

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 19 July 2012

**Public Authority:** High Speed Two Limited ('HS2 Ltd')

**Address:** 2nd Floor  
Eland House  
Bressenden Place  
London  
SW1E 5DU

### Decision (including any steps ordered)

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1. The complainant requested the disclosure of information, held by High Speed Two Limited, which would demonstrate why changes were made to a proposed rail route around the area of Hints.
2. HS2 Ltd furnished the complainant with information that fell within the scope of his information request. The complainant argued that HS2 Ltd held more information.
3. The Commissioner finds that HS2 Ltd holds no further relevant information other than that now disclosed to the complainant.
4. The Commissioner requires no steps to be taken.

### Request and response

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5. On 24 September 2011 the complainant wrote to HS2 Ltd and requested the following information:

*"[All] information relating to the decision path that determined the final design parameters for & the re-alignment of the original published route along the section of the HS line around Hints from Mullensgrove Farm, Curdworth to Shaw Lane Farm, Handsacre.*

*This should include the detailed background information that led to the route, as published in March 2010, being modified in September 2010,*

*again in December 2010 and finally in February 2011 with the introduction of the road diversion for Rookery Lane.*

*Secondly I would like to receive the same information which led to the decisions to reject the alternative routes to the west & east of Hints that were considered in the September and November reports respectively."*

6. On 26 October 2011 HS2 Ltd responded to the information request. It made several information disclosures and directed the complainant to other information already accessible in the public domain. HS2 Ltd went on to withhold internal communications relying on the exception found at regulation 12(4)(e).
7. On 05 November 2011 the complainant wrote to HS2 Ltd and requested an internal review.
8. On 11 November 2011 HS2 Ltd responded and upheld its initial refusal notice.

### **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way HS2 Ltd had responded to his requests for information. The complainant argued that HS2 Ltd decisions concerning track alignment had been reactionary and subject to political steer. Various amendments to the original proposal published in September 2010 - amendments which appear to provide mitigation to various communities – would have a negative impact to Hints. The complainant argued that other routing options were not considered because of political pressure from Members of Parliament with constituency interests.
10. During the course of the investigation, HS2 Ltd confirmed that upon conducting its internal review it had, in actual fact, released all internal communications held. It confirmed that it was, therefore, no longer relying on the exception at regulation 12(4)(e).
11. Therefore, the scope of the investigation will be to determine whether HS2 Ltd holds any further relevant information that demonstrates why changes were made to the published route of the HS line around the area of Hints, from that published in the March 2010 report to that published in subsequent reports in September 2010, December 2010 and February 2011.
12. The investigation will also look to determine whether HS2 Ltd holds any further relevant information that demonstrates the reasoning for the decisions to reject alternative routes to the west and east of Hints - as

the complainant claims - that were considered in the September 2010 and November 2010 reports (regulation 12(4)(a)).

## Reasons for decision

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13. The Commissioner has initially considered whether the relevant access regime for the request should be the EIR or FOIA.

### Is the requested information, if held, “environmental”?

14. “Environmental Information” is defined at regulation 2 of the EIR. In order for it to be environmental, information must fall within one or more of the definitions set out at regulation 2(1)(a) to (f) of the EIR – constituting “information on” any of the subjects covered by those six sub-sections.
15. The requested information in this case relates to the consideration of a new high speed rail network and its route.
16. For the reasons set out below, the Commissioner has not had sight of the requested information itself. However, he is satisfied on the balance of probabilities that the information, in the event that it was held, would be on a measure likely to affect the elements and factors cited in regulations 2(1)(a) and 2(1)(b) of the EIR. This is because it is a measure, namely a proposal to build a new railway network, which will ultimately affect the state of the elements of the environment, including the land and landscape and a number of environmental factors arising from this.
17. He has therefore concluded that the requested information, if held, would fall within the definition of environmental information set out at regulation 2(1)(c) of the EIR.

### Regulation 12(4)(a)

18. Regulation 12(4)(a) of EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when a request is received.
19. In cases such as this where there is some dispute as to whether a public authority holds information falling within the scope of the request the Commissioner has been guided in his approach by a number of Tribunal decisions which have used the civil standard of the balance of

probabilities, i.e. whether on the balance of probabilities the Commissioner is satisfied that no further information is held.<sup>1</sup> In deciding where this balance lies the Commissioner will take into account the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

20. Therefore, the Commissioner will consider both:
- the scope, quality, thoroughness and results of the searches and
  - other explanations offered as to why the information is not held.

### **The search**

21. During the investigation HS2 Ltd provided a substantive response to the Commissioner detailing how the public authority carried out its searches.
22. HS2 Ltd maintains all records electronically on an internal network, and in this case all of the information was retrievable by such means.
23. HS2 Ltd confirmed that members of staff who were known to be working on the subject of rail-track route and alignment conducted their own respective searches. Relevant members of staff knew where information was saved and searched the small number of relevant electronic files and folders held. Information retrieved was then relayed back to the information governance team and disclosed to the complainant.
24. The Commissioner asked HS2 Ltd about staff use of personal computers for work purposes – especially where employees might work 'out in the field'. HS2 stated that in line with the Government's data protection and security policy, the use of personal computers for work is strictly prohibited. HS2 Ltd confirmed that all information is stored on the HS2 Ltd network.
25. HS2 Ltd was unable to confirm whether information falling within the scope of the complainant's request was destroyed prior to receiving the request for information. However, the Commissioner is satisfied that upon receipt of the request, HS2 Ltd were mindful of the need to retain any information falling within the scope of the request. HS2 Ltd stated that all staff are aware of their responsibilities under the EIR and the FOIA.

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<sup>1</sup> See *Bromley v Information Commissioner* [EA/2006/0072].

26. The Commissioner has previously questioned HS2 Ltd about its in-house decision making process<sup>2</sup> otherwise described as the "*decision path*" in the complainant's request. HS2 Ltd explained to the Commissioner that much of the information used to make decisions is obtained verbally during technical discussions and meetings with relevant professionals who have relevant knowledge and expertise. In relation to this case specifically, notes were not taken of those meetings however the results of the discussions have been disclosed to the complainant.
27. HS2 Ltd confirmed that the route announced by the Secretary of State is based on concept design and, as such, no detailed work on the track's course was carried out. It is currently a preliminary design and the line requirements at all locations are still to be considered in more detail.

### **Other explanations as to why the information is not held**

28. No other explanations have been offered as to why the information is not held.
29. Taking into account HS2 Ltd's arguments, and in the absence of any evidence that further information is held to the contrary, he is satisfied that, on the balance of probabilities, HS2 Ltd holds no further information that might fall within the scope of the complainant's request.
30. Therefore, after considering all the information before him, the Commissioner concludes that on the balance of probabilities no other relevant information is held.

### **The public interest test**

31. Regulation 12(1)(b) of the EIR requires that all exceptions, including regulation 12(4)(a), are subjected to a public interest test. However, it is not possible for the Commissioner to do this given his finding that no further relevant information, other than that now disclosed to the complainant, is held to which the public interest could apply.

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<sup>2</sup> See Decision Notice FER0417009 at paragraph 40.

## Right of appeal

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32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Pamela Clements**  
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