

Dr James Conboy
hs2@jimconboy.com

25 June 2019

Dear Dr Conboy,

FOI-19-3090-R – internal review response

I am writing in response to your concerns about HS2 Ltd's handling of your request for information (our reference: FOI18-2188) received on 11 November 2018 and which was responded to on 10 December 2018.

Your information request was handled by F Woollard - Briefings, Correspondence and FOI Adviser. I was appointed to carry out an independent review as a member of the HS2 Ltd Senior Leadership team not involved in the original decision.

In your request you asked for the following information:

"We understand that you have commissioned a report on the safety case for the Chilterns Tunnel, a long standing concern of this society. We request a copy of the report, and any related correspondence between HS2 Ltd and its authors, under the Freedom of Information Act."

Original decision

HS2 Ltd wrote to you on 10 December 2018 to confirm that we hold the information requested but that it was being withheld under the Environmental Information Regulations (EIR) (the 'Regulations'):

- **12(5)(a) – public safety**
- **12(5)(e) – commercial sensitivity.**

Internal review request

On 03 February 2019 you contacted HS2 Ltd to request an internal review as you were not satisfied with the original response to the above request. You asked for *"a copy of those portions of the report"* relating *"to the procedures for the evacuation of a stationary train within the Chiltern Tunnels, and for providing a 'rescue' train on the unaffected line."* You subsequently submitted a separate complaint noting your disagreement with the Refusal Notice.

Internal review

I have reviewed the original request and the following exceptions of the Regulations are applicable in this case:

- ***EIR Regulation 12(4)(e): Request involves disclosure of internal communications***
- ***EIR Regulation: Regulation 12(4)(d) Relates to material which is still in the course of completion; unfinished documents; and incomplete data.***

Regulation 12(4)(e) Internal Communications

Regulation 12(4)(e) excepts information from disclosure where “the request involves the disclosure of internal communications”. The request is for a report which was commissioned by the Area Central team and intended for internal considerations only. The report is an independent opinion piece that was never intended for circulation beyond HS2 Ltd. Therefore the documents were intended for internal communication only and are ‘internal communications’ for the purposes of the EIR.

Regulation 12(4)(d) – Material in the course of completion, unfinished documents and incomplete data

Regulation 12(4)(d) of the EIRs provides that a public authority may refuse to disclose information “to the extent that the request relates to material which is still in the course of completion, to unfurnished documents or to incomplete data”. In effect, the exception covers three classes of information: information which relates to material which is still in the course of completion; unfinished documents; and incomplete data. If the information falls into any one of these categories, then the exception is potentially engaged (subject to a consideration of where the public interest lies). In this case the subject matter that the information relates to is material which is still in the course of completion and therefore this exception is engaged.

Public Interest Test

All exceptions under EIR are 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 exception outweighs the public interest in disclosing the information. The public interest is not what interests the public, or a particular individual, but what will be the greater good, if released, to the community as a whole.

For a public interest test, issues that favour release need to be measured against issues that favour non-disclosure. As noted by the Information Commissioner, if more than one EIR exception applies to the information, it is possible to aggregate the public interest factors relevant to each exception when considering the public interest test.

We have weighed up the benefits to the public of releasing the information against the factors for not releasing it. We consider that the factors for not releasing the information outweigh those for disclosure.

Please see Appendix A for the public interest considerations in relation to each of these exceptions.

Conclusion

I trust that this is now clear and this response addresses your concerns. If you are not content with the way we have handled your review, you may take this up in writing with the Information Commissioner, please see further details below.

Please remember to quote reference number **FOI-19-3090-R** in any future communication relating to this request.

Yours sincerely,

Janine Mantle

Corporate Affairs Director
High Speed Two (HS2) Limited

Your right to complain to HS2 Ltd and the Information Commissioner

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