

Dr Conboy

Email: HS2@chilternsociety.org.uk

Date as email

Dear Dr Conboy

FOI-20-3931-R – Internal Review response

I am writing in response to your concerns about HS2 Ltd's handling of your request for information (our reference: FOI-20-3931).

I am a member of the HS2 Ltd Executive Team appointed to carry out an independent review of the original decision made in relation to your request, and as someone that was not involved in the original decision to refuse to release part of the information held in respect of that request.

This review of your original request is an entirely new and separate decision and is explained as such below.

Original request

In your original request received on 30 November 2020, you sought access to the following data

Please treat this as a request for Ecological Surveys and any other reports related to the protection and conservation of wildlife, undertaken in the area of Grims Ditch, for the 3 months preceding 18th November this year.

I would like to confirm that whilst the preamble to the original response stated that "your request has been considered under the Freedom of Information ('FOI') Act 2000 ('the Act')", in fact your request was considered under the Environmental Information Regulations ('EIR') 2004 ('the Regulations') because the information you 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.

Internal review

As part of this review response: I have considered the following to ensure that:

1. We correctly identified whether the information requested was held by HS2 Ltd
2. We appropriately responded within the statutory deadlines

3. That the exceptions were correctly applied

Having found no error of judgment in 1 and 2 above, I then went on to consider the strength of the public interest test that we provided to you in our original response.

Public Interest Test

In respect of the application of Regulation 12 (5)(g) protection of the environment, I recognise and support the general arguments made in favour of openness and transparency.

I do understand your argument that your

“request relates to the woodland which previously surrounded the Grims Ditch ancient monument, and this environment *no longer exists* since HS2 contractors have felled all the trees, and removed the undergrowth”

Therefore the final factor against disclosure raised in the original response is not valid, as now the trees are removed at this specific site, and consequently disclosure is less likely to adversely affect the ability to prevent disruption to any mitigation works at that specific site.

However, this location is not a site in isolation, but is part of an integrated landscape. Any protected species moving on from this specific site would likely be found in nearby habitats including hedgerow, woodland and. Thus releasing data on any such species found at the specified site would provide, as a minimum, a starting point for those interested in such species and encourage a nearby exploration of the area, disturbing those species and others that may be in the vicinity, whether accidentally or on purpose.

Please do note that we have a legal requirement to protect the populations of such species and not just any individual(s) found.

Further considerations

After considering the arguments, I do consider that the factors for not releasing information do outweigh those for disclosure and uphold the decision provided in the original response.

The public interest test is attached at **Annex A**.

I also note your comment “that regulation 12 makes no reference to species, protected or otherwise”.

For your information, Parliament introduced the EIR in order to implement the provisions of Directive 2003/4/EC, which states that a request may be refused if disclosure would adversely affect

“the protection of the environment to which such information relates, such as the location of rare species” (**Article 4(2)(h)**).

Please use the following link to access the relevant Directive, available online at

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0004&from=EN>.

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-20-3931-R** in any future communication relating to this request.

Yours sincerely,

Chris Rayner
Director of Infrastructure
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