

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 April 2012

Public Authority: High Speed Two Limited
Address: 2nd Floor
Eland House
Bressenden Place
London
SW1E 5DU

Decision (including any steps ordered)

1. The complainant asked for High Speed Two Ltd ('HS2 Ltd') to "*explain the justification*" for alleged changes made to the proposed high speed railway track around Hints.
2. HS2 Ltd did not accept the complainant's submission as a valid request for information.
3. The Commissioner finds that part of the request is valid and that HS2 Ltd must comply with regulation 5(1) of the EIR or issue a valid refusal notice.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 24 August 2011 the complainant wrote to HS2 Ltd as part of a consultation response. In the correspondence the complainant asked:

"Perhaps you could explain the justification for the negative changes made around Hints as set out in the following paragraph and admit they are not improvements as your Chairman and others have stated in the past."

6. The following paragraph outlines the "*negative changes*":

"[...] increasing its [the railway track's] curvature to well beyond the normal design limits; by raising its height at Rookery Hill by 6 metres; and by proposing a diversion for Rookery Lane across the pristine escarpment opposite Hints Village [...]."

7. On 08 September 2011 HS2 Ltd acknowledged the complainant's correspondence. It did not treat the correspondence as a request for information under the EIR. HS2 Ltd did however confirm that, at that time, the government had not confirmed whether high speed rail would go ahead and so the proposed route had yet to be decided.
8. On 24 September 2011 the complainant wrote to HS2 Ltd expressing dissatisfaction at the response received. He said that as a result of his dissatisfaction he was submitting a request for information in the following terms:
9. *"You will note that the reply [of 08 September 2011] acknowledges my comments but it fails to address the question I raised in the 2nd paragraph of my letter [of 24 August 2011]. I am therefore writing to request some information under the Freedom of Information Act and/or the Environmental Information Regulations relating to two specific issues which fall within the scope of the question I raised with Ms Carter:*

[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."

10. On 26 October 2011 HS2 Ltd responded specifically to the information requested by the complainant on 24 September 2011.
11. On 05 November 2011 the complainant wrote to HS2 Ltd and requested an internal review. He argued that the response failed to address concerns in the second paragraph of his 'original request' dated 24 August 2011.

12. On 11 November 2011 HS2 Ltd argued that it did not believe that the request dated 24 August 2011 constituted a valid request for information and so it was not considered. It stated that it had taken a reasonable interpretation of the request dated 24 September 2011 given it referred to "*two specific issues*" only.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way HS2 had responded to his requests for information.
14. The Commissioner considers the request dated 24 August 2011 to be a separate information request from that dated 24 September 2011.
15. The complainant's request dated 24 September 2011 is not considered in this decision notice but is instead being investigated separately.
16. In order for the complainant to apply to the Commissioner for a decision to determine whether HS2 Ltd dealt with the request dated 24 August 2011 in accordance with the EIR, the public authority had still to exhaust its own complaints procedure (FOIA section 50).
17. On 20 March 2012 the complainant, on instruction from the Commissioner, wrote to HS2 Ltd and asked for an internal review to be conducted for his request dated 24 August 2011.
18. On the same day HS2 Ltd responded with the results of the internal review. HS2 Ltd stated that at the time it received the complainant's submission dated 24 August 2011, the public authority did not believe that it constituted a valid request for information. HS2 Ltd maintained that the complainant's submission on internal review was still not considered a valid request for information.
19. Therefore the scope of this case is to only consider whether the request dated 24 August 2011 constitutes a valid request for information. It will address nothing else.

Reasons for decision

20. Anyone can request copies of information which a public authority already holds in a recorded form, but the EIR do not require HS2 Ltd to provide opinions or explanations, generate answers to questions, or create or obtain information it does not hold. In this instance, there is no obligation on HS2 Ltd to create an 'explanation' for the alleged changes to the route around Hints.

21. Where decisions are made that concern the route of a railway track, it can be assumed that such decisions are based on evidence. Therefore, the justification itself could be 'explained' by recorded information that might have been used to assist decision makers in this particular instance. This would not require HS2 Ltd to create the explanation of the justification used. Rather it should look to determine whether it holds relevant information and proceed to locate, retrieve and extract that information.
22. Therefore the Commissioner finds that the request did genuinely seek recorded information held on 24 August 2011. HS2 Ltd should comply with regulation 5(1) of the EIR or issue a valid refusal notice for information used in the decision to allegedly:
 - increase the track's curvature
 - raise the track's height
 - propose the location of the Rookery Lane diversion at a specific site
23. For all exceptions other than that provided by regulation 12(5)(a), HS2 Ltd has a duty to confirm or deny whether or not information, if held, would be disclosed.
24. Finally, where the complainant asks for the Chairman of HS2 Ltd to 'admit that changes are not improvements', the Commissioner finds that the public authority, as outlined in paragraph 20, is under no obligation to respond.

Other matters

25. HS2 Ltd, in failing to identify the request as a valid request under the EIR, breached regulation 5(2) when it failed to make information available within 20 working days.

Right of appeal

26. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. 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
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**