

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 6 April 2021

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information from High Speed Two (HS2) Limited ("HS2") about properties it had purchased since its inception. HS2 initially considered the request under the Freedom of Information Act 2000 (FOIA). It disclosed some randomised information, but said that it could not provide the information as requested (in the form of a spreadsheet with full address details and accompanying prices) since this would be exempt under section 31(1)(a) – law enforcement (Prevention of crime) and/or section 40(2) – personal information.
2. After reconsidering the request under the EIR, HS2 continued to withhold the information, relying on the exceptions at regulation 12(5)(a) – adversely affect public safety, regulation 12(5)(b) – adversely affect the course of justice, and/or regulation 13 – personal data.
3. The Commissioner's decision is that the exception at regulation 12(5)(a) is engaged, and that the balance of the public interest favours maintaining the exception.
4. The Commissioner does not require HS2 to take any steps.

#### **Request and response**

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5. On 21 January 2020, the complainant wrote to HS2 and requested information in the following terms:

*"Under the Freedom of Information Act I am requesting a full list with dates, addresses, post codes and amounts of all properties purchased via HS2 since inception to 31/12/2019. I need this data listed in excel format as has been supplied by you on three previous annual occasions".*

6. HS2 responded on 17 February 2020. It provided two lists. The first was a list of *"individual prices paid in ascending order"*, without any identifying information for any of the properties, but which it said comprised all amounts paid for all properties acquired by 'statutory blight'. The second list had two columns headed *"partial postcode"* and *"purchase year"*. It showed the first part of each property's postcode together with the year of purchase, in chronological order by year (eg *CV8 - 2011*).
7. HS2 stated that it could not provide the requested information in full, since this would identify individual properties and *"would prejudice the prevention of crime by facilitating the possibility of a criminal offence being carried out"*. It also considered that providing the full addresses of each property, linked with the price paid, was third party personal data and could not lawfully be disclosed. HS2 stated that it was therefore relying on the FOIA exemptions at section 31(1)(a) – law enforcement (prevention of crime), and section 40(2) – personal information – to withhold the requested information.
8. Following an internal review, HS2 wrote to the complainant on 17 April 2020. It maintained its position.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 15 May 2020 to complain about the way his request for information had been handled.
10. The Commissioner corresponded with HS2 about the request and explained that, in her view, the information was likely to comprise information "on" measures and activities affecting, or likely to affect, the environment, and therefore to fall within the definition of environmental information at regulation 2(1)(c) of the EIR. HS2 agreed to consider the request under the EIR.
11. On 17 November 2020, HS2 issued a revised response to the complainant. It provided the same two lists as before. HS2's position was that the information, in the requested format, was exempt from disclosure under the following exceptions of the EIR:
  - regulation 12(5)(a) – adversely affect public safety,

- regulation 12(5)(b) – adversely affect the course of justice, and/or
  - regulation 13 – personal data.
12. On 8 January 2021, HS2 provided the outcome of an internal review to the complainant and also responded to the Commissioner, who had raised some investigative questions. It maintained its position.
13. This notice considers whether HS2 correctly withheld the requested information under regulation 12(5)(a) of the EIR. If necessary, the Commissioner will also consider the application of regulations 12(5)(b) and regulation 13.

## Reasons for decision

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### **Regulation 12(5)(a) – adversely affect international relations, defence, national security or public safety**

14. Regulation 12(5)(a) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety. In this case, HS2 considers there would be an adverse effect on public safety.
15. It is a qualified exception, meaning that even if the exception is engaged, the information should only be withheld if the balance of the public interest favours maintaining the exception.

#### **Is the exception engaged?**

16. HS2 has provided details of why it considered there would be an adverse effect on public safety resulting from the disclosure of the information.
17. It has explained to the Commissioner that it considers that there is an increased risk of harm to the individuals residing at the properties acquired by HS2. It also considers there is an increased risk of harm to those individuals who maintain, improve or manage the properties.
18. It stated: *"Release of the information would lead to these addresses potentially being the target of violent and intimidatory behaviour by those opposed to HS2 Ltd, who are already targeting individuals and endangering public safety."*
19. HS2 has provided examples, in confidence to the Commissioner, of incidents when tenants and other individuals at its properties have been targeted by anti-HS2 protestors, and experienced suspicious and intimidating behaviour. HS2 has also provided examples to the

Commissioner of damage to some properties (both occupied and vacant) and trespass. These were also provided in confidence.

20. As well as providing evidence to the Commissioner, HS2 wrote to the complainant outlining the damage that it envisaged, including the targeting of properties for various criminal activities.
21. In its view, the evidence provided to the Commissioner shows "*a direct link between the addresses being known as associated with HS2 and acts of intimidation and violence*".
22. HS2 has also drawn the Commissioner's attention to websites on which anti-HS2 protestors encourage the public to make direct contact with persons connected with HS2; in HS2's view, it considers the behaviour being encouraged would amount to intimidation, and could be extended to individuals at its properties.
23. In HS2's view, disclosure of the requested information in this case would lead to an increased risk of harm.
24. Although it acknowledges that some information about which properties are owned by HS2 is already in the public domain, in various ways (including registers of title at the Land Registry, information on other property websites, and knowledge amongst local communities), it has argued that publication of the requested information would increase the likelihood of its properties being identified and targeted. It considers that publishing a list that places each property's address alongside its purchase price and the date of purchase would make it easier for individuals, and properties, to be targeted. It therefore considers that the risk would be increased by the disclosure of the information.
25. In support of this, HS2 has cited the similarity between the exception at regulation 12(5)(a) of the EIR and the exemption at section 38(1) of the FOIA – Health and Safety. Specifically, HS2 has drawn a parallel with the case of *PETA v Information Commissioner and University of Oxford (EA/2009/0076)*, in which the First-tier Tribunal considered the application of section 38(1) of the FOIA.
26. In that case, as is explained in the Commissioner's guidance on Information in the Public Domain<sup>1</sup>, the Tribunal considered that although some of the requested information was already in the public domain, it

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

was not easy to find and collate. It considered that publication of the requested information, in the particular context of the request in that case, would place individuals "*in the firing line*" more directly than was otherwise the case.

27. HS2 has argued that this is relevant in this case: it considers that publishing a single list of all HS2-acquired properties, with full addresses and purchase prices, would facilitate the targeting of HS2 properties "*and may, in some cases, be used to encourage such behaviour*". Indeed, HS2 has speculated that its previous disclosure of similar information may have led to some of the incidents which it has recorded, since these took place subsequent to previous disclosures.
28. The Commissioner has considered whether HS2 has demonstrated that there would be an adverse effect on public safety, from the disclosure of the information.
29. The Commissioner notes that HS2 considered that the increased risk of damage to buildings and the surrounding areas (rather than to individuals), which it envisaged, likely fell to be considered under the exception at regulation 12(5)(b) – adversely affect the course of justice – rather than under regulation 12(5)(a). In relation to regulation 12(5)(a), it only presented arguments about the increased threat that it envisaged to individuals.
30. However, having considered her guidance<sup>2</sup> on regulation 12(5)(a), the Commissioner considers that the likelihood of damage to property in ways such as trespass, potential theft and damage to windows, etc, falls within 'public safety' and can therefore be considered in the context of regulation 12(5)(a). The guidance makes clear that the exception can be used to protect the public as a whole, and can relate to potentially targeted sites, as well as to individuals.
31. In this case, therefore, having considered the evidence put forward by HS2, the Commissioner has taken into account the envisaged damage to buildings and surrounding areas, as well as harm to individuals, in her considerations of regulation 12(5)(a).
32. The Commissioner is satisfied that an increased risk of harm to individuals and properties, as is envisaged, would constitute an 'adverse

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1633/eir\\_international\\_relations\\_defence\\_national\\_security\\_public\\_safety.pdf](https://ico.org.uk/media/for-organisations/documents/1633/eir_international_relations_defence_national_security_public_safety.pdf)

effect'. She is also satisfied that there is a causal link between the disclosure of the requested information and this adverse effect. That is, in her view, it is the disclosure of the requested information that would increase the risk.

33. To engage the exception, as with the other 'adverse effect' exceptions under the EIR, it is not enough to show that disclosure could or might have an adverse effect. Following her guidance, the Commissioner needs to be persuaded that the adverse effect would be more probable than not to occur.
34. The Commissioner is satisfied that the evidence provided by HS2 shows that incidents of harm at its properties were increasing during the period leading up to the request for information. She considers it to be a reasonable conclusion that there would be an increased risk of such incidents occurring if the property details were published in the requested manner.
35. She also agrees that there are similar considerations relevant to regulation 12(5)(a) of the EIR and section 38(1) of the FOIA (Health and Safety). With regard to some information already being in the public domain in this case, but not easy to collate, she agrees that the *PETA* case is relevant.
36. She is satisfied that HS2 has demonstrated that disclosure of the requested information 'would' have an adverse effect, and is satisfied that the exception is engaged.
37. Since this is a qualified exception, she has gone on to consider the balance of the public interest.

### **The balance of the public interest**

38. As previously stated, regulation 12(5)(a) is a qualified exception. It is, therefore, subject to the public interest test at regulation 12(1)(b) of the EIR, which states that 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.
39. In addition, regulation 12(2) of the EIR specifically states that a public authority shall apply a presumption in favour of disclosure, and the Commissioner has included this in her deliberations.

#### *HS2's view*

40. HS2 has acknowledged that there is a public interest in accountability and transparency regarding the way in which it conducts its business. Specifically, it acknowledged that there is a public interest in "*disclosure*

*of information which contributes to the development of public debate, and facilitates public understanding of an important public project and matters of public concern. In this case releasing information would provide greater transparency and accountability around the expenditure of public money."*

41. However, it has explained that it considers this is outweighed by what it perceives to be a "*substantial increased risk to public safety*". It explained: "*releasing the addresses increases the risk of those addresses being the focus of protests, and intimidatory and violent behaviour, thereby increasing the risk of injuries to the public*".
42. HS2 considers that by providing some of the requested information in a randomised format – it has disclosed a list of all property purchase prices, and a separate list of partial postcodes together with the year of purchase, to the requester, as previously described in this notice – it has met the public interest in transparency as regards this aspect of the HS2 project, including the money spent.
43. It considers that, when weighed against the increased risk of public harm, it would not be in the public interest to disclose the information in the specific format requested, with all requested details.
44. HS2 has acknowledged that it had previously disclosed a detailed list of properties and prices, and that this request is essentially for an updated version. However, it considers that any request for information under the FOIA or EIR needs to be considered on its own merits, and the response needs to take into account the circumstances at the date of the request. In this case, the increasing number of incidents of harm at its properties led it to conclude that disclosure would not be in the public interest at the relevant time.
45. HS2 stated that it is aware that the public should have trust and confidence in HS2. However, in its view, this extends to the public being able to trust that it will protect them from harm. In HS2's view, the balance of the public interest lies in the exception being maintained.

*The complainant's view*

46. The complainant considers that the information should be disclosed. He disputes that HS2-owned properties are at any greater risk of damage than other properties, whether it be from squatters or vandals. With regard to squatters, he argues that the requested information would not identify which properties were empty, and, in any event, HS2 employ management companies to "*visit the empty properties to ensure nothing un-toward is going on and manage the grounds*".



47. He has pointed out that local communities are already aware of which properties have been acquired by HS2. He has explained that HS2 uses a specific agent in each area to manage its properties, the identity of which would also be known locally. He has also referred to the information that is already in the public domain, via the Land Registry and other property websites.
48. Although the complainant was provided with two randomised lists in response to his request on this occasion, he has explained that he "*cannot tabulate values to properties to areas*", as it was possible to do previously.
49. He has argued that, when the information was disclosed previously, the level of detail enabled constituency MPs, parish and county councillors and indeed STOPHS2.org to "*work with local communities to ensure that the full extent of HS2 ownership and disruption to local life can be monitored*".
50. He has explained that the information allowed "*public representatives to engage and intervene to assist other householders being held to ransom by HS2 in property valuations going forward.*" He states that it also allowed the relevant councils to contact "*new rental residents*" about council, and other, matters. In the event that properties were not being properly maintained, local representatives knew who to contact.
51. Regarding the cost of acquiring the properties, he has argued that the requested information would make it possible to see how much HS2 has invested "*at a micro local level*".
52. The complainant has explained that that the information disclosed previously was of interest to national media outlets, and was supplied to the Speaker of the House of Commons prior to meetings with HS2 and the Ministry of Transport, and to the Select Committee on HS2.
53. The complainant's position is that there is a lack of transparency on the part of HS2, which he sees as an attempt to deny public and parliamentary scrutiny. He states that "*the public have a right to know the details of where, when and on what public funds are being expended. They have the right to be able to check whether any corrupted influences have been used in property dealings.*"

### **The Commissioner's decision**

54. The Commissioner has considered the balance of the public interest, and has also taken into account the presumption of the disclosure of environmental information, under regulation 12(2).



55. In cases such as this one, where she has accepted that disclosure would have an adverse effect on public safety (in which there is clearly an inherent public interest), the Commissioner will consider the severity of the adverse effect, and whether there is a compelling public interest in the withheld information being published.
56. In finding the exception to be engaged, the Commissioner has already accepted in this case that disclosure would have an adverse effect on public safety: that is, that there would be an increased risk of harm occurring in or around HS2's properties. She is aware that the complainant is not privy to the evidence of incidents of harm, including incidents which took place after HS2 disclosed this type of information previously, and it is understandable that he therefore considers some of HS2's arguments to be somewhat "*spurious and fanciful*". However, the Commissioner has been persuaded that disclosing the information at the date of the request, in the requested manner and with the requested level of detail, would increase the risk of harm to the public. She considers this to be a real and significant risk.
57. In favour of disclosure, she is aware that the HS2 railway is a high profile, high impact project which continues to attract widespread attention. It has proved to be a very expensive project and has many critics, not least for the impact it has had on the British countryside. She is aware that there is a high level of interest in HS2's activities.
58. The Commissioner considers that, in the face of so much attention and criticism, some of which comes from MPs, and in light of the very high cost of the project, there is a need for HS2 to seek to be as transparent and accountable as possible.
59. However, in this case, she considers that the two lists provided to the complainant do go some way towards HS2 meeting these obligations. It is possible from the lists to learn exactly what has been spent, as well as (separately) the number of properties acquired and in which wider postcode area.
60. The Commissioner acknowledges that there is some interest in being able to extract more information than it is possible to do from the lists. She notes that it is not possible, from the lists, to link the price of each property with any geographical area, nor with any particular year. The complainant has explained that the data, in the form it has been presented, cannot be manipulated in order to extract details of activities at local level.
61. The Commissioner has also been presented with arguments that some information about the properties is already publicly available, and that, therefore, it is unnecessary to withhold the requested information.

62. She has weighed the public interest in being able to easily access the information about the acquired properties all together on one spreadsheet, and in being able to carry out more detailed analysis, against the adverse effect on public safety in this case.
63. In the circumstances of this case and taking all relevant factors into account, having viewed the withheld information, the Commissioner has determined that the adverse effect on public safety outweighs the public interest in disclosure. She does not find that there is a sufficiently compelling interest in the disclosure of the information, to overturn the exception.
64. The Commissioner has determined in this case that the balance of the public interest lies in the exception being maintained. It has not been necessary for her to consider the exceptions at regulation 12(5)(b) and regulation 13.
65. She does not require HS2 to take any steps.

## Right of appeal

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66. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

67. 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.
68. 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 .....**

**Phillip Angell  
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Wycliffe House  
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