

Graeme Amis

request-533791-2adfc922@whatdotheyknow.com

16 February 2018

Dear Mr Amis

FOI19-3037

Thank you for your information request received 09 January 2019. This response replaces the version previously placed on this site.

REQUEST

- 1. How many informal investigations into sexual misconduct/harassment were detailed in the HR records?**
- 2. What were the results of these investigations?**
- 3. Why did this request take so long to answer?**
- 4. What other records aside from HR records, were searched for this request?**
- 5. What other avenues do employees have to report sexual misconduct/harassment complaints? e.g. the Speak Out whistleblowing line, the Health & Safety Directorate.**
- 6. Were these records searched? If not, why not?**
- 7. Please provide all correspondence from the FOI/correspondence/briefings team regarding the original request, this should include internal correspondence from within the FOI department (or whatever it is named) and any correspondence it had with HR, senior management, external whistleblowing line contractors or anyone else that is relevant to this request. Of course I'm happy for you to redact the names of junior members of staff as per ICO guidance.**

RESPONSE

We can confirm that some relevant information is held by HS2 Ltd. However, while the majority of the requested information is provided below I am not required to release all of the information requested. Please find following the response, including a redacted version of an email conversation.

REASONS FOR DECISION

The redacted information is exempt by virtue of the following exemptions

Section 40 (2) (Personal Data)

Section 42 (1) (Legal Professional Privilege)

Section 40(2) is an absolute and class based exemption if to release the information would breach the third party's data protection rights. In this case to release this personal information would not constitute fair processing of the data. As this exemption is class based I am not required to identify the harm in disclosure and in this instance I believe that the right to privacy outweighs any public interest in release.

Within the email conversation there is legal advice provided to HS2 Ltd by its in-house lawyers. It is therefore covered by the Legal Professional Privilege exemption (Section 42(1)). As this exemption is class based there is no obligation to consider the harm in release. There is however a requirement to undertake a Public Interest Test (PIT). This PIT is included at the end of this response.

RIGHT OF APPEAL

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 using HS2 Ltd's complaints procedure which is provided below.

Please remember to quote reference number **FOI19-3037** in any future communication relating to this request.

Yours sincerely

Carl Bird

Briefings, Correspondence and FOI 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

1. How many informal investigations into sexual misconduct/harassment were detailed in the HR records?

No record of any investigations were found at the time of the initial request, although one was uncovered during the course of the Internal Review.

2. What were the results of these investigations?

The complaint, identified at Internal Review stage, was investigated and subsequently not upheld.

3. Why did this request take so long to answer?

There was an unusually high number of FOI requests received by HS2 Ltd in November.

4. What other records aside from HR records, were searched for this request?

Along with a full check of Human Resources (HR) systems, conversations with senior HR employees and the individual accountable for the whistleblowing procedure.

5. What other avenues do employees have to report sexual misconduct/harassment complaints? e.g. the Speak Out whistleblowing line, the Health & Safety Directorate.

An individual would normally raise a formal complaint with HR or via the whistleblowing policy. Any such complaint would then be recorded on HR systems.

6. Were these records searched? If not, why not?

They were searched (see answer to question 4).

7. Please provide all correspondence from the FOI/correspondence/briefings team regarding the original request, this should include internal correspondence from within the FOI department (or whatever it is named) and any correspondence it had with HR, senior management, external whistleblowing line contractors or anyone else that is relevant to this request. Of course I'm happy for you to redact the names of junior members of staff as per ICO guidance.

A redacted copy of the internal correspondence relevant to his request is included on the following pages.

From: [REDACTED]
Sent: 07 January 2019 11:28
To: [REDACTED] <[REDACTED]>;
Cc: Neil Hayward <[REDACTED]>
Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Hi [REDACTED]

Please find attached our response which will be sent later today.

Any problems let me know.

[REDACTED]
[REDACTED] | **HS2 Ltd**
Tel: [REDACTED] | Mob: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) |
[LinkedIn](#)

High Speed Two (HS2) Limited, Two Snow Hill, Snow Hill Queensway, Birmingham, B4 6GA |
www.gov.uk/hs2

From: [REDACTED]
Sent: 07 January 2019 09:20
To: [REDACTED] <[REDACTED]>
Cc: Neil Hayward <[REDACTED]>
Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

I will call you, just on a conf call

[REDACTED]

[REDACTED] | [REDACTED] | **HS2 Ltd**
Tel: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: [REDACTED]
Sent: 04 January 2019 14:19

To: [REDACTED] <[REDACTED]>; Neil Hayward <[REDACTED]>
Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Sorry no we haven't [REDACTED].

Can we meet when you are back to discuss please?

[REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | Mob: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: [REDACTED]
Sent: 04 January 2019 14:18
To: Neil Hayward <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

[REDACTED]
I think we have sorted this now haven't we?

[REDACTED] | [REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: Neil Hayward
Sent: 04 January 2019 12:52
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>
Subject: Re: FOI18-2200 - Sexual harassment and misconduct hearing

[REDACTED] BW Neil

Sent from my iPad

On 4 Jan 2019, at 12:50, [REDACTED] <[REDACTED]> wrote:

I think it's just a misunderstanding of what is required. Are you happy for me to just go and talk to [REDACTED]

[REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | Mob: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: Neil Hayward

Sent: 04 January 2019 12:49

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: Re: FOI18-2200 - Sexual harassment and misconduct hearing

We can't say we've searched all our records because those records don't exist in the mists of time which is why we've asked for a time period to look formally. So we can only say that "as far as we are aware" N

Sent from my iPad

On 4 Jan 2019, at 12:46, [REDACTED] <[REDACTED]> wrote:

Hi Neil

I understand, but we are dealing with a legal requirement to respond to a formal FOI request.

I used the wording provided by HR to construct a response within the terms of the Act. I don't believe that I have changed any of the meaning of what was said, but maybe I do not understand something. Earlier on I did ask for the name of the person involved in the MI team because it would be easier to explain what is required face-to-face. I am happy to speak with [REDACTED] if you feel that is appropriate.

I have no desire to involve anyone who does not need to be involved.

All I am asking is for confirmation that a formal search was undertaken and that no results were found (which is what my text says).

I am happy to talk further about the legal obligations and duties involved with responding to a Freedom of Information request, but – if the wording I have given is incorrect – at the moment I just need to be in a position to understand the nature of the search that has been undertaken and what results have been uncovered.

Thank you

[REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | Mob: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: Neil Hayward

Sent: 04 January 2019 12:33

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: Re: FOI18-2200 - Sexual harassment and misconduct hearing

I'm happy with the text my team sent you on 4 Jan. I don't see why we need to embellish this or say any more. Look how many of us have been involved already?

Neil

Sent from my iPad

On 4 Jan 2019, at 12:16, [REDACTED] <[REDACTED]> wrote:

Hi Neil / [REDACTED]

Thanks for this. Under FOI we are only obliged to undertake what is called a 'reasonable search' and a search of our formal HR records is a reasonable search, I believe.

Just so I am clear, are you happy with the text as I have written it, or just to be more clear do we want to change the place of the word 'formal' as below?

A search of our formal Human Resource records has shown that:

No formal investigations have been undertaken regarding sexual misconduct or sexual harassment.

There have been no sexual misconduct/harassment complaints involving a member of senior management.

No members of staff have left the company who have at some point submitted a sexual misconduct/harassment complaint.

HS2 Ltd

Tel: [REDACTED] | Mob: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: Neil Hayward

Sent: 04 January 2019 11:44

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
[REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Nicole Geoghegan <[REDACTED]>;
[REDACTED] <[REDACTED]>

Subject: Re: FOI18-2200 - Sexual harassment and misconduct hearing

██████████ I am happy with the response provided by the MI Team on this. Neil

Sent from my iPhone

On 4 Jan 2019, at 11:37, [REDACTED] <[REDACTED]> wrote:

I am comfortable with the wording with this caveat - [REDACTED] there is a whole new leadership team in HR and the statement below is correct as far we are aware.

[REDACTED]

[REDACTED] | [REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | [REDACTED] [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: [REDACTED]

Sent: 04 January 2019 11:31

To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; Nicole Geoghegan <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

[REDACTED]

The HRMI team can only confirm what we know based on data held formally in the system, as consequence we cannot without question confirm that there has not been any instances of the subject nature that have occurred. In this instance a decision to respond with the below text I believe could not be signed off by the HRMI team.

[REDACTED] – Is this text something you are confident to sign off on?

Regards

[REDACTED]

[REDACTED] | [REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

High Speed Two (HS2) Limited, Choose an item. | www.gov.uk/hs2

From: [REDACTED]
Sent: 04 January 2019 10:41
To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; Nicole Geoghegan <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Thanks for this.

Therefore would the text below be accurate?

A search of our Human Resource records has shown that:

No formal investigations have been undertaken regarding sexual misconduct or sexual harassment.

There have been no sexual misconduct/harassment complaints involving a member of senior management.

No members of staff have left the company who have at some point submitted a sexual misconduct/harassment complaint.

Could you confirm please, as this is the text that we will use in our response?

[REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | Mob: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: [REDACTED]
Sent: 04 January 2019 09:47
To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; Nicole Geoghegan <[REDACTED]>; [REDACTED] <[REDACTED]>;
[REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Hi All,

We have discussed this with a number of key stakeholders within HR who have access to and knowledge of HR formal cases during their service with the business and based on our feedback, as far as we are aware, we have had no formal sexual harassment cases.

Many Thanks,

MI & Reporting Team

[REDACTED]
Sent: 04 January 2019 09:25
To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; Nicole Geoghegan <[REDACTED]>; [REDACTED] <[REDACTED]>
[REDACTED] <[REDACTED]>
Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

To all,

In terms of the purpose and the requester, this is irrelevant. We would treat any FOI in the same way, where the information may end up being used in wider public channels including the media. If we know it's a journalist, we obviously prioritise.

From a reputation management point of view, once we know the response to the FOI request we will put together our lines to take on it and any reactive statement that could be used to respond to media enquiries. This would normally be about reiterating our policies, and that we have followed procedures etc.

Can this request be treated as a matter of urgency please as it is now overdue.

Thanks,

[REDACTED]

[REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | Mobile: [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

High Speed Two (HS2) Limited, 3rd floor Snow Hill Birmingham B4 6GA. | www.gov.uk/hs2

From: [REDACTED]

Sent: 04 January 2019 09:01

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; Nicole Geoghegan <[REDACTED]> <[REDACTED]>

Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Importance: High

Hi HRMI

Can you let me know who is dealing with this so that I can pop over and discuss please?

[REDACTED]

[REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | Mob: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: [REDACTED]

Sent: 02 January 2019 13:03

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; Nicole Geoghegan <[REDACTED]> <[REDACTED]>

Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Hi MI & Reporting team.

Thanks for this and sorry for any confusion.

I am aware that there is no timeline, if you are unable to go back to the formation of HS2 limited within the cost limits, then can you let me know how far you would be able to go back to please?

The FOI Act is a legal obligation and is 'purpose and applicant blind'. There are exceptions to these rules, but the FOI team (i.e. us) would be the ones to look into this. On the face of it I can see no reason for us to go back to the requester and ask for the purpose behind it.

I can certainly let you have a draft, or any correspondence, for you to share with the stakeholders. I am already keeping Media Relations 'in the loop'.

The problem is – until we have the information from you – or an indication of what can be searched for within the cost limit (time limit of 2 and a half days) – then we are unable to move this request on. It is already over the 20 days' time limit.

Therefore could let me know what information you could provide please **by close of business tomorrow** please?

If you need anything more from me please let me know.

[REDACTED] | **HS2 Ltd**

| Tel: [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: [REDACTED]

Sent: 02 January 2019 09:54

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] Nicole Geoghegan [REDACTED]
[REDACTED]

Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Hi [REDACTED]

Thank you for the email.

As per below trail and the request which does not indicate any timeline, from the third trail we haven't had any cases of this nature in the last 5 months.

We're also concerned with regards to purpose and reason behind this request as mentioned below and it may be from the same individual as it's similar to the request FOI18-2047. If we have an idea of the purpose and reason it will help us prepare for any follow-ups if required and inform our stakeholders so they would be able to advise us of how we can proceed.

If you have any further questions let us know.

Thank you.

Kind Regards,

MI & Reporting team

From: [REDACTED]

Sent: 02 January 2019 08:56

To: Nicole Geoghegan <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: [REDACTED]

Subject: RE: FOI18-2200 - Sexual harassment and misconduct hearing

Importance: High

HR MI - can you provide the data, or at least indicate what data you can provide, **as soon as possible please?** I am aware that timescales may be an issue

I understand why you would want to see how we have answered previous requests, but FOI requests should be dealt with on a case-by-case basis. [REDACTED]
[REDACTED]

In any case, except in a few rare cases, it is impossible to know whether exemptions apply without seeing the data.

This request is already late so I'd appreciate a prompt response.

If you need anything more please let me know.

Thanks

[REDACTED]

[REDACTED] | **HS2 Ltd**

| Tel: ([REDACTED] [REDACTED] | [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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From: [REDACTED]

Sent: [REDACTED]

[REDACTED]

Cc: [REDACTED]

Subject: Re: FOI18-2200 - Sexual harassment and misconduct hearing

I am not sure we have had any complaints of this nature, certainly not in the last five months? We shouldn't release this information as there so few if any cases of this nature

Sent from my iPhone

On 23 Nov 2018, at 19:34, [REDACTED] > wrote:

Hi FOI,

Thank you for the email.

The below is requesting for some very sensitive information which appears there is a risk to the information being released. The questions below would most likely identify individuals.

We have had similar FOI request previously that was determined that it shouldn't be released due to confidentiality reasons such as FOI18-2047 which requested for non-disclosure agreements.

We understand you cannot inform us about the source of the request is but could you perhaps investigate if the below requester has been requesting other similar request in the past? If this is the case would it be possible to let us know the reasons for the request and potentially what they would use it for?

If you have any questions let us know.

Thank you.

Kind Regards,

MI & Reporting team

From: [REDACTED]

Sent: 23 November 2018 16:25

To: [REDACTED]

Cc: [REDACTED]

Subject: FOI18-2200 - Sexual harassment and misconduct hearing

Hi HR

I have receive an FOI which I would like to commission to your team to deal with.

- 1. How many sexual misconduct/harassment investigations have been conducted?**
- 2. How many sexual misconduct/harassment investigations have been concluded?**
- 3. What were the conclusions of these investigations?**
- 4. How many members of staff have left the company after being investigated for sexual misconduct/harassment?**
- 5. How many sexual misconduct/harassment complaints have involved a member of senior management**
- 6. How many members of staff have left the company who have at some point submitted a sexual misconduct/harassment complaint?**
 1. Do we have the information?
 2. If we do could you please supply the information.
 3. Please do not create the information
 4. Would it take more than 18 hours to search for the information.

I am considering exemptions on this but do need the information in order to consider them.

I would be grateful if you could please get back to me by COP Friday, 30 November 2018.

Many thanks for your help in this matter.

Kind regards

[REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | **HS2 Ltd**

Tel: [REDACTED] | Mobile No [REDACTED] | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

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Section 42 (1) (Legal Professional Privilege)

Public Interest Test

Considerations favouring release of the information

Disclosing information provides greater transparency in the actions of a public authority. It is clear that there is a public interest in public authorities operating in as transparent a manner as possible, as this should ensure they operate effectively and efficiently.

Considerations favouring withholding the information

There is an inherently strong public interest in legal advisers being able to provide their advice in a confidential environment where it can be provided honestly and fully, without fear of interference. Legal professional privilege (LPP) is a fundamental principle of English law and protects confidential communications between legal advisers and their clients.

The information was created by HS2 Ltd's Legal Department and constitutes legally privileged advice they provided to HS2 Ltd staff.

It is in the public interest that public authorities are able to receive the highest quality legal advice. Anything that undermines the confidence nature of the legal adviser / client relationship has the potential to influence the advice given and may therefore be restricted and of lesser quality.

Conclusion

For a public interest test, issues that favour release need to be measured against issues that favour non-disclosure.

We recognise that there is a strong public interest in releasing information, and in public authorities being open and transparent. However, on balance it is considered that the public interest in providing the information is outweighed by the potential impact release would have on the integrity of the lawyer/client relationship.

In *Bellamy v Information Commissioner & the Secretary of State for Trade and Industry* (EA/2005/0023) the Information Tribunal stated “there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest”. Furthermore the Information Commissioner notes, in their guidance on this exemption, that additional weight may be added to the reasons to withhold the information if the advice is recent, live and protects the rights of individuals. In this case the advice is very recent and, as the original response is in the process of being reviewed, it can also be considered live.

The wider public interest lies in upholding the concept of LLP, as this ensures frankness between lawyer and client and therefore serves the wider public interest by protecting the administration of justice. As noted by the Information Commissioner “the general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice” (Information Commissioner’s Office guidance “Legal professional privilege (section 42)).

For these reasons I believe that Section 42 (1) applies and the reasons against disclosure outweigh the public interest in releasing information.