

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2019

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

Decision (including any steps ordered)

1. The complainant has requested information relating to contracts awarded to PR, marketing and lobbying agencies/companies. HS2 provided the complainant with some information but confirmed that no further information was held under section 1(1)(a) FOIA.
2. The Commissioner considers that no further information is held by HS2 other than that which has been provided to the complainant under section 1(1)(a) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 7 September 2018 the complainant made the following request for information under the FOIA for:

“Please provide the details of all contracts awarded to PR, marketing and lobbying agencies/companies. This includes any agencies or contractors hired to produce illustrations, animations or other visual or audiovisual materials which do not have a specific design function.

These details should include as a minimum the value of the contract and the party to who it has been awarded.

Please also provide a list of all PR expenditures which have been approved by the DfT and/or the Cabinet Office.”

5. HS2 responded on 8 October 2018 and provided some information within the scope of the request but refused to provide the remainder. HS2 cited that the reason for this was that there were no contracts awarded to PR/Lobbying firms by HS2 Ltd.
6. HS2 provided an internal review on 22 November 2018 in which it maintained its original position. HS2 stated that a "thorough search" had been undertaken to find the information on the database management system where contracts awarded are recorded and it advised the complainant that the information found had been provided. HS2 further explained that no information is held on whether the companies are considered a PR, Lobbying or Marketing firm outside of the scope of the services contracted for HS2. Finally, it provided additional information about the services provided by the companies awarded contracts.

Scope of the case

7. The complainant contacted the Commissioner on 3 January 2019 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether HS2 was correct to confirm that no further information was held in this case under section 1(1)(a) FOIA other than that which was provided to the complainant.

Reasons for decision

9. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request". Section 1(1)(b) of FOIA states that, "If that is the case, to have that information communicated to him".
10. HS2 said that its response of 8 October 2018 stated clearly that no firms undertake or have undertaken PR or lobbying on behalf of HS2. That response then gave a list of 20 contracts awarded by HS2 for marketing. It went on that upon review the original decision was upheld. However, that response provided a description of the services provided in relation to the contracts that had already been provided. The response to internal review clearly explained that HS2 hold data on the

services provided with respect to contracts and does not hold a definition of the firms that are awarded those contracts. It reiterated that no firms undertake or have undertaken PR work for HS2.

11. HS2 confirmed to the Commissioner that it did not refuse to provide any information in relation to this request. It said that the response and the response to internal review both provided information held by HS2 that is relevant to this request.
12. It went on that the information held by HS2 is the name of company, and value and nature of contract awarded to undertake marketing activities on behalf of HS2.
13. HS2 reiterated that the response to internal review clearly stated that HS2 does not hold information on the nature of those companies and HS2 has no use for, or interest in, the definition of the company or what type of work it undertakes outside of the services that it provides to HS2.
14. As HS2 does not hold a definition of the type of business each company undertakes it is under no obligation to provide this information. In order to assist the requester it provided data that was held that was relevant to the request, which is information on the services provided to HS2.
15. Subsequently the requester has stated that whether a company is a PR or Marketing firm is 'a matter of public record' and it is therefore irrelevant whether HS2 holds the information or not. However, as a definition is not held by HS2, in order to find out if any company is deemed to be a PR or marketing firm, would require HS2 to undertake a search of the Internet to find a definition of each firm awarded a contract by HS2. This would, in effect, be creating information which is not required under the terms of the FOIA. HS2 noted the ICO guidance on 'Determining whether information is held' which states "Information that is available to a public authority online will only be held by that public authority if it has downloaded, or printed it off". In this case HS2 has not downloaded or printed any such descriptions of these companies.
16. In terms of searches undertaken to locate relevant information falling within the scope of this request, as stated above the searches did provide information relevant to the request and this was provided to the requester. It said that a search of its Electronic Document Management System was undertaken and relevant records were extracted. These were then examined to verify that they did refer to marketing activity. HS2 confirmed that information would be held in electronic records, and

so appropriate searches were undertaken and information located was provided.

17. HS2 said that it is not possible to say what information may have been held at any time relevant to this request but deleted. The control arrangement around records retention is set out in its Record Retention, Archiving/Retrieval and Disposal Procedure. This states that all records not held within HS2's Electronic Document Management System shall be kept for the period of time set out within the Records Retention Schedule. This schedule breaks financial records into the following groups:

Budgets

Internal Management/financial reports

Statutory returns

Audit reports

Taxation

Bank statement, transaction

Invoices received and sent

Payroll

Annual and Interim Report and accounts (signed copy)

All these are required to be held for a period of 7 years

18. HS2 said that if there were some relevant data which had been deleted it is possible that invoices may have been retained locally in the relevant business area. However it said that whilst there is a remote possibility that some relevant data made be held somewhere within the organisation, this is unlikely. It reiterated that the department most likely to hold relevant data (Corporate Affairs) were fully involved in the search for the data and so it is likely that if any hardcopy data were held it would have been discovered. It therefore concluded that it has conducted a reasonable and thorough search for the requested information.
19. In this case the Commissioner is satisfied that HS2 has provided the information that is held which is relevant to this request. This information is the name of the company, and the value and nature of contract awarded to undertake marketing activities on behalf of HS2. The Commissioner is also satisfied that HS2 does not hold a definition of

companies and it is not obligated under FOIA to create information using 'public records' to respond to the request. HS2 has said that if some relevant data (not held on its Electronic Document Management System) had been deleted, invoices may have been retained by the relevant business area. However given the fact that HS2 has confirmed that it does not record the definition or nature of a company any such invoices would be unlikely to provide such information.

20. Based upon HS2's submissions the Commissioner is satisfied that on the balance of probabilities, that no further information is held under section 1(1)(a) FOIA.

Right of appeal

21. 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

22. 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.
23. 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.....

Gemma Garvey
Senior Case Officer

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Wycliffe House
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Wilmslow
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SK9 5AF