

Jim Conboy
HS2@chilternsociety.org.uk

Date as email

Dear Dr Conboy,

FOI-20-3725

Thank you for your information request which was received on 6 July 2020. I have processed your request under the Environmental Information Regulations ('EIR') 2004 ('the Regulations') because the information you have requested concerns work affecting the environment according to the definition in Regulation 2. Section 39 of the Freedom of Information Act ('FOI') 2000 ('the Act') exempts environmental information from the Act but requires us to consider it under the EIR.

REQUEST

I have received a decision notice from the ICO regarding the above FOI requests, which upholds your decision to withhold information under FOI regulation 12(4)(d) – 'continuing development of policy' (Para. 27).

However, I note that in para 44 you state that you 'intend to make public your final decision', and that 'the public will be able to review and comment on the proposed measures'.

Since you have now commenced construction on a large scale at the tunnel South portal, and have only purchased two tunnel boring machines, it is clear that you have made an irrevocable commitment to a twin bore tunnel. That being the case, the policy has surely 'been developed' and it is time for you to release the information regarding the safety case for such a tunnel.

Accordingly, I request (again) under the FOI act that you release all reports and documents relating to the safety case for the proposed evacuation procedure to be followed, in the event of a train becoming disabled within the Chiltern Tunnel. I also request that you respond to this request in a timely fashion, as required by the FOI legislation.

RESPONSE

The specific request considered by the ICO is not the same as the request above. Your current request is for "all reports and documents relating to the safety case for the proposed evacuation procedure to be followed, in the event of a train becoming disabled within the Chiltern Tunnel."

Your request is very broad as you have requested all reports and documents concerning the safety case. Whilst the safety case is not yet required and therefore has not yet been produced, there are many reports and documents which relate to the proposed evacuation procedure.

Consequently, there are a large number of documents captured by your request and any search would require examination of these documents to identify those relevant to your request.

Regulation 12(4)(b) of the EIR allows public authorities to refuse a request for information where the cost or burden of dealing with the request would be too great.

A search for the requested information has returned a significant number of relevant documents. Each of these documents would need to be examined in order to ensure that it did not contain exempt material – such as personal data or information relating to public safety. Therefore, in this case, responding to this request would place a disproportionate burden on HS2 Ltd. Please see Regulation 12(4)(b) - Manifestly unreasonable requests below for more detail.

OFFER TO ASSIST

Unfortunately, considering the size of the material caught by this request, I am unable to suggest any practical way in which your request may be narrowed within the terms of the Regulations. However, I am willing to consider any revised request which narrows the scope of the information captured. You may wish to consider focusing on specific aspects that are of interest to you.

Please note that any reformulated request we receive will be treated as a new EIR request, and we cannot guarantee that any relevant exceptions under the Regulations will not apply to a revised request.

REGULATION 12(4)(b)

Regulation 12(4)(b) of the EIR sets out that a public authority may refuse to disclose information to the extent that the request for information is 'manifestly unreasonable'. A request may be manifestly unreasonable if dealing with the request would create unreasonable costs or involve an unreasonable diversion of resources.

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". We have weighed up the benefits to the public for 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 Annex A for full details of our considerations.

Right to Review

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 HS2 Ltd. Please find below details of HS2 Ltd's complaints procedure which includes your right to complain to the Information Commissioner.

Please remember to quote reference number **FOI-20-3725** in any future communication relating to this request.

Yours sincerely

Sent on behalf of 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 40 working days of the date of this response 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