

Mr Joe Rukin

By email: [request-288516-16a4c60e@whatdotheyknow.com](mailto:request-288516-16a4c60e@whatdotheyknow.com)

20 October 2015

Dear Mr Rukin

**FOI15-1380R – Internal review**

I am writing in response to your concerns about HS2 Ltd's handling of your request for information dated 27 August and which was responded to on 18 September.

Your information request was handled by Jane Ivey, Freedom of Information Manager. I was appointed to carry out an independent review as a member of the HS2 Ltd Executive team not involved in the original decision.

In your original request you asked for the following information:

**"I would like to know the latest traffic-light rating given to the HS2 project by the Major Projects Authority. I would also like a copy of this report, or at least to know the areas of concern and/or suggested actions which have been recommended."**

Having reviewed your request and our original response dated 18 September, I have found that we do hold information on the recommendations relating to HS2 Ltd made as a result of the most recent Major Projects Authority (MPA) review and the 'traffic-light rating'. I apologise that we did make this as clear as we could have in our original response. However, I can confirm that original response was correct in stating that we do not hold a copy of the report.

Your request for an internal review of our original response, dated 22 September, included further questions as follows:

**"If the information above has been deleted or destroyed when did this occur?"**

**"If so, why was it destroyed or deleted?"**

**"Have email and phone text records of senior HS2 officials been checked for this information?"**

**"Is there any record of HS2 staff being given an explanation of why MPA project reports would no longer be provided to them?"**

**"What meetings have HS2 Ltd staff members attended to discuss the most recent MPA project report, which HS2 Ltd staff members attended them, and can you please provide the minutes of any such meetings?"**

I have found no evidence that any information has been deleted or destroyed. I have also found no record of HS2 Ltd staff being told that MPA reports will no longer be provided to them. There were three meetings held on 8, 16 and 17 September 2015 with the Senior Responsible Owner for the project to discuss the recommendations of the report. These were attended by HS2 Ltd's Chief Executive, Simon

High Speed Two (HS2) Limited One Canada Square, London E14 5AB  
T: 020 7944 4908 E: [hsenquiries@hs2.org.uk](mailto:hsenquiries@hs2.org.uk) [www.gov.uk/hs2](http://www.gov.uk/hs2)

High Speed Two (HS2) Limited, registered in England and Wales.  
Registered office: One Canada Square, London E14 5AB. Company registration number: 06791686. VAT registration number: 181 4312 30.

Kirby and the Managing Director, Infrastructure (Phase One), Jim Crawford. The outputs of these meeting were agreed actions against the recommendations.

Two additional HS2 Ltd staff attended the meeting, but we are withholding these names as this constitutes personal data. These individuals have not given their consent to having their personal information released and would not reasonably expect us to make such details public on request. The individuals are also not sufficiently senior or public facing in their roles that they should in any event expect such disclosure. Disclosure of this information to the world at large would be unwarranted, unfair and in breach of the first DPA principle and, as such, is exempt from disclosure under section 40(2) of the FOIA. No public interest test applies in this case. This approach is in line with our policy not to release names of members of staff below Senior Civil Service Level, an approach accepted by the Information Tribunal.

With regard to the latest traffic light rating, the MPA publishes its annual report which details their overall Delivery Confidence Assessment of the projects on their portfolio at a fixed point in time. The 2014-15 MPA annual report is available in the Government Major Projects Portfolio data, September 2014 document which can be found online via <https://www.gov.uk/government/publications/major-projects-authority-annual-report-2015>.

### **Freedom of Information (FOI) Act (2000)**

I should make clear that we have considered which regime most appropriately applies to the information in question, and have concluded that the information held is not "information ...on...the state of the elements of the environment" and therefore does not meet the definition of environmental as set out in Regulation 2(1) of the Environmental Information Regulations (EIR) 2004. HS2 Ltd does not, therefore, consider the Regulations to apply to this information.

### **Applicable Exemption**

#### **Section 36(2)(b) and (c) (Prejudice Effective Conduct of Public Affairs)**

Section 36 of the Freedom of Information (FOI) Act (2000) exempts information if, in the reasonable opinion of a 'qualified person', disclosure would (or would be likely to) inhibit the free and frank provision of advice or exchange of views or otherwise prejudice the effective conduct of public affairs.

I have considered your request under the FOI Act and have concluded that the information that we do hold on the recommendations, the actions against them and the traffic-light rating relating to the latest MPA report is being withheld under FOI Act exemption section 36(2)(b) and (c) 'Prejudice to the effective conduct of public affairs'.

The disclosure of the withheld information would prejudice the free and frank exchange of views and would dampen the quality of decision-making. This is because public authorities require a safe space, away from public scrutiny, in which to deliberate on issues and reach decisions. Releasing such information would dilute the value of the MPA reviews as it may lead to some initial 'self-censoring' by HS2 Ltd before providing detailed input into the MPA reports if they felt that information relating to the reports would be routinely released soon after completion. The loss of frankness and candour would damage the quality of advice with regard to these reports and may lead to Department for Transport Ministers making decisions without the knowledge of all known facts or appreciation of all the risks and implications. It may also mean that a full range of viable options are not considered when reaching critical project decisions.

For the purposes of section 36, and as HS2's 'qualified person', it is in my reasonable opinion that, in respect of the information requested, this exemption is applicable.

### **Public Interest Test**

Section 36 is subject to a Public Interest Test (PIT) which means that I 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*". I have weighed up the benefits to the public of releasing the information against the factors for not releasing it. I consider that the factors for not releasing the information outweighs that for disclosure. Please see Annex A for full details of my consideration.

If you are unhappy with the way we have handled your review you may complain in writing to the Information Commissioner, further details below. Please remember to quote reference number FOI15-1380R in any future communication relating to this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alison Munro', with a stylized flourish at the end.

**Alison Munro**  
Managing Director – Development  
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

Annex A – FOI15- 1380R – Public Interest Test

FOI15-1380R:	Recommendations, the actions against them and the traffic-light rating for the latest Major Projects Authority report
Date:	20 October 2015
FOI Act 2000 Section 36(2)(b): Prejudice to the effective conduct of public affairs – Information which would, or would be likely to, inhibit: (i) the free and frank provision of advice, or (ii) the free and frank exchange of views for the purposes of deliberation.	
Factors supporting disclosure	Factors supporting non-disclosure
<p>Disclosure will help with –</p> <ol style="list-style-type: none"> <li>1) Compliance with FOIA 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.</li> <li>2) Compliance with FOIA public authority obligations to be accountable to the public in respect of its operations and decision making, especially where involving the use of public funds.</li> <li>3) Facilitating public understanding of an important public project and matters of public concern.</li> </ol>	<ol style="list-style-type: none"> <li>1) The information relates to recommendations, actions to be taken and the assessment (traffic-light) rating in relation to the latest MPA report. While there is a strong public interest in knowing the decisions and actions taken by HS2 Ltd are meeting the transparency and accountability principles, disclosure would inhibit the public authority's 'safe space' to consider the information, deliberate on issues and reach decisions. Authorities require space away from public scrutiny to develop ideas, debate live issues and reach decisions away from external interference and distraction. Information on the MPA's assessment of all government projects, including HS2, is published in its annual report. The MPA's 2014-15 report is available online via the following link: <a href="https://www.gov.uk/government/publications/major-projects-authority-annual-report-2015">https://www.gov.uk/government/publications/major-projects-authority-annual-report-2015</a>.</li> <li>2) Releasing such information would dilute the value of the MPA reviews as it may lead to some initial 'self-censoring' by HS2 Ltd before providing detailed input into the MPA reports if they felt that information relating to the reports would be routinely released soon after completion. The loss of unrestrained questioning would inevitably impair the level of scrutiny and detail of open discussion and damage the quality of advice provided regarding the HS2 project. This may lead to Department for Transport Ministers making decisions on the project without the knowledge of all known facts or appreciation of all the risks and implications. It may also mean that a full range of viable options are</li> </ol>

	<p>not considered when reaching critical project decisions.</p> <ol style="list-style-type: none"> <li>3) Disclosure of the information now would delay or damage the decision making process in response to any findings that may or may not have been made by the MPA regarding the HS2 project thus reducing certainty for the public. Such a procrastinated process would divert resources from addressing any points / matters raised by the MPA including scheduled activities and time tables, and incur unnecessary public funds in dealing with this matter, which would not be in the wider public interest.</li> <li>4) There is a strong public interest in ensuring that decision makers receive full and frank advice regarding the progress and performance on the HS2 project. For practicality, clarity and quality, and the provision of a proper record, such information will normally be written. If staff believe their confidential discussions with the MPA and vice versa will be disclosed, information may not be recorded, and decision makers will be forced to rely on oral advice, which will undermine the decision-making process and will lead, inevitably, to a loss of rigour and precision of the MPA reporting process. A written record will then not be available to inform future deliberations, corrective actions (if relevant) or historical consideration.</li> <li>5) It is contrary to the public interest to disclose information reflecting possibilities considered with regards to the performance of the HS2 project, but not eventually adopted, before decisions are taken. Such disclosure would be likely to lead to confusion and ill-informed debate, to give a spurious standing to such documents or promote pointless and captious debate about what might have happened rather than what did.</li> </ol>
<p><b>Conclusion:</b> The decision to withhold the recommendations, actions to be taken and the assessment (traffic-light) rating in relation to the latest MPA report on the HS2 project is upheld in light of the</p>	



arguments against disclosure. The release of the information would be likely to prejudice the effective conduct of public affairs and inhibit free and frank discussion, thus section 36 of the FOI Act is engaged.

We recognise that there is strong public interest in releasing this information, particularly as it concerns a large-scale taxpayer funded project that will directly affect communities. However, there is also a public interest that public authorities are allowed 'safe space' for internal deliberation and the decision making process. Ministers, civil servants, senior responsible owners and project deliverers need space to review the recommendations and actions in order to debate live issues, make value judgements and informed decisions without being hindered by external interference.

It is in the public interest to ensure that the value of the MPA reviews is not diluted. The recommendations and action points must be written in appropriately frank and blunt language. They should provide a concise and timely appraisal of issues raised in the MPA report, so that problems are confronted and addressed, rather than overlooked. Disclosure of such information so soon after the completion of the report may endanger this process by hindering candour, which will ultimately undermine the quality of the information relied on and the decision making process. The very great importance of the HS2 project, and its cost, further underscore the need to ensure that oversight of the project is as robust as it can possibly be.

Overall, I do not believe that the factors favouring disclosure outweigh the factors favouring maintaining the section 36 exemptions. While I recognise and appreciate the principle of open and transparent administration, I also recognise the direct conflict this principle has with the point on protecting the 'safe space' for ideas to be fully developed. In every consideration of the public interest test there will be tension between the two principles that must be balanced. However, in this instance I do not believe that the balance of public interest justifies opening deliberations on these matters.