0001, information might be more forthcoming.***

Your internal reviews were acknowledged on the 22 September 2017.

On 25 September 2017, DfT responded confirming that it held all of the information that you had requested in your two requests but refused to disclose it in reliance on the exemption at section 35(1)(a) of the FOI Act and on balance the public interest in withholding the information outweighed that for disclosure.

On 15 October 2017 you re-iterated your request for an internal review.

On 19 October 2017 DfT advised you that it needed to extend its deadline for reply to your requests for an internal review until the 16<sup>th</sup> November 2017.

On 16 November 2017 I wrote to advise you of a further delay until the 24<sup>th</sup> November 2017.

As a member of the Department's Information & Security Team who was not involved in the handling of your original request I have carried out an independent review. I set out my findings below.

### **Environmental Information**

You made your internal review requests under both the FOI Act and the Environmental Information Regulations (EIRs). I have reviewed the specific reports you requested and it is my opinion that the information contained within them is environmental in nature as defined in regulation 2 of the EIRs. They are reports and measures which will affect the elements and factors referred to in the legislation. Therefore your requests should have been handled under the EIRs as opposed to the FOI Act. I have then gone on to see if any EIR exceptions would apply to the information.

### **EIR exception 12(4)(e)**

Regulation 12(4)(e) of the EIRs allows a public authority to refuse to disclose information to the extent that the request involves the disclosure of internal communications. Regulation 12(8) of the EIRs states: 'For the purposes of paragraph 4(e), internal communications includes communications between government departments'. As part of my review I have established that the reports have not been shared with anyone outside of government including HS2 Ltd.

The Information Commissioner makes clear that the definition of a communication is broad and will include any information intended to be communicated to others, and also that all central government departments are treated as one public authority for the purpose of this exception. Therefore in my opinion the reports are internal communications as defined in the EIRs.

The purpose of the exception is to allow public authorities to discuss the merits of proposals and the implications of decisions internally without outside interference. It provides authorities with a safe space in which it is possible to think in private when reaching decisions about environmental matters. All EIR exceptions are subject to a public interest test.

I have reviewed the public interest arguments for disclosure that the department provided to you in its reply dated the 25 September 2017. While these public interest arguments were made in relation to the FOI Act I consider they remain equally applicable under the EIRs. In addition to the public interest arguments set out in that reply in favour of disclosure, I believe that disclosure of the information contained in the IPA and the Sir Jeremy Heywood reports may also allow the public to contribute to the policy making process as well as making government more accountable to the electorate and increasing trust.

I have also reviewed the public interest arguments for withholding the requested information and I am persuaded by all of them.

In your internal review request you made reference to a previous Information Tribunal case that you were a party to and which related to very similar information namely Project Assurance Reviews (PARs) prepared by the then Government's Major Projects Authority (now the IPA) about the High Speed 2 Rail Project between 2013 and 2015. These reviews are much older than the reports that you are now requesting. I agree that to publish more recent information would compromise the safe space Ministers and officials require in order to formulate and develop 'live' government policy on HS2 away from public scrutiny. I also agree that officials would be reluctant to provide free and frank advice / views if they felt that it would be routinely placed into the public domain so soon after the reports had been compiled and before final decision had been taken and announced. This would have a detrimental effect not only on the HS2 project but it would set a precedent for other major government projects. Although regulation 12(2) of the EIRs states that public authorities shall apply a presumption in favour of disclosure, in this case I am not convinced that presumption outweighs the arguments for withholding the reports. In my view on balance the public interest in withholding the IPA and the Sir Jeremy Heywood reports outweighs the public interest in disclosure.

### **Freedom of Information Act**

For completeness and because you asked for your internal reviews to be considered under both the FOI Act and the EIRs I have considered whether the FOI exemption cited in the original reply to you would still be applicable if the information was considered non-environmental. Having reviewed the department's arguments for and against disclosure in its original refusal notice I am content that if the information was handled under the FOI Act instead of the EIRs it would still be exempt from release under section 35(1)(a) of the FOI Act.

### **Conclusion**

Your request should have been handled under the EIRs because the reports you have requested contain environmental information. The exception at regulation 12(4)(e) of the EIRs is engaged and on balance the public interest in withholding the information outweighs that for disclosure. The relevant text of the EIR exception is attached at **Annex A**.

If you are not content with the outcome of this 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  
Cheshire  
SK9 5AF

Yours sincerely,

**Ivan Pocock**  
**Information & Security**

## **Annex A**

### **EIR Exception 12(4)(e)**

12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that — (e) the request involves the disclosure of internal communications.