

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

Decision notice

Date: 6 July 2017

Public Authority: High Speed Two Limited
Address: One Canada Square
London
E14 5AB

Decision (including any steps ordered)

1. The complainant has requested maps, reports and documents relating to the refined Meadowhall route for Phase 2b of HS2. High Speed Two Limited (HS2) sought to rely on the exception at Regulation 12(4)(d) of the EIR to refuse the request.
2. The Commissioner's decision is that the information relates to material still in the course of completion and the regulation 12(4)(d) exception is engaged and the public interest favours withholding the information. The Commissioner does not require HS2 to take any steps.

Request and response

3. On 19 December 2016, the complainant wrote to HS2 and requested information in the following terms:
"1) A copy of any maps, reports or other documents which show the refined Meadowhall route for Phase 2b which was completed after public consultation about the original Meadowhall route in 2013/14."
4. HS2 responded on 13 January 2017. It stated that it had treated the request as a request for environmental information under the EIR and confirmed that it held information within the scope of the request. However, HS2 refused the request on the basis of regulation 12(4)(d) – that information was still in the course of completion and was unfinished.

5. Following an internal review HS2 wrote to the complainant on 10 February 2017 maintaining its position that any information held was excepted from disclosure by virtue of regulation 12(4)(d) of the EIR.

Scope of the case

6. The complainant contacted the Commissioner on 14 February 2017 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of her investigation to be to determine if HS2 has correctly withheld information within the scope of the request under the regulation 12(4)(d) exception.

Reasons for decision

8. Regulation 12(4)(d) of the EIR states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
9. The exception sets out three distinct categories and the information must fall within one of these for the exception to be engaged. The first category is that the information relates to material which is in the course of completion. The 'material' in question may be a final policy document that is to be produced later, therefore although the requested information may be contained in a document which is in itself complete, if that document is intended to inform a policy process that is still ongoing, the information may engage the exception.
10. The interpretation of unfinished documents is more simple in that a document will be unfinished if the public authority is still working on it at the time the request is received. Furthermore, a draft version of a document will remain an unfinished document even once a final, finished version of that document has been produced.
11. Finally, incomplete data is data that a public authority is still collecting at the time of the request.
12. HS2 argues that the information it holds is material still in the course of completion because the policy for the new route in the area is still being developed and in making this argument it has explained some of the background to the issue.
13. HS2 states that the information relates to the refined route design for Phase 2b of the HS2 route from West Midlands to Leeds and the policy

on the HS2 route in South Yorkshire is on-going and no final decision has been made. The HS2 route via Sheffield Meadowhall was the subject of a public consultation on the Phase Two route which was held in 2013/14. Following the consultation, HS2 developed and refined the entire Phase Two route in response to the issues identified during the consultation process. This development work included a number of refinements to the route serving Meadowhall and the requested information (maps and documents) relate to this refined route via Meadowhall.

14. In November 2016 the Secretary of State for Transport announced he was minded to move the alignment of the route from the Meadowhall route to a different route in South and West Yorkshire. The route alignment, known as M18/Eastern route, would no longer serve Meadowhall but would instead follow the M1 and the M18 transport corridors with a spur connecting the HS2 mainline with the existing network. The Government held a public consultation on its preferred Phase 2b route refinements including the M18/Eastern route and this consultation closed on 9 March 2017. The Secretary of State is considering the outcome of the consultation and will make a decision on the seven refinements from the 2013 consultation route that have been consulted on.
15. HS2 has explained that the refined Meadowhall route was not the subject of the recent consultation because the preferred route announced in November 2016 was the M18/Eastern route. At the time of the request the information on the refined Meadowhall route was unfinished as it was no longer under consideration by the Government.
16. HS2 argues that all of the information it holds on the refined Meadowhall route is material that is still in the course of completion as the proposals were still at the idea stage and the refined route was not part of the proposals for the preferred Phase 2b route that was subject to public consultation. At the time of the request, and still to date, the policy for the route has not been finalised and information on the refined Meadowhall route forms part of the advice that is currently being considered by the Government before the final decision is made.
17. As the refined Meadowhall route was not part of the public consultation this could indicate that the information is not part of the ongoing policy process. However, the Commissioner considers this change in intention by the Government, with different refined routes being preferred, indicates the fluid nature of the early stages of the planning and development process for major new programmes such as the HS2 Phase 2b route.

18. It is clear that the Phase 2b planning process and the policy development is still ongoing. The refined Meadowhall route is not the preferred option for the Government; however information on the refinements to this route is being used to inform ongoing work, including the most recent consultation and the final decision. Until this process has concluded the Commissioner is satisfied that information on refined routes or options developed as part of the Phase 2b planning process will relate to material which is still in the course of completion.
19. Therefore the Commissioner is satisfied that the exception provided by regulation 12(4)(d) is engaged.
20. However regulation 12(4)(d) is subject to the public interest test as set out in regulation 12(1)(b). This means that even though the exception is engaged, the information can only be withheld if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure. In simple terms this involves considering whether disclosing the information on the refined Meadowhall route would be harmful in some way and, if so, balancing that harm against the value to the public in making the information available.

Public interest arguments in favour of disclosure

21. In favour of disclosure, HS2 has recognised the general public interest in disclosing environmental information. That disclosure would serve the public interest by increasing accountability, leading to greater public awareness and promote more effective participation in public debate of the issue.
22. Specifically in relation to the information in question; HS2 recognises that disclosure would facilitate public understanding of an important public project and would ensure that HS2 remains accountable to the public in respect of its decision making.
23. The complainant argues that as the revised Meadowhall route is being used as part of the live consultation to provide comparisons with the current Phase 2b consultation and the preferred M18/Eastern route the information should be disclosed to allow for the public to engage with the consultation with full knowledge of all the information that is feeding into the decision.

Public interest arguments in favour of maintaining the exception

24. HS2 argues that there is a public interest in ensuring that public officials have a 'safe space' to work candidly and freely without being concerned that information could be released in a form where it is potentially misleading. HS2 is of the view that disclosing all of the advice being

considered would inhibit the public authority's safe space to consider the information, deliberate on issues and reach decisions.

25. With specific regard to the information in question; HS2 considers that disclosing this information would be likely to lead to misinterpretation or would mislead the public into thinking a final decision has been made. This would carry a risk of unnecessarily blighting areas along the refined Meadowhall route where property owners and communities have not previously been or are not currently affected by the proposals for the Phase 2b route. If maps and information were released showing a route option in an area that is not currently being considered before the final decision is made it would be likely to have negative implications for residents and property owners living along or near the refined route, potentially affecting property prices.
26. HS2 has stated that information, including maps showing the refined Meadowhall route will be published when the Secretary of State makes a decision on the Phase 2b route but it would not be in the public interest to release information prior to the decision being announced. As the decision making and implementation process is still 'live' disclosure of information on the refined Meadowhall route would result in fruitless public debate and interrogation of officials on unadopted positions and abandoned arguments. This would be likely to make it more difficult to bring the decision process to a proper conclusion in a timely manner.
27. HS2 argues that this is a very high profile project that is subject to a high level of public and media scrutiny. It accepts that it can contextualise information on routes that are not currently under consideration but it could not do this with any confidence that this would be sufficient to correct any misleading impressions or confusion that would be created within the local community if the information were to be released and used in the national debate surrounding HS2.

Balance of the public interest arguments

28. The Commissioner has considered HS2's arguments for withholding the information. She accepts the principle that there is often a value in a public authority being able to develop a project in private. In order to explore all available options it may be necessary to look at many alternatives, some of which may be radical or impractical and be dismissed as other information is gathered or other options proposed. Nevertheless it is necessary to explore these options in order to ensure the final plans represent the best way forward. To make information on early options public could hinder proper consideration of later options and the full array of options. It is reasonable to allow a public authority time to develop its thinking to a stage where its proposals are more firm and dependable before it is placed in front of the public for scrutiny.

29. However, it is somewhat more difficult to sustain an argument that HS2 is entitled to safe space to develop its options when they have, to some extent, invited the public in to that safe space through the consultation exercises. That being said, the Commissioner accepts the purpose of the consultation was to seek views on the seven proposed changes or refinements to the HS2 route from Crewe to Manchester and West Midlands to Leeds, rather than the details of the options which have been used as a comparator to develop the new refinements to the route.
30. The Commissioner does recognise that the HS2 expansion is very high profile and its development and eventual finalised route has the potential to impact on many people. Therefore if information on all refined routes and proposed options, even those no longer in contention but used as a comparator, had been released at the time of the request i.e. when the consultation was ongoing, it is reasonable to expect that it would have been scrutinised and widely reported. This would have refocused the attention of some respondents from the route refinements currently open for comment, potentially undermining the objectives of the consultation. Further to this, any debate on the route refinements should be based on the information presented that is currently relevant not on information which is no longer viable as plans have evolved. The Commissioner therefore accepts that disclosing the refined Meadowhall information at the time of the request would distract the public debate. To a lesser extent, she also accepts the need to respond to any enquiries generated by disclosing this information would also distract resources from the policy development process.
31. HS2 has also argued that disclosing the refined Meadowhall route information would be misleading and cause confusion and an inaccurate impression of the Government's plans. HS2 has suggested that this could impact on residents in areas that would have been affected by the route, affecting property prices. However, it appears to be widely known that the Government's preferred option is the M1/Eastern route so it is not clear how disclosing information on the Meadowhall route when it is not the Government's preferred option would have the impact described by HS2.
32. There will always be some weight given to the value in disclosing environmental information to promote transparency and accountability, and to lead to greater public awareness of environmental matters. In this particular case the added public interest relates to whether the requested information would further the public debate on the issues raised by the consultation exercise and therefore promote public participation in environmental decision making.
33. The Commissioner has viewed the withheld information and the consultation exercise that was ongoing at the time of the request. The

consultation centres on the seven proposed route refinements and asks for views on these. The withheld information relating to the proposed Meadowhall route shows how this refined route was developed and compares and contrasts it with other options to help determine the most cost effective, environmentally sound, efficient and least disruptive option for the Government to choose going forwards. Therefore the Commissioner is satisfied there is information within that which is being withheld that has some relevance to the consultation exercise.

34. Whilst the Commissioner acknowledges there is a public interest in the disclosure of any information on this subject given it is of high interest to a large number of people who may be affected by the final decision, she considers this is somewhat mitigated by the fact that the Meadowhall route is not the Government's preferred option and its relevance to the decision is only in that it is used as a comparator for the developing options. It is questionable therefore how much disclosing this information would truly contribute to the debate and assist in informing those who want to contribute to consultations.
35. Balanced against any public interest in disclosure is the risk that disclosing the information at the time of the request would have disrupted the consultation exercise and hindered HS2's ability to obtain the public's views on the proposed refinements and not on other refinements no longer being considered. The Commissioner therefore finds that the public interest in favour of maintaining the exception outweighs that in its disclosure.
36. HS2 are entitled to rely on regulation 12((4)(d) to refuse the request. The Commissioner does not require the public authority to take any further action.

Right of appeal

37. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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

Jill Hulley
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