

Annex to FOI2016/00683

Regulation 12(4)(d) material in the course of completion

Regulation 12(4)(d) of the Environmental Information Regulations (EIRs) states:

‘a public authority may refuse to disclose information to the extent that (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data’¹

The Information Commissioner’s interpretation of the EIRs

The Information Commissioner’s Office (ICO), has provided the following guidance on the application of Regulation 12(4)(d)

Regulation 12(4)(d) is engaged when the request relates to material that is still in the course of completion, unfinished documents or incomplete data... [M]aterial which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete...²

In this case both:

- our work on calculating the costs of the proposed project to allow direct services from Hastings to London St Pancras via Ashford using HS1; and
- our work on plans for potential upgrade work to line speed and signalling between Ashford and Hastings, plus any duelling and electrification projects, including any works that need to be completed at Ashford station

constitute material in the course of completion since the figures and plans are not finalised and the work is still in progress.

The public interest test

Merely demonstrating that this exception is engaged is not sufficient for public authorities (like ourselves) to withhold information. We must also demonstrate that the public interest lies in not disclosing the information in question.

Factors in favour of disclosure

We recognise that there are significant public benefits in disclosure, most notably:

1. There is a general presumption in favour of public authorities disclosing information under the EIRs since to do so promotes greater transparency and accountability.

¹ Please see http://www.legislation.gov.uk/ukxi/2004/3391/pdfs/ukxi_20043391_en.pdf for the full text of the EIRs.

² Paragraph 4 of the ICO’s guidance on Regulation 12(4)(d) of the EIRs. See https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf for the full text.

2. In this instance we recognise that disclosure would give an insight into a transport project that might one day affect the daily lives of a great many people and the economic life of a large area of the country. This is self-evidently a public good: individuals have a right to information about public authority decisions that affect their lives and their region.

Factors against disclosure

It is important to also consider the factors against disclosure:

1. The key point is that we need a safe space in which to develop policies. Allowing our experts this space to do their work dispassionately will lead to better results since the outcomes will be based on their knowledge, experience and the best available evidence rather than any influence from partisan external bodies.

It is for this reason that we believe that disclosure of the information you have requested at this stage has the potential to adulterate this safe space to the detriment of the Kent Route Study which we expect to be published later this year. This is clearly not in the public interest.

2. Disclosure through the EIRs could lead to reluctance to keep thorough and accurate records of our decision making process, through concern that any speculative or potentially contentious views would be subject to disclosure before they had been considered and evaluated. This would mean that any potential review of decisions would be hindered and the rationale and integrity of the process would be obscured, neither of which is in the public interest.

Conclusion

In conclusion, we recognise the public interest in providing an insight into the development process for a project particularly in relation to matters of substantial regional significance.

Set against this, however, is our belief that disclosure would be detrimental to policy development, specifically in relation to the Kent Route Study.

Weighing the two sides of the argument we think that the public interest lies in withholding the information. A significant factor in reaching this conclusion is the fact that the public interest in disclosure has already and will continue to be satisfied by the extensive public consultation that we have been involved in. Moreover the fact that the Kent Route Study will be put before the government for consideration means that there will be further, ongoing opportunities for scrutiny by elected representatives.

This represents a refusal of your request under Regulation 12(4)(d).