

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

**Decision notice**

**Date:** 4 June 2024

**Public Authority:** High Speed Two Limited  
**Address:** Snow Hill  
Queensway  
Birmingham B4 6GA

**Decision (including any steps ordered)**

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1. The Commissioner's decision is that, under regulation 12(5)(e) of the EIR, High Speed Two Limited (HS2) is entitled to withhold the requested information about payments it made to a golf club. This exception concerns commercial confidentiality.
2. It's not necessary for HS2 to take any corrective steps.

**Background**

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3. HS2 has provided the following background in its submission to the Commissioner:

"Phase 2a of HS2 has been approved by an Act of Parliament, and the SoS [Secretary of State] is authorised to obtain, by compulsory purchase, the land that HS2 Ltd needs to build the railway. In these circumstances, land or property can be bought or occupied with or without the permission of the owner or the occupier. Owners and occupiers can claim reasonable compensation if their land or property is obtained through compulsory purchase, in line with the relevant compensation law and practice. This requires HS2 Ltd to compensate those affected fully for all of their reasonable losses arising from the loss of land.

Due to the HS2 Phase 2a land acquisition programme at that time, some land was acquired from the club and the remainder is still to be conveyed. The acquired land was taken to accommodate a utility gas pipe diversion.

Ingestre Golf Club and the Secretary of State for Transport have a Land Agreement. This Land Agreement sets out the mechanism for the SoS to acquire land for the HS2 railway and for the Club to reconfigure its golf course onto adjacent land. This Land Agreement provides the funding mechanism for the SoS to make regular payments to the Club and for the Club to then use these payments to fund the construction of its new course."

## Request and response

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4. The complainant made the following information request to HS2 on 17 November 2023:

**"HS2 Payments made to Ingestre Park Golf Club.**

I would like comprehensive details on all the payments made to the above golf club which has relocated a major part of the course to accommodate what was the proposed HS2 railway through Staffordshire. This information should include all payments to the Club, and Kingston Hill Company Ltd and or any payments made to contractors carrying out works to achieve the relocation."

5. HS2's final position was that the requested information was excepted from disclosure under regulation 12(5)(e) of the EIR.

## Reasons for decision

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6. This reasoning covers HS2's application of regulation 12(5)(e) to the complainant's request.
7. Under regulation 12(5)(e) of the EIR, a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
8. The Commissioner considers four tests when he's considering whether regulation 12(5)(e) is engaged.

9. First, is the information commercial or industrial in nature? The Commissioner is satisfied that the requested information is commercial in nature. From the terms of the request, the information relates to land HS2 purchased in order to redevelop it.
10. Second, is the confidentiality provided by law? In a submission to the Commissioner HS2 has advised that the information is for payments it made to a golf club "in order for them to purchase goods and services for the development of land." HS2 has confirmed that the information hasn't been made public or shared more widely. A confidentiality clause was also included in the Land Agreement between the SoS and the club, to protect HS2's and the club's economic interests.
11. The Commissioner accepts that circumstances in which the information is held, and HS2's reason for holding it, would, in his view, be sufficient to impose an obligation of confidence on HS2. HS2 employees who had access to the information would understand that the information was to be held in confidence until such time as this, or any other of HS2's agreements, necessary acquisitions and/or planning applications were achieved or agreed, or both. The information therefore has the necessary quality of confidence.
12. Third, is the confidentiality protecting a legitimate economic interest? For this test it's necessary to consider how sensitive the information is at the date of the request and the nature of the harm that would be caused by disclosure. The timing of the request and whether the commercial information is still current are likely to be key factors. Broader arguments that the confidentiality provision was originally intended to protect legitimate economic interests at the time it was imposed won't be sufficient if disclosure wouldn't actually impact on those interests at the time of the request.
13. It's not enough that disclosure **might** cause some harm to an economic interest. It needs to be established that disclosure **would** cause harm (on the balance of probabilities – ie more probable than not).
14. Regarding whose interests would be affected by disclosure, if the information were jointly agreed or was provided under a contractual obligation of confidence, either party's interests could be relevant.
15. Finally, if a third party's interests are at stake the public authority will need to consult with them, unless the authority has prior knowledge of its views. It's not sufficient for the authority to speculate about potential harm to a third party's interests without some evidence that the arguments genuinely reflect the concerns of a third party.
16. In its submission, HS2 has noted that it still has thousands of similar claims still to progress to settlement across all sections of the HS2 route. It says that releasing this information would harm HS2's ability to

negotiate with respect to these claims and would adversely affect its ability to secure the best possible deal for the taxpayer. In order to obtain best value, it's important, HS2 says, that it's able to negotiate with claimants effectively. Disclosing the withheld information would create an expectation and hinder the prospect of an agreeable estimate being reached in any ongoing claims. HS2 considers that this isn't in the interests of the HS2 project, the public purse or the wider public.

17. HS2 has referred to the Commissioner's decision in [IC-139941-L6Q0](#) and [IC-43206-D9F4](#), which it considers are similar situations. In both of those cases HS2 provided comprehensive evidence to substantiate its application of regulation 12(5)(e), and in both cases the Commissioner agreed that the exception was engaged.
18. HS2 has also noted that for the current request, and in the cases quoted above, the focus of the adverse effect was the harm to HS2's commercial interests. But, it says, in this particular case, releasing the detailed information would not only affect HS2's ability to negotiate effectively but would also have an adverse effect on the golf club's ability to negotiate with suppliers and contractors. Disclosing the withheld information would enable potential tenderers to tailor their bids and frustrate the ability of the club to achieve the most cost-effective rates for any works that haven't yet been completed.
19. The Commissioner accepts that disclosing the requested information would compromise the legitimate economic interests of HS2 and the golf club in question. The situation remains live in the sense that HS2's negotiations with the golf club haven't been completed and it remains in negotiation with many other organisations along the HS2 route. If it were known how much HS2 had paid to the golf club, other organisations along the highspeed route with which HS2 is negotiating would have an expectation of the sort of sums they might be able to realise from HS2 and would negotiate from that position. That would make it more difficult for HS2 to achieve the best financial outcome. And if contractors with which the golf club is working knew how much HS2 had paid the club, that could also influence the negotiating position of those contractors, to the detriment of the club.
20. Finally, would disclosure adversely affect the confidentiality? Although this is a necessary element of the exception, once the first three elements are established, the Commissioner considers it's inevitable that this element will be satisfied. Disclosing truly confidential information into the public domain would inevitably harm the confidential nature of that information and would also harm the legitimate economic interests that have been identified.

21. Since the four elements of the exception test have been met, the Commissioner is satisfied that the information that HS2 is withholding under regulation 12(5)(e) of the EIR engages that exception. He's gone on to consider the associated public interest test.

### **Public interest test**

22. The EIR feature a presumption in favour of disclosing information, under regulation 12(2).
23. In their request for an internal review the complainant said that the 500+ members of the golf club, who are all shareholders of the company that operates the business of the club, should be able to know the precise finances of the club. The complainant noted that the railway line would not now be built beyond the Birmingham area, following the Prime Minister's decision and indications from the Labour Party that it wouldn't reverse the decision if it were to win the next election. They therefore couldn't see what negotiations HS2 would be concerned about.
24. HS2 has stated that there's a general public interest in releasing information about how it spends public funds.
25. Against disclosure, as discussed HS2 considers that releasing the requested information into the public domain would adversely affect its commercial interests because it would weaken its ability to negotiate future settlements effectively. Disclosure would create a level of expectation in future settlements and frustrate HS2's ability to obtain a fair price for both parties.
26. HS2 argues that it's not in the public interest for it to be disadvantaged in its ability to obtain the best value for money for the public purse.
27. It also argues that making the information public would undermine the confidentiality of its arrangements and it would make organisations less willing to engage openly with HS2 Ltd, to the detriment of the settlement negotiations.
28. HS2 has also re-stated that releasing the requested information would adversely affect the golf club's ability to negotiate with its suppliers and contractors and hinder its ability to obtain the best price for any works that haven't yet been concluded.

## **Balance of the public interest**

29. HS2 has acknowledged the importance of accountability and that releasing the information would enable the public to satisfy itself that HS2 is achieving the best value when it spends public funds.
30. However, HS2 considers that there's a strong countervailing public interest in protecting its ability to secure good value in its future negotiations.
31. HS2 has referred to IC-139941-L6Q0, in which the Commissioner said that "in order to obtain best value it is important that HS2 is able to negotiate with suppliers and contractors effectively" (paragraph 62). In this case, HS2 says, disclosure would interfere with its ability to negotiate effectively with those along the HS2 route who have been affected by the project. It would also adversely affect the golf club's ability to negotiate with their contractors effectively.
32. HS2 notes that there's a considerable amount of information available on the design, costs, and planned route for HS2. This goes some way to meeting the wider public interest of informing the public about the project. Where information can be released without having a detrimental effect on commercial activity, then this is made public. Ministers regularly report to Parliament on the HS2 project and HS2 publishes financial information online, including in its Annual Report and Accounts. HS2 has also noted that in IC-139941-L6Q0, the Commissioner advised that he "is not aware of any concerns that HS2, aside from the issue of the withheld information, has failed to be transparent over its affairs in general" (paragraph 63).
33. HS2 has concluded by advising that where releasing information would have a detrimental commercial effect on it, or any third party – like the golf club in this case - this isn't automatically placed in the public domain. In this case, for the reasons it outlined in its communications with the complainant, and in its submission to the Commissioner, HS2 considers that releasing the requested information, at the time of the request wouldn't be in the public interest.
34. The complainant didn't see what negotiations would now be affected if HS2 disclosed the information they've requested. HS2 has explained that its negotiations with the golf club aren't complete, and it's still in negotiations with other organisations along the HS2 route. The Commissioner appreciates the complainant's concern and interest in the golf club in question and in the information they've requested. However, disclosure under the EIR is effectively disclosure to the wider world, not just to the complainant. As such, the Commissioner has found that disclosing that information would adversely affect the commercial interests of the golf club and HS2.

35. Such public interest as there is in the golf club's financial position is largely restricted to the club's members. The Commissioner is satisfied that there's greater, and wider, public interest in HS2 being able to achieve the best value for money that it can in its ongoing negotiations. It will be more likely to achieve this by withholding the information requested in this case. This will prevent other parties forming an expectation about payments HS2 might be prepared to make and negotiating accordingly.

## **Right of appeal**

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36. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
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**Information Commissioner's Office**  
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