

Mr Joe Rukin

Email: [joe\\_rukin@hotmail.com](mailto:joe_rukin@hotmail.com)

19/02/2015

Dear Mr Rukin

**FOI14-1231R**

I am writing in response to your concerns about HS2 Ltd's handling of your request for information.

In line with our policy, as the officer involved in the original decision, I have conducted the initial review.

You requested the following information:

**75 questions the MPA has asked HS2 to address**

Having reviewed your request for information and our original response I have determined that we do hold the information requested, but we are withholding the information under FOI exemption, section 36 'Prejudice to the effective conduct of public affairs'. This exemption under the Freedom of Information act 2000 is subject to a Public Interest Test (PIT) that is needed to consider whether '*in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information*'. As the information requested arose from the scoping interview with the Major Projects Authority (MPA), the release of this information would likely inhibit the free and frank exchange of views with the result of impaired decision making by government departments.

We have weighed up the benefits to the public of releasing the information against the negative effects that release would likely have on the decision making ability of public bodies. Please see annex A for full details of our consideration. The following link sets out section 36 in full:

<http://www.legislation.gov.uk/ukpga/2000/36/section/36>

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 the Information Commissioner at the address provided with the attached details of HS2 Ltd's complaints procedure and your right to complain to the Information Commissioner.

Please remember to quote reference number **FOI14-1231R** in any future communication relating to this request.

Yours Sincerely

Karen Macknight

Freedom of Information Manager

**Annex 1 – Public Interest Test**

<b>FOI14-1231R</b>	<b>The MPA Questions</b>
<b>FOIA Exemption: Section 36 (2) (C) would be likely otherwise to prejudice the effective conduct of public affairs</b>	
<b>Factors supporting disclosure</b>	<b>Factors supporting non-disclosure</b>
<ol style="list-style-type: none"><li>1. Statutory responsibility to release information to the public in a timely manner as outlined in HS2 Ltd's publication scheme;</li><li>2. General public interest in the disclosure of information to ensure transparency and visibility of public bodies being held to account regarding decisions made and use of funds;</li></ol>	<ol style="list-style-type: none"><li>1. The questions informed part of the MPA's Terms of Reference that determined the scope of the MPA review. The release of this information would reduce the ability of the MPA to operate a 'safe space' in which to develop ideas, debate live issues and reach decisions away from external interference and distraction.</li><li>2. The ability of public authority staff and other interviewees to express themselves openly, honestly and completely, or to explore extreme options when providing their views and opinions would be likely impaired by the understanding that their views may later be made public. This would inevitably impair the level of scrutiny, detail of open discussion and the quality of informed decision making.</li><li>3. Releasing such information may lead to some initial 'self-censoring' by HS2 Ltd and the MPA before providing their views to DfT Ministers. This may lead to Ministers making decisions without</li></ol>

	<p>the knowledge of all known facts or the appreciation of all the risks and implications. It also may mean that a full range of viable options are not considered when reaching critical project decisions.</p> <p>4. Releasing this information would likely result in further questions, which would be likely to prejudice the effective conduct of public affairs, in the form of the diversion of resources in order to manage the potential disruptive effect.</p>
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<p><b>Conclusion:</b> The decision to withhold the information is upheld in the light of the arguments against disclosure. The release of the requested information would be likely to prejudice the effective conduct of public affairs, thus section 36 exemption is engaged.</p> <p>We recognise that there is a strong public interest in releasing information, particularly as it concerns a large-scale taxpayer funded project that will directly affect communities. However there is also a public interest in ensuring that public authorities are given reasonable private space to develop policies and make informed decisions. Releasing information on the detailed questions from the MPA review would be likely to constrain the openness of reviewers and respondents impairing the quality of this review and any future reviews. Ultimately this would damage effective scrutiny, decision making and delivery. There is already a wealth of information on HS2 in the public domain and publishing the MPA’s list of questions will not add to the public’s understanding of how decisions have been reached.</p>	
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**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