

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 21 July 2022

Public Authority: High Speed Two (HS2) Ltd
Address: Two, Snowhill
Snow Hill
Queensway
Birmingham
B4 6GA

Decision (including any steps ordered)

1. The complainant has requested information from HS2 relating to the HS2 project. HS2 initially provided some information, stated that some information was not held and withheld other information under regulations 12(5)(e) and 12(4)(d) relating to single track kilometrage, track layout schematics and the Euston High Speed Two terminus. After the Commissioner began his investigation, HS2 revised its response, citing regulation 12(4)(b) (manifestly unreasonable).
2. The Commissioner's decision is that HS2 has correctly cited regulation 12(4)(b) of the EIR, that the request can be categorised as manifestly unreasonable by virtue of cost, and that the public interest favours maintaining this exception. He has also decided that HS2 provided adequate advice and assistance under regulation 9 of the EIR. However, HS2 failed to comply with the request within 20 working days which is a breach of regulation 5(2) of the EIR.
3. The Commissioner does not require HS2 to take any further steps.

Request and response

4. On 29 January 2021 the complainant wrote to HS2 and requested information. As the request is lengthy it has been reproduced in an annex at the end of this notice.
5. HS2 asked the complainant to clarify the term "motorparc" on 11 February 2021.

6. The complainant clarified this matter on the same day as follows:

"What I mean by the term 'motorparc', is 'motor vehicle parc'. The word 'parc' is a French loanword, approximating to 'fleet'. Both words are used in English, for example, by the Society of Motor Manufacturers and Traders. Motorparc Vehicles in Use (UK) - SMMT

parc - English translation – Linguee

As was stated in the initial FoI e-mail, item IV is "a request for the integer number of cars of each propulsion type, by year, for a defined territory (preferably, England alone, but Great Britain, or Great Britain and Northern Ireland, if England is not available)."

If the 'quantum of cars by propulsion type by appraisal year' is not explicitly held, then perhaps you could send the partial information that is held, e.g. the 'assumed number of cars irrespective of propulsion type, by year, for a defined territory (preferably, England alone, but Great Britain, or Great Britain and Northern Ireland, if England is not available)'.

7. HS2 wrote to the complainant on 11 March 2021 stating that it needed an extension of time, from 20 working days to forty working days because it considered the request to be complex and voluminous.
8. HS2 responded to the complainant on 15 April 2021 as follows:

- I. (i), (ii), (iii) and (iv) – withheld under regulation 12(5)(e)(commercial or industrial information).
- II. (i), (ii), (iii), and (iv) – withheld under regulation 12(5)(e).
- III. – HS2 responded to part of the request and stated that some information was 'not held'.
- IV. – HS2 responded to part of the request and stated that some information was 'not held'.
- V.(i) – responded to part of the request and cited regulation 12(4)(d) for part of it.

- (ii) – cited regulation 12(4)(d) (material in the course of completion).
 - (iii) - responded to.
9. The complainant asked for an internal review to be carried out on 21 May 2021. The parts of their request that the complainant asked to be reviewed were -
- Item I. (Single track kilometrage),
 - Item II. (Track layout schematics), and
 - Item V. (Euston High Speed Two terminus - design for capacities, and construction phasing options).

For the details requested in item I, II and V see the attached annex.

10. In their request for a review the complainant provided arguments against HS2's citing of the exceptions at regulations 12(4)(d) and 12(5)(e).
11. On 16 July 2021, HS2 provided an internal review. The review acknowledged the lateness of the refusal notice. It also upheld HS2's application of regulations 12(4)(d) and 12(5)(e).

Scope of the case

12. The complainant contacted the Commissioner on 2 September 2021 to complain about the way their request for information had been handled.
13. The Commissioner sent his initial investigation letter to HS2 on 16 May 2022.
14. On 15 June 2022, HS2 wrote to the Commissioner to apologise and explain that it was now citing regulation 12(4)(b) (manifestly unreasonable) to what it now termed the narrowed request, this was the part of the original request that the complainant had asked to be reviewed. HS2 explained that when it was considering its submission to the Commissioner it was recognised that some of the data in question had not been gathered for the original response or review. The information is technical and had not been provided due to a misunderstanding. HS2 then realised that the task to collate this data would be too burdensome.
15. HS2 sent a new refusal notice reflecting this application of the new exception to the complainant on 23 June 2022 and providing a break down, estimating that it would take approximately 34-36 hours to

extract the information for parts I and II of the request. The Commissioner was copied into this response.

16. The Commissioner then wrote to the complainant, having considered HS2's arguments regarding regulation 12(4)(b), explaining that it was his initial view that the exception was engaged and that any decision notice was likely to support HS2's position.
17. The complainant responded to the Commissioner on 30 June 2022 and said that they did not accept his initial view.

"at the least, [HS2 should] be able to provide information in respect of Item I (i), i.e. stk for phase one, Item II (i), i.e. track layout for phase one, and Item V."

18. HS2 provided a more detailed response to the Commissioner on 12 July 2022.
19. The Commissioner considers the scope of this case to be HS2's citing of regulation 12(4)(b) and any procedural matters that may have occurred.

Reasons for decision

Is the information environmental information for the purposes of the EIR?

20. Regulation 2(1) of the EIR defines environmental information as any information in any material form on:

"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'

21. The requested information clearly relates to an environmental measure (the HS2 project) which is affecting or likely to affect the environment. The Commissioner therefore considers that this information is environmental information under regulation 2(1)(c) of the EIR.

Regulation 12(4)(b) – manifestly unreasonable

22. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
23. HS2 has cited the exception at regulation 12(4)(b) for the narrowed request (Parts I and II), though it did state that it could provide a response to part V(i) and (ii) of the request.
24. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if it is vexatious, and secondly, where it would incur unreasonable costs for a public authority or an unreasonable diversion of resources.
25. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. The Fees Regulations provide that the costs associated with dealing with a request (determining whether the requested information is held; finding the information, or records containing the information; retrieving the information or records; and extracting the requested information from records) should be worked out at a standard rate of £25 per hour per person. The appropriate limit is set at £450 for HS2, which is the equivalent of 18 hours.

26. The EIR differ from FOIA because, under the EIR, there is no specific cost limit set for the amount of work required by a public authority to respond to a request. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they nevertheless provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that would be incurred in dealing with a request. However, the Fees Regulations are not the determining factor in assessing whether the exception applies. Section 12 FOIA limits the activities that can be taken into account when deciding if the appropriate limit would be exceeded. This is not an issue under the EIR. The costs of considering if information is exempt can be taken into account as relevant arguments under regulation 12(4)(b)¹.
27. In assessing a public authority's application of this exception, as well as the burden of complying, the Commissioner takes into account all the circumstances of the case including:
- the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
 - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
 - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
28. The exception is subject to the public interest test which also means that a public authority must demonstrate that the public interest in maintaining the exception outweighs the public interest in favour of disclosure.

The complainant's view

29. The complainant made the following argument:
-

¹ [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](https://ico.org.uk)

"In my view HS2 Ltd should, at the least, be able to provide information in respect of Item I (i), i.e. stk for phase one, Item II (i), i.e. track layout for phase one, and Item V."

HS2's view

30. Firstly, HS2 provided some context to the request. It explained that:

"The design of the track is at varying stages of completion along each of these phases, with public consultation having been undertaken (Phase 1 and Phase 2a) or currently underway (Phase 2b) for each phase. As the line develops, the exact alignment evolves to take into account design elements such as the likely effects on the ecological environment, impacts on local communities and engineering design constraints."

31. HS2 states that the data to produce the requested information is held within several electronic files. In order to produce figures for the currently planned HS2 network total single track kilometrage to the level of detail requested would require HS2 to produce several bespoke outputs. It provided an example to the Commissioner.

32. HS2 explains the alignment model as follows:

"Each alignment model is divided into separate sections, split either by phase and/or by geographic delivery boundaries. Within the model, there are a significant number of individual track alignments that represent the geometry position and length of the centreline for each track; together these add up to the total single-track km requested. Where the models join, there are overlapping sections of the track alignment which would need manual modification to produce the overall length."

33. The request asks for various scenarios which means that the reports would need to be run for each state and would require manual modification. These outputs would need to include sidings, depots and connecting lines and would need to be tailored to meet the requirements of the request.

34. HS2 states that each route diagram is made up from a series of several other computer aided design models referenced together with varying scaling. These are live documents updated for changes in the design. HS2 explains that a bespoke copy of the route diagram would need to be made, retaining links to the referenced models. These bespoke outputs would need to be individually produced (ensuring that scaling

mix fits the sheet size) and then checked. HS2 explains that although this is not a complex task, it would be time-consuming.

35. An estimate of how many hours it would take to carry out the necessary activities (locate, retrieve and extract) was provided to the Commissioner by HS2 as follows:

Production and check/review of each route diagram (3 hours per diagram) (**12 hours**)

Incorporation of Annandale RS Depot to generate schematic (**4 hours**)

Production of figures for the currently planned HS2 network total single track kilometrage - including sidings, depots, and connecting lines (**0 hours**)

Phase 1 – 3 (Main lines including Handsacre, Washwood heath and Calvert) (**3 hours**)

Phase 2a - 2 (Main lines including Crewe connection and Stone depot) (**2 hours**)

Phase 2b West – 3 (Main lines, Crewe Depot and RS depot Annandale) - With Annandale Depot (**5 hours**)

Phase 2b East - 9 (Lot 3 contracts split delivery alignment models by area- Main lines, Clayton & Staveley spurs and Leeds Depot) (**5-7 hours**)

On Network Works Phase 2B connecting lines - (**3 hours**)

The total estimated time is between **34** and **36 hours**.

36. HS2 also argues that there is an additional burden in considering whether the information is exempt. Its view is that the amount of time required to review and prepare the information for disclosure can also be taken into account if it would contribute to a grossly oppressive burden on the organisation. Therefore, there is a substantial burden, not only in locating and extracting the information, but in ensuring that the information can be released. HS2 contends that it would have to examine each output in order to demonstrate whether regulation 12(4)(d) or regulation 12(5)(e) is applicable and it quotes the Commissioner's guidance where it states:

- the requester has asked for a substantial volume of information; **and**

- you have real concerns about potentially exempt information, which you are able to substantiate , if asked to do so by the ICO; **and**
- you cannot easily isolate any potentially exempt information because it is scattered throughout the requested material.”²

HS2 points out that the request is for schematics of variations of the entire HS2 route which is 300 miles of track.

37. HS2 provided the Commissioner with a brief analysis of regulations 12(4)(d) and 12(5)(e) but he has only considered them from the point of view of HS2’s arguments concerning the burden of determining exempt information.
38. HS2 suggests that each part of the line, and each aspect of the schematic, would need to be examined in order to ensure that it would not reveal commercially sensitive information. Each aspect of the design would need to be assessed in order to ascertain the impact of any newly released data on the community engagement project. HS2’s view is that all the information would need to be examined because it was not possible to separate out non-exempt information.
39. The burden of locating, retrieving and extracting the information would place a considerable burden on HS2 and divert highly technical staff from their core duties. Additionally, the request concerns a substantial amount of information that would need to be examined for the reasons given in the paragraph above.
40. HS2 has calculated that the cost of locating and extracting the requested information would cost between £850 and £900 in line with the cost limit of £25 per hour. HS2 states that it is hard to estimate accurately how long it would take to establish which parts of the extracted information should be withheld. However, it believes that it would take a similar amount of time to locate and extract the information. In other words between £850 and £900. Added together, HS2 calculates that it would require between £1700 and £1800 to comply with this request which it considers would impose an unreasonable cost and burden.

The Commissioner’s view

² [How do we deal with a single burdensome request? | ICO](#)

41. The Commissioner acknowledges that it is difficult for a complainant to argue against a detailed breakdown provided by a public authority. They are unlikely to be familiar with HS2's systems and processes.
42. However, even if the Commissioner discounted the cost of establishing what information should be exempt, HS2 has estimated that the cost of locating, retrieving and extracting the requested information alone would be £400 beyond the fees limit. This is at its lowest estimation. At its highest it would be £450 beyond the limit. The Commissioner accepts that the calculation HS2 has made cannot be precise, given the unusual nature of the activities that would be required. In other words, this is not a case where a simple calculation can be applied such as, a certain number of files multiplied by a certain number of minutes for each file, based on a sampling exercise or previous experience. The Commissioner's view is that, even if the time estimate was considerably reduced, it would still exceed the fees limit. Therefore he considers the time estimate to be reasonable and the exception is engaged.

Public interest test

43. Unlike section 12 FOIA, when this exception is engaged, a public authority must consider where the public interest lies before deciding whether to disclose the information. The public authority has to bear in mind the presumption in favour of disclosure under EIR.

Public interest factors in favour of disclosing the withheld information

44. The complainant had provided arguments querying HS2's citing of regulations 12(5)(e) and 12(4)(d) before HS2's citing of regulation 12(4)(b). However, it is clear from the request that the complainant is arguing for transparency regarding the HS2 project and the various options under consideration.
45. HS2 also states that there are general public interest arguments in favour of greater transparency and accountability around the progress of the HS2 programme. In relation to this request, it acknowledges that disclosure of the information would help to facilitate a more detailed understanding of the line of route for the general public. HS2 also acknowledges that there is a great deal of public interest in the detail of where the railway will run, given the scale and profile of HS2.

Public interest factors in favour of maintaining the exception

46. HS2's view is that complying with the request would entail a significant amount of time and effort to find the information and then prepare it for

release. In order to do this, HS2 staff would need to be diverted from their core duties to spend time on searching, extracting and reviewing the information it holds. The interests of the public would not be best served by undertaking a resource-intensive search to obtain the detailed information that has been requested.

47. At a conservative estimate it would cost between £1,700 and £1,800 to comply. HS2 states that there is a strong public interest in ensuring that public funds are spent proportionately. HS2 argues that it is important that a publicly funded organisation exercises tight control of expenditure and resources and that it is in the public interest that HS2 funding is appropriately managed.
48. HS2 proactively publishes information on the line of the route and details of each phase, including details of the effects of HS2 on individual areas³. It contends that publication ensures that it is open and transparent regarding the effects of its work.
49. However, HS2 states that, while there is always a public interest in releasing information, this interest needs to be weighed against the cost of providing it.
50. HS2 believes that release of the requested information to the level of detail requested, and in the format requested, would impose a disproportionate burden at the taxpayer's expense. It further argues that release in an unredacted form has the potential to undermine the community engagement process and interfere with the tendering process. HS2 argues that, as the design is continually developing, releasing information while it still has the potential to change, would provide a misleading impression of the effects of the project. Its opinion is that the publication of information outlined above satisfies the public interest in ensuring that HS2 is open and transparent regarding the work it is currently undertaking and will undertake.

³ <https://www.hs2.org.uk/in-your-area/map/>

<https://www.hs2.org.uk/what-is-hs2/phase-one-london-west-midlands/>

<https://www.hs2.org.uk/what-is-hs2/phase-2a-west-midlands-crewe/>

<https://www.hs2.org.uk/what-is-hs2/phase-2b-crewe-to-manchester/>

<https://www.hs2.org.uk/what-is-hs2/phase-2b-west-midlands-to-leeds/>

The balance of the public interest

51. The Commissioner has considered where the balance of the public interest lies. He accepts that there is a public interest in disclosing the requested information because there is an undeniable public interest in transparency regarding a controversial project. The HS2 project affects a large number of people and involves a significant amount of public money.
52. However, it is unclear how much the disclosure of this particular information would serve the public interest when set against the resources that HS2 would need to expend in responding. When weighed against the considerable effort in identifying and withholding the requested information, the extent of the value of the information is unclear, after misleading information has been removed. The Commissioner has also taken into account that HS2 has provided some information and explained how it might provide more information to the complainant. Finally, the Commissioner set against disclosure the fact that HS2 proactively publishes related information.

Regulation 12(2) – Presumption in favour of disclosure

53. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.
54. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly

Regulation 9(1) – duty to advise and assist

55. The EIR states the following:

"9.—(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

(a)ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to

provide more particulars in relation to the request; and
(b)assist the applicant in providing those particulars.”

56. The Commissioner’s guidance states⁴:

“When refusing a request for environmental information under regulation 12(4)(b) on the grounds of cost, public authorities should provide the requester with appropriate advice and assistance. This will usually involve setting out the costs involved in answering the request and explaining how it might be refined to make it more manageable and therefore, not manifestly unreasonable. The aim of advice and assistance should be to help the requester to submit a new, more manageable, request.”

57. When HS2 revised its response to the complainant and cited regulation 12(4)(b) it stated that it had identified parts of the request that could be responded to without placing a disproportionate burden on HS2. It said that it could undertake searches regarding V(i) and V(ii) and respond to those parts of the request.

58. The complainant did not accept HS2’s view.

59. The Commissioner considers that HS2 has fulfilled its duty to advise and assist by clearly stating what could be responded to within the fees limit, though late in the day. This allows the complainant to revise their request, should they wish to so.

Regulation 5 - duty to make environmental information available on request

60. Regulation 5(1) of the EIR states that:

“a public authority that holds environmental information shall make it available on request.”

61. Regulation 5(2) of the EIR states that:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

⁴ [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](https://ico.org.uk/manifestly-unreasonable-requests-regulation-12(4)(b))

62. HS2 did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the HS2 has breached regulation 5(2) of the EIR.

Annex

63. On 29 January 2021 the complainant wrote to HS2 and requested information in the following terms:

"I would like to request certain information about the High Speed Two project, which you may hold. Please get in touch if any clarification is needed.

I. Single track kilometrage

Could you provide the figures for the currently planned HS2 network total single track kilometrage - including sidings, depots, and connecting lines - for

(i) phase one, taking account of any changes arising from 'more detailed designs', such as the extended Bromford tunnel

<https://hs2inwarwicks.commonplace.is/schemes/proposals/bromford-tunnel/details>

(ii) phase 2a

(iii) phase 2b, prior to the changes and additions proposed in the October 2020 Western leg design refinement consultation

<https://www.gov.uk/government/consultations/hs2-phase-2b-western-leg-design-refinementconsultation>

(iv) phase 2b, assuming the changes and additions proposed in the October 2020 Western leg design refinement consultation were implemented.

II. Track layout schematics

Could you provide the current planned HS2 network track layout schematics - including crossovers, station loops, sidings, depots, and connecting lines - for

(i) phase one, including any changes and additions introduced from 'more detailed designs' such as the

extended Bromford tunnel

<https://hs2inwarwicks.commonplace.is/schemes/proposals/bromford-tunnel/details>

(ii) phase 2a

(iii) phase 2b, prior to any changes and additions proposed in the October 2020 Western leg design refinement consultation

<https://www.gov.uk/government/consultations/hs2-phase-2b-western-leg-design-refinementconsultation>

(iv) phase 2b, assuming the changes proposed in the October 2020 Western leg design refinement consultation were implemented.

III.

Meaning of 'Direct intercity services'

On a number of occasions HS2 Ltd's Twitter @hs2ltd and / or Facebook presence has referred to re-routing 'direct intercity services', allowing 'more trains to run on existing lines'.

For example, the tweet from '8:10 AM · Mar 4, 2020' stated: "By putting direct intercity services on dedicated high speed lines, #HS2 will allow more train services to run on three of the country's most heavily congested rail routes; West Coast Main Line, East Coast Main Line and Midland Main Line. Find out more <https://www.hs2.org.uk/why/capacity/>"

<https://twitter.com/hs2ltd/status/1235115304717443072>

It is unclear what HS2 Ltd means by 'direct intercity service', as opposed to a 'non-direct' or 'regular' intercity service. Could you provide the information on what is meant or defined by 'direct intercity service', and which of the current or year 2019 Avanti intercity services on the West Coast Main Line would be categorised as 'direct'.

IV. Private car population / motorparc, in scheme appraisal

Could you provide the count / forecasts of private car population held or used by HS2 Ltd, for each appraisal year, by propulsion type

(petrol, diesel, electric, other). This is a request for the integer number of cars of each propulsion type, by year, for a defined territory (preferably, England alone, but Great Britain, or Great Britain and Northern Ireland, if England is not available).

V. Euston High Speed Two terminus - design for capacities, and construction phasing options

Over the last year, it has been reported that several options have been under consideration for the layout of approach track and platforms, and construction phasing, for the HS2 Euston terminus.

I would like to

(i) acquire a list of the various Euston layout and build options which were under consideration by HS2 Ltd at 1 January 2020 or later

(ii) request the 'Euston Layout Comparisons Technical Note' and 'Euston Flat Track Approach Options Technical Note' documents

(iii) establish when (i.e. at what date) the concept of grade-separated approach trackage at Euston was adopted into the official design for phase one."

Right of appeal

64. 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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

65. 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.
66. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF