

ICO ref: FS50712384

Our ref: FOI17-1870/FOI17-1870R

**Mr David Lake**

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23 May 2018

Dear Mr Lake,

## ICO Compliant Response

On 16 April 2018 HS2 Ltd received an email from the ICO informing us of your complaint regarding the following information request of 25 October 2017:

**"Please provide an unredacted copy of the service agreement between High Speed Two (HS2) Ltd and Smith Lambert Hampton Ltd Property Management and Estate Services."**

## Initial Response

Your request was treated under the Freedom of Information Act (2000) ('the FOI Act'). The following documents relating to the request were provided in their entirety:

- Framework Scope
- Selection Procedure
- Quotation Procedure
- Package Order Conditions of Contract for Services

Further information relating to the request was withheld under FOI Act Section 43(2) – Commercial Information.

## Internal Review

Following our initial response, you requested an internal review of our response by email on 14 November 2017. In your email you stated:

**"The documents provided do not relate to the FOI17-1870 request made, the exemption provided is not absolute and the public interest outweighs your reasoning for non-disclosure. If you are in any doubt as to your legal standing, Please refer to <https://ico.org.uk/action-weve-taken/decision-notice/fs50296349/>**

**This request and decline will now be submitted for review by the Information Commissioner."**

HS2 Ltd asked for clarification on 14 November to confirm that you would like us to conduct an internal review since the ICO would require this before they reviewed a case. This was confirmed on the same day.

On 5 December 2017 HS2 Ltd responded to your request for an internal review. HS2 Ltd advised that it considered the information withheld was still exempt in full under Section 43(2) – Commercial Information, and therefore upheld the decision made in the initial response.

## **ICO Review**

On 16 April the ICO confirmed that they would like HS2 Ltd to review and reconsider the way that your information request has been handled.

We have reconsidered the information provided to you and the FOI exemption that was applied at the internal review.

### ***Requested information withheld by HS2 Ltd***

There is no single document which falls within the scope of your request. Given the scale of HS2 we require a wide range of services relating to land and property. As such, early in the programme, an overarching 'Land and Property Professional Services Framework' was established.

The Land and Property Professional Services Framework defines some of the conditions of contract a contractor has to work to, and allows HS2 Ltd to secure a range of services from a number of different contractors under a consistent set of terms and conditions. A contractor is appointed to undertake work in accordance with a defined Selection Procedure and a defined Quotation Procedure.

The 'Land and Property Professional Services Framework' comprises of 4 'Lots' which suppliers can be appointed to in respect of providing services. These Lots are:

- Lot 1 – Valuation Services
- Lot 2 – Estates Services
- Lot 3 – Property Management Services
- Lot 4 – Urban Regeneration/Commercial Development Advice

The requested service agreement between HS2 Ltd and Lambert Smith Hampton (LSH) Property Management and Estate Services falls within the scope of Lot 3 of the Land and Property Professional Services Framework, 'Property Management Services.'

Once the scope, pricing and supplier of the work required has been agreed through these procedures, a Package Order is then created which contains the detail of HS2 Ltd's requirement and the conditions under which it is to be delivered. The 'Land and Property Professional Services Framework' defines some of the conditions to be adopted in each Package Order. Any further detailed conditions associated with the specific element of work the Package Order relates to are then incorporated into the associated individual Package Orders as 'Special Conditions'.

In respect of the Package Order raised with LSH for services associated with Property Management and Estates Services there are 3 Appendices which define HS2 Ltd's requirement in terms of:

- Appendix A - Management Services
- Appendix B - Residential properties and agricultural holdings
- Appendix C - Commercial including office retail and industrial properties

## **Revised Decision**

In consideration of the contractual arrangement outlined above, the tables below list the information HS2 Ltd considers to fall within the scope of your request.



We have reconsidered the FOI exemption that was applied at the internal review. For your ease of reference we have identified the information previously provided, the information provided now following our further review and the information where HS2 Ltd upholds the decision to withhold under FOI Act Section 43(2) - Commercial Information.

**1. Land and Property Professional Services Framework (Annex A)**

Annex	Document Title	Status	Status Update
A	Core Framework Document	Withheld	Fully disclosed
	Framework Information	Withheld	Fully disclosed
	Framework Scope	Fully disclosed	-
	Selection Procedure	Fully disclosed	-
	Quotation Procedure	Fully disclosed	-
	Commercial Schedule	Withheld	-
	Forms of Novation	Withheld	Fully disclosed
	Package Order Conditions of Contract	Fully disclosed	-

**2. Land and Property Professional Services Framework Lot 3: 'Property Management Services' (Annex B)**

Annex	Document Title	Status	Status Update
B	Section 1: Package Order Special Conditions	Withheld	-
	Section 2: Package Order Standard Conditions	Fully disclosed	
	Appendix A - Property Management Services	Withheld	Fully disclosed
	Appendix B - Residential and Agricultural Property Services	Withheld	Fully disclosed
	Appendix C - Commercial Property Management Services	Withheld	Fully disclosed

Following further review and consideration of the requested information please find attached Annex A and B which contains previously provided information along with the following additional documents:

- Core Framework Document
- Framework Information
- Forms of Novation
- Appendix A - Scope of Management Services
- Appendix B - Scope of Residential Services
- Appendix C - Scope of Commercial Property Management Services

It is viewed that given these are HS2 documents that set out standardised requirement specification and not a supplier solution they can be disclosed. These documents support the LSH property Management Work Package Order.

HS2 Ltd upholds the decision that the following documents should be withheld under FOI Act Section 43(2) - Commercial Information:

- Commercial Schedule
- Package Order Special Conditions

**FOI Act Section 43(2) - Commercial Information**

Under the FOI Act, Section 43 allows public authorities to refuse a request for information if it is likely to prejudice the commercial interests of any person. (A person maybe an individual, a company, the public authority itself or any other legal entity). In addition Section 43(2) applies where information requested relates to the commercial activity of HS2 Ltd.



The withheld information relates to bespoke commercial pricing, financial management and contractor practices. It is therefore considered that the disclosure of this information would likely cause harm to and impact upon the commercial position of HS2 Ltd. Furthermore, HS2 Ltd also considers that the disclosure of the withheld information would adversely affect its relationship with its suppliers, who have specifically requested this information not be made available to the public. The third party in question believes that the information would likely prejudice its commercial interests if released and would give a competitor an unfair advantage on future tenders. This would be to the detriment of the project and public interest in seeing that the project is developed with the best services, advice and at favourable rates for taxpayers' money.

### ***Public Interest Test***

We have concluded that the public interest factors in favour of maintaining the exception outweigh those in favour of disclosure. HS2 Ltd consider that if the withheld information were to be released it would compromise HS2 Ltd's ability to conduct reasonable commercial negotiations in the future. It is also important that HS2 Ltd protects interests of the third party involved. It is considered that disclosure would have an adverse impact on the commercial competitiveness of the current contractor.

#### **Factors supporting disclosure:**

- Compliance with HS2 Ltd's legal obligations to be transparent and to assist information applicants with their requests for information.
- HS2 Ltd is using public money effectively, and that HS2 Ltd is getting value for money when purchasing goods and services.

#### **Factors supporting non-disclosure:**

- HS2 Ltd has a duty to ensure that the competitive position of companies in their particular market is not disadvantaged. Releasing detailed information about HS2 Ltd's operational delegations would reveal information about the negotiating position. Suppliers could use this information when submitting bids during future procurements of a similar nature. This would hinder the ability of suppliers or bidders to act competitively within the market. Internal processes that allow such suppliers to create and maintain a competitive advantage would be lost as they become public knowledge creating unfair and distorted competition in the market. It is important that the competitive position of companies in their particular market is not disadvantaged by doing business with HS2 Ltd.
- Some of the withheld information has been provided to HS2 Ltd on a commercially confidential basis. Companies provide HS2 Ltd with commercially sensitive information so that HS2 Ltd is able to make robust decisions regarding its suppliers of goods and services, including ensuring that HS2 Ltd obtains the best value for money from each transaction. Disclosure of the information would be likely to cause actual prejudice to the commercial interests of suppliers. Losing the trust of potential suppliers could damage HS2 Ltd's reputation with suppliers within the infrastructure industry and therefore undermine HS2 Ltd's ability to procure specialised services. This would be to the detriment of the project and public interest in seeing that HS2 is developed with the best advice and services, and at favourable rates.
- The information relates to legitimate economic interests. Disclosure of the information would prejudice the bargaining position of HS2 Ltd. For example, if an organisation knows how agreed costing of an item or service are determined, then it can exploit this for profit or other gain. The nature of the project means that there will be similar procurements for a number of years. If this information were released it would undermine HS2 Ltd's ability to negotiate competitive rates because potential suppliers would adjust their bids accordingly. Therefore, disclosing the information would have an adverse impact on HS2 Ltd's legitimate economic interests within the commercial market.

I trust this reply is helpful.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mark Thurston', with a stylized, cursive script.

**Mark Thurston**  
Chief Executive  
High Speed Two Ltd

