

## Annex A – FOI16-1552 – Public Interest Test

FOI16-1552:	"any reports or assessment giving rise to Point 9 of the summary of the National Audit Office's report on HS2 of 28 June 2016 and paragraphs 1.12-1.13 and 3.8 of that Report"
Date:	29 September 2016
FOI Act 2000 – Section 36 – Effective conduct of public affairs	
Factors supporting disclosure	Factors supporting non-disclosure
<p>Disclosure of the requested information would contribute to the development of public debate and facilitate public understanding of an important public project and matters of public concern.</p> <p>It is also my reasonable belief that providing greater transparency around all independent reviews of the progress of HS2 is likely to aid public confidence in the project.</p> <p>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.</p>	<p>Naturally, given the scale of the project and its potential impacts upon the general public, the project is subject to a great deal of public and political scrutiny, which ensures that we are held accountable in respect of our operations and decision making. Such scrutiny includes the parliamentary process for the Phase One High Speed Rail Bill, most recently the House of Lords Select Committee:</p> <p><a href="http://www.parliament.uk/high-speed-rail-london-west-midlands-bill-select-committee-lords">http://www.parliament.uk/high-speed-rail-london-west-midlands-bill-select-committee-lords</a></p> <p>Further, HS2 Ltd endeavours to make information regarding the progress of the project proactively available via our website <a href="https://www.gov.uk/government/organisations/high-speed-two-limited">https://www.gov.uk/government/organisations/high-speed-two-limited</a>, and via Data.Gov.UK <a href="https://data.gov.uk/publisher/high-speed-2">https://data.gov.uk/publisher/high-speed-2</a></p> <p>As it will be noted from the above, a considerable amount of detail about the project is already made available via multiple communication channels, allowing significant public and political scrutiny of the project as well as contributing to the development of public debate in the High Speed Network arena.</p> <p>This also includes the full National Audit Office (NAO) report on HS2 published in June 2016 which is available via the NAO website: <a href="https://www.nao.org.uk/report/progress-with-preparations-for-high-speed-2/">https://www.nao.org.uk/report/progress-with-preparations-for-high-speed-2/</a>.</p> <p>In consideration of the above factors and the sensitivities of the information requested, it is my reasonable belief that –</p>

	<ol style="list-style-type: none"> <li>1. The public interest in releasing this information is low. Information authored as a result of the review point process relates to the development of Government policy. There is therefore a need for a safe space for consideration of policy options, which includes providing officials the space and freedom to decide when and how reports are required as part of the review point process. Officials will not be able to provide full and frank advice if they are constrained in their ability to conduct reviews into a major project.</li> <li>2. 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. The loss of unrestrained reporting 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 decisions being taken 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 not considered when reaching critical decisions. Therefore, engaging Section 36(2)(b)(ii).</li> <li>3. 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 in writing. If staff believe their confidential discussions regarding the review point process 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 work needed to attain further review points. A written record will not then be available to inform future deliberations, corrective actions (if relevant) or historical consideration. Therefore, engaging Section 36(2)(b)(ii).</li> <li>4. The review points, are a critical aspect of the Government's control and oversight of the project whereby the Department for Transport ('the DfT') assesses whether HS2 Ltd has the capabilities, plans and controls it needs to deliver Phase One of HS2.</li> </ol>
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	<p>While there is a strong public interest in knowing the decisions and actions taken by HS2 Ltd are meeting transparency and accountability principles, disclosure of all the detail would inhibit the public authority's 'safe space' to consider the information, deliberate on issues and reach decisions. Authorities require safe space away from external interference and distraction. Therefore, engaging Section 36(2)(c).</p> <p>5. The free and frank provision of views contributes 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 this communication was even partially revealed, the information could be detrimental to future work and, used out of context, damaging to public interest. Therefore, engaging Section 36(2)(c).</p> <p>6. It is contrary to the public interest to disclose information reflecting possibilities considered with regards to the performance of HS2 project, but not eventually adopted, before decisions are taken. Such disclosure would be likely to lead to confusion and ill-informed debated, to give a spurious standing to such documents or promote pointless or captious debate about what might have happened rather than what did. Therefore, engaging Section 36(2)(c).</p>
<p><b>Conclusion:</b> In consideration of the factors that favour both disclosure and non-disclosure I have concluded that the decision to continue to withhold the reports and papers relating to RP1 is upheld in light of the compelling arguments that favour non-disclosure. It is my reasonable belief that the release of the information at this time would be likely to prejudice the effective conduct of public affairs and inhibit free and frank discussion, thus Section 36(2)(b)(ii) and (c) of the FOI Act is engaged.</p> <p>Overall, I do not believe that the factors favouring disclosure outweigh the factors favouring maintaining the section 36 exemptions cited above. 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 this case, it is crucial to allow a major transport infrastructure project of this size to be subject to informed scrutiny by the DfT without fear that this scrutiny will in any way be hampered by uninformed interference.</p>	

To this end, I am content that the public interest factors favouring non-disclosure in this case prevail , therefore, the request is refused under Section 36(2)(b)(ii) and (c) of the FOI Act.