

Joe Rukin

Via email: request-346435-412dad88@whatdotheyknow.com

29 September 2016

Dear Mr Rukin

FOI16-1552 – Response

Thank you for your recent information narrowed request received via email on 4 August 2016. Your request has been considered under the *Freedom of Information (FOI) Act 2000* (the Act).

In your email you requested the following information:

“(a) any reports or assessment giving rise to Point 9 of the summary of the the National Audit Office Report’s on HS2 of 28 June 2016 and paragraphs 1.12-1.13 and 3.8 of that Report; and

(b) the information upon which Philip Rutnam relied in making the statement quoted in the previous letter about the costs and schedules as part of Review Point 1 having a positive assessment and his claim that:

“The message coming out of Review Point 1 was that the company was fit and ready to proceed with the tenders; there was no doubt about that.””

Decision to process information under the FOI Act

I have carefully reviewed your request, including your request that it be handled under the EIRs. I consider that information relating to Review Point 1 ('RP1'), which is about planning and governance, does not fall within the definition of environmental information as per the definition given under Regulation 2(1) of the EIRs.

Search for information

In relation to part (a) of your request, I can confirm that we do hold information that was provided (via the Department for Transport ('the DfT')) to the National Audit Office, though we cannot confirm whether, and to what extent, such information was used to inform point 9 of the summary of their 28 June 2016 Report. In relation to part (b) of your request, while HS2 Ltd provided information to the DfT to support the RP1 process, we are unable to categorically say which of this information Mr Rutnam relied upon in making the statement that you have referred to.

Notwithstanding the above, please note access has been refused to information relevant to part (a) and (b) of your request, on the following grounds:

Section 36 – Prejudice to effective conduct of public affairs

Section 36 of the Act 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 (section 36(2)(b) and (c)).

In December 2014, HS2 Ltd signed a Development Agreement with the Department for Transport ('the DfT'). The Development Agreement establishes requirements for HS2 Ltd to pass three 'Review Points', whereby the DfT assesses whether HS2 Ltd has the capabilities, plans and controls it needs to deliver Phase One of HS2.

The disclosure of the withheld information, which relates to preliminary work undertaken as part of RP1, would prejudice the free and frank exchange of views and the ability to reach fully informed decisions. Releasing such information would diminish the value of future assessments or reports as it may lead to some initial 'self-censoring' by HS2 Ltd if they felt that the reports and assessments would be routinely released soon after completion. Reports and assessments on the HS2 project need to be sufficiently challenging to ensure that all issues are considered in detail. Disclosing these reports and assessments would have a detrimental effect on this type of rigorous review work in future. This is because public authorities require a safe space, away from public scrutiny, in which to deliberate on issues and reach decisions. The loss of frankness and candour would damage the quality of advice with regard to these reports and may lead to decisions being taken without the knowledge of all known facts or the 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.

The free and frank provision of advice and free and frank exchange of views contribute to the accuracy of the NAO investigation and report. The disclosure of the requested documents could prejudice future workings with the NAO, where it is vital to be able to have full and frank exchanges about the detail of reports and supporting analysis ahead of their publication. Releasing such documentation is likely to lead to less detailed material being prepared and therefore being available for the NAO to consider in future. If the withheld material was even partially revealed, the information could be detrimental to future work and, used out of context, damaging to public interest.

Section 36 is subject to a Public Interest Test (PIT) which means that we need to consider whether "*in all circumstances of the case, the public interest in maintaining the exemption 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 our consideration.

For the purposes of section 36, HS2 Ltd's 'qualified person', has given their reasonable opinion that, in respect of the withheld information, this exemption is applicable.

Conclusion

If you are unhappy with the way we have handled your request or with the decisions made in relation to your request, you may complain in writing to HS2 Ltd at the above address. Please also see attached details of HS2 Ltd's complaints procedure and your right to complain to the Information Commissioner.

Please remember to quote reference number **FOI16-1552** in any future communication relating to this request.

Yours sincerely

Jane Ivey

Freedom of Information Manager
High Speed Two (HS2) Limited

Your right to complain to HS2 Ltd and the Information Commissioner

You have the right to complain to HS2 Ltd 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.

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