



3rd Floor
55 Victoria Street
London SW1H 0EU
Tel: 020 7944 4908

XXX
Via email: XXX

28 January 2010

REQUEST FOR INFORMATION

FOI REQUEST FOI09/008

Dear XXX

I am writing regarding your request for information received on 29 December 2009.

In your request you asked for:

1. HS2's completed report to government (on high speed rail) under Freedom of Information legislation (the "Report").

I confirm that High Speed Two (HS2) Limited ("HS2") holds the requested information; however it is withheld under the Environmental Information Regulations 2004 ("EIR"). The information is environmental information as defined by Regulation 2(1)(c) of the EIR. The attached Annex to this letter sets out Regulation 2(1) in full.

Pursuant to the EIR, the Report is withheld under two separate exceptions from the duty to disclose, namely;

- Regulation 12(4)(b) where it would be manifestly unreasonable to disclose the requested information; and
- Regulation 12(4)(e) which covers any information contained in any internal communication of a public authority and between public authorities.

Regulation 12(4) is also set out in full in the Annex to this letter.



Regulations 12(4)(b) and 12(4)(e) are subject to the public interest test. This means that HS2, having identified the exemptions has to consider in relation to each exemption relied upon that the public interest in maintaining the exemption (and not disclosing all or any part of the Report) outweighs the public interest in disclosing the Report.

In determining the public interest, HS2 evaluated the impact of not releasing the information (including its likelihood and magnitude) against the need for public bodies to exercise their functions in a visible way. In this case, if the Report became publicly available in advance of the Government's response, it may cause unnecessary blight in respect of options identified but not taken forward. It is therefore our opinion that the public interest is to withhold the information under the identified EIR exemptions.

HS2's report on the feasibility of, and business case for, a new high speed rail line from London to the West Midlands and options for a longer term network to Scotland was submitted to the Government at the end of last year. The Report is intended to be released before the end of March 2010 alongside a response from Government.

If you are unhappy with the way we have handled your request or with the decisions made in relation to your request, you may complain by writing to HS2 at the above address. Please see attached details of HS2's complaints procedure and your right to complain to the Information Commissioner.

Please remember to quote the reference number above in any future communications.

Yours sincerely

XXX
Corporate Services

020 7944 XXXX
XXX.XXX@hs2.gsi.gov.uk



Your right to complain to HS2 Ltd and the Information Commissioner

You have the right to complain to HS2 within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF



ANNEX

Environmental Information Regulations 2004

Part I – Interpretation

2(1) In these Regulations –

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);



Part III – Exceptions from the duty to disclose environmental information

12. - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

(a) it does not hold that information when an applicant's request is received;

(b) the request for information is manifestly unreasonable;

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

(e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

(a) international relations, defence, national security or public safety;

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

(c) intellectual property rights;

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;



(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

(f) the interests of the person who provided the information where that person -

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

(6) For the purposes of paragraph (1), a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

(7) For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

(8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

(9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

(10) For the purposes of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

(11) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.