

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2021

Public Authority: High Speed Two Limited
Address: Two, Snowhill
Snow Hill
Queensway
Birmingham
B4 6GA

Decision (including any steps ordered)

1. The complainant has requested information about gift, hospitality and conflict of interest registers from High Speed Two Limited (HS2 Ltd). HS2 Ltd is relying on section 14(1) of the FOIA (vexatious request) because of the burden it considers is involved in preparing the information for release.
2. The Commissioner's decision is as follows:
 - HS2 Ltd is entitled to rely on section 14(1) of the FOIA to refuse to comply with the complainant's request of 20 September 2019 as complying with it would be a disproportionate burden to HS2 Ltd.
3. The Commissioner does not require HS2 Ltd to take any remedial steps.

Request and response

4. On 20 September 2019 the complainant made the following request for information under the FOIA for:

"Please provide any and all gift and hospitality registers, registers of interest or similar such documents that HS2 holds."

5. On 18 October 2019 HS2 Ltd responded. It relied on section 14(1) of the FOIA to refuse to comply with the request as it considered the burden of preparing the information for release would place a disproportionate burden on it.
6. On 21 October 2019 the complainant wrote to HS2 as follows:
 - "...So to simplify my request:
 1. Please provide the Gift & Hospitality Register, AND the Conflicts of Interest Register (or whatever name these documents go by), in the original format if possible, with ALL individuals' names redacted to preserve data protection.
 2. Please provide the titles of any other documents which you think are relevant to this request."
7. Further correspondence with the complainant followed, in the course of which, in correspondence dated 20 November 2019, HS2 Ltd said, first, that it did not hold a central Conflicts of Interest Register. HS2 Ltd then advised that it could not simply remove one column from the Gifts and Hospitality Registers, so that the remaining information could be released. It said this was because personal data was contained within more than one column. HS2 Ltd explained that there are 28 columns in the Hospitality Register, of which nine have at least some personal data. Consequently, each of the near 1,200 lines of data within those nine columns would need to be interrogated, and all personal data removed.
8. HS2 Ltd advised it could provide the following information from the Gifts and Hospitality Registers within the cost limit: recipient name (subject to personal data exemptions); the date on which the hospitality/gift was offered; organisation offering the hospitality/gift; type of hospitality/nature of gift offered; value of the hospitality/gift and whether the hospitality/gift was accepted or declined. Alternatively, HS2 Ltd said, it could provide the Gifts and Hospitality Registers to the complainant minus all the columns that contain personal data.
9. On 10 December 2019 the complainant submitted the following request:
 - "Thank you for your response dated 20th November. Further to that reply, please provide:
 1. "the Gifts and Hospitality registers to you minus all columns within which personal data is stored" - but also include the titles of each column you delete

2. As per my message of 21st October, "the titles of any other documents which you think are relevant to this request" - this request doesn't seem to have been answered by your reply of 20th November
3. Please confirm that HS2 Ltd does not hold a Conflicts of Interest Register, as it was my understanding that the HS2 Conflicts of Interest panel held one."
10. On 10 January 2020 HS2 Ltd responded to this request. With regard to part 3 of the above correspondence, HS2 Ltd advised that it in fact *does* hold a Conflicts of Interest Register. HS2 Ltd relied on section 14(1) of the FOIA to refuse to comply with the request ie for the three Registers. HS2 Ltd suggested what information it might be able to provide. It said it would be able to provide the complainant with the Hospitality Register and the Conflicts of Interest Register minus all columns within which personal data and/or the names of 'small' or 'micro' companies is interwoven and difficult to distinguish from non-exempt information. HS2 Ltd said that, because it is smaller, it would be able to examine the Gifts Register in its entirety.
11. On 6 March 2020 the complainant wrote to HS2 Ltd and confirmed that he would be prepared to accept: the Gifts Register in its entirety, the titles of any documents it might think relevant to "my request", the Hospitality and Conflicts of Interest Register minus all columns within which personal data was interwoven and, if absolutely necessary, minus columns within which the names of 'Small and Micro Companies' are interwoven. The complainant also asked for an internal review "of this request".
12. On 13 March 2020 HS2 Ltd advised the complainant that he could either progress a new request for the information it had suggested, or he could progress an internal review of its original response.
13. In correspondence to HS2 Ltd on 16 April 2020, the complainant discussed what he considered HS2 Ltd's review should cover. HS2 Ltd provided an internal review on 7 May 2020. It explained why it had erroneously advised the complainant in its correspondence of 20 November 2019 that it did not hold a Conflict of Interest Register and subsequently confirmed that it did. The complainant is not satisfied that HS2 Ltd made this contradictory claim. However, the Commissioner considers that HS2 Ltd's explanation was satisfactory and does not intend to consider that matter further. The purpose of an internal review is for a public authority to reconsider its response to a request and to revise and clarify its position as appropriate, as HS2 Ltd did in this case.

14. In its review response, HS2 Ltd maintained its reliance on section 14(1) as it considered the burden on its resources caused by redacting information exempt from disclosure under sections 31 and 40 of the FOIA would be disproportionate. HS2 Ltd again advised the complainant on what relevant information it could provide.

Scope of the case

15. The complainant contacted the Commissioner on 17 March 2020 to complain about the way his request for information had been handled.
16. The Commissioner corresponded with the complainant about the scope of his complaint and he confirmed that his focus was on HS2 Ltd's response to his original request of 20 September 2019. This is because, as well as other two Registers covered by the request, the complainant is still seeking a copy of the Conflict of Interest Register. In its 18 October 2019 response HS2 Ltd had relied on section 14(1) of the FOIA to refuse to comply with that request. HS2 Ltd's further responses of 10 January 2020 and 7 May 2020 confirmed its reliance on section 14(1) in respect of the three Registers.
17. The focus of the Commissioner's investigation will therefore be on whether HS2 Ltd can rely on section 14(1) of the FOIA to refuse to comply with the complainant's request of 20 September 2019, which catches the three Registers that HS2 Ltd holds.

Reasons for decision

Section 14– vexatious and repeat requests

18. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
19. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations

- Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
20. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
21. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
22. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
23. In its submission, HS2 Ltd has confirmed that it holds information within the scope of the complainant's request, namely a Conflicts of Interest Register, a Hospitality Register and a Gifts Register. HS2 Ltd has provided this information to the Commissioner. It is held in Excel spreadsheets.
24. The Commissioner's published guidance on section 14(1) states that an authority is most likely to have a viable case to apply section 14(1) where:
- the requester has asked for a substantial volume of information AND
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO AND
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

The Commissioner has considered each of these in turn.

The requester has asked for a substantial volume of information

25. HS2 Ltd has noted that the Conflicts of Interest Register held at the time of the request contains 41 columns and 1,842 rows. The Hospitality Register has 28 columns (although three are blank) and 1,476 rows. The Gifts Register is much smaller and consists of 14 columns and 30 rows.

Discounting the three blank rows in the Hospitality Register, the request covers 267,840 cells of information.

The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO

26. HS2 Ltd says that each of these cells would need to be examined in order to determine whether any of the following exemptions were applicable to any of the information in each Register document:

- Section 40(2): personal information
- Section 31(1) law enforcement

HS2 Ltd considers other exemptions may apply to the information but without a full examination of each Register it is not possible to say.

27. With regard to section 40(2) HS2 Ltd says that by their very nature, these Registers contain personal data of both individuals who work for HS2 Ltd and individuals who work for other organisations. In at least one entry, the information captured by the request may concern an individual in a personal, rather than a professional, context.

28. The Commissioner has reviewed the information in scope of the request, and she agrees that some of it appears to be the personal data of third persons which is potentially exempt information.

29. Regarding the exemption under section 31(1), HS2 Ltd has explained to the Commissioner that the Registers contain the names of companies and organisations that are in some way associated with HS2 Ltd. It says there have been a number of instances of intimidation and violent behaviour directed towards individuals and companies because of their links to HS2 Ltd. Examples of the targeting of companies associated with HS2 include:

- Direct action onsite – protestors visiting a business to directly intimidate it
- Direct action over the internet – a coordinated campaign of calling and emailing a business to intimidate it
- Doxing – publishing data on the internet that identifies a business and people involved that allows others to identify them as individuals, plus other data that could be used to target, eg vehicles, phone numbers etc

30. HS2 Ltd says that in each instance it would need to judge whether releasing the name of the individual or organisation would lead to them

being targeted for criminal behaviour. It has noted (albeit with respect to Section 38 of the FOIA) that the Tribunal in *PETA v Information Commissioner and University of Oxford* concluded that disclosure through a FOI response was likely to increase the risk individuals would be targeted. "...disclosure in this atmosphere both raised their profile, placed them in a new context... and consequently put them into a context of a suggested target. To use a colloquialism this was placing them in the cross hairs." (paragraph 49 EA/2009/0076).

31. The Commissioner considers that HS2 Ltd's concerns about this information are valid. Again, she has reviewed the information. She may not be quite persuaded at this point that section 31(1) could be applied to certain information but, as in the *PETA v Information Commission and University of Oxford* case HS2 Ltd, there may be a case that section 38 could be applied, or another exemption – because of the concerns that HS2 Ltd has.
32. In correspondence to the Commissioner the complainant has argued why HS2 Ltd cannot rely on the exemptions it has indicated would apply to some of the information he has requested. However, at this stage, the Commissioner is not considering whether HS2 Ltd correctly applied particular exemptions to any information it has redacted. She is considering whether HS2 Ltd's position that it would need to redact some information before disclosing the remainder is credible, and the Commissioner finds that it is.

Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material

33. HS2 Ltd acknowledges in its submission that exempt information is contained only in particular columns of the spreadsheets. However, it notes is "not permissible to blanket exempt" parts of the information ie it is not permissible to simply redact these columns in their entirety. HS2 Ltd says it is required to review each cell and only redact material that is exempt.
34. HS2 Ltd goes on to explain that information is not easy to isolate. For example column B of the Conflict of Interest Register ('Description of Conflict') has been populated with 'free text' which often names individuals and companies without necessarily describing the conflict. The potential conflict /perceived conflict being declared in the Register may be due to the job of a partner or family member of an employee. This may therefore involve the personal data of both the employee and their family member. HS2 Ltd's initial examination of this column has indicated that some of these entries are simply 'cut and pasted' emails.

35. Again, within the Hospitality Register, the 'Hospitality Description' column contains free text with the names of individuals and companies contained within the entries. As above, this column contains text directly lifted from emails.
36. Finally, HS2 Ltd has discussed the burden that identifying and redacting exempt information would cause to it and why this is disproportionate to the request's value.
37. HS2 Ltd says that the request captures a substantial amount of information that would need to be examined to understand whether it was suitable for release. In particular with respect to personal data and information that could lead to organisations becoming the target of criminal behaviour.
38. This information is spread throughout the documents, and in particular in a number of columns that contain descriptive free text. The information is not easily identified within these particular cells and therefore preparing the document for release would place a significant burden on HS2 Ltd.
39. HS2 Ltd has estimated that it would require a minimum of two minutes to examine, identify and redact harmful material in each row. As there are 3,348 rows, it would therefore take a minimum of 111 hours to comply with the request.
40. HS2 Ltd says it recognises that there is a public interest in openness and transparency and that this is especially relevant in this case. Releasing the information would reassure the public about HS2 Ltd's propriety and show the public that HS2 Ltd deals appropriately with gifts, hospitality and conflicts of interest. But HS2 Ltd goes on to say that as a publicly funded organisation it is important that it exercises tight control of expenditure and resources. It considers that it is in the public interest that all HS2 Ltd funding is appropriately managed.
41. To prepare the Register documents for release, in the form requested, would, HS2 Ltd says, require a significant amount of time and effort. HS2 Ltd staff would have to be diverted from their core duties in order to devote time to searching for, extracting and reviewing all of the information held in relation to the request.
42. HS2 Ltd's FOI team would need to review the information to ensure that all exempt material was identified and removed. HS2 Ltd says that, given the nature of the information, it is certain that the FOI team would need to liaise with a number of individuals and business areas to make sure that the information was properly understood and that the exemptions had been applied appropriately in each case.

43. HS2 Ltd's submission has gone on to discuss the proportionality of the burden caused to it by reviewing and redacting the information in question. As noted above, HS2 Ltd has estimated that it would take at least 111 hours to prepare the information for release. HS2 Ltd says that this is far in excess of the 'appropriate limit' provided under section 12 of the Act (cost exceeds appropriate limit). Therefore the time burden involved in complying with the request would be far more than could be considered reasonable.
44. HS2 Ltd has noted that it already publishes online the HS2 Executive team's Register of Business Interests - those individuals' travel data, expenses and gifts and hospitality. It says it has already provided the complainant with the links to that published information. HS2 Ltd has also noted that it has offered a substantial amount of information to the complainant, information that it could collate without it being a significant burden.
45. HS2 Ltd has explained that, despite the headings, the columns in the requested information that need redacting do not necessarily contain information that would be informative to the public. For example, the 'Description of Conflict' column does not always describe the conflict in question and, even where it does, it does so in way that does not allow for a full understanding of the issue in question.
46. Acknowledging that the potential to mislead is not normally a consideration with a FOI release, HS2 Ltd says that in this case it needs to consider what wider public interest there would be in the information that would remain after redactions. It considers that the value of the information left after redactions to specific columns needs to be weighed against the considerable effort in redacting them.
47. Releasing the Register documents with certain columns removed would place a considerable amount of information into the public domain. This would, HS2 Ltd acknowledges, allow the public to understand how HS2 Ltd manages conflicts of interest and the gifts and hospitality received by its staff, without placing an unnecessary strain on the public purse.
48. However, HS2 Ltd says that integrity is a core principle, and its Compliance Team supports procurement and commercial activities, so that HS2 Ltd can effectively deliver the programme in a compliant way. Within HS2 Ltd, all employees, interims and secondees are required to complete a Register of Interest form declaring any connection with HS2 Ltd's activities or fields of interest. Senior representatives from across HS2 Ltd meet twice a month to review and recommend actions (including mitigations) and provide decisions relating to conflicts of interest (where the Compliance Team does not already have a set precedence). The Compliance Team owns HS2 Ltd's Gift and Hospitality

Policy and provides advice as to whether accepting gifts or hospitality is appropriate. These processes ensure that gifts, hospitality and conflicts of interest are effectively managed within HS2 Ltd.

49. In HS2 Ltd's view, the information it proactively publishes and the information it has offered to the complainant satisfy the public interest in ensuring HS2 Ltd is transparent, and that the High Speed 2 project is undertaken appropriately.
50. HS2 concludes its submissions by confirming that, at this time, it considers that the interests of the public are best served by refraining from undertaking the resource-intensive search for information that would need to be redacted before release. To comply with the request would place a substantial burden on it; it considers that this diversion of resources is significant and disproportionate and would not be in the interests of the public.
51. In his correspondence to the Commissioner the complainant has made the following points about HS2 Ltd's claim that redacting exempt information would be a burden. He argues that Excel is designed to make it easy to locate and isolate information. In its reply of 18 October 2019 the complainant notes that HS2 Ltd said that "personal data... would need to be identified and redacted" in "over 2000 lines of data" which "would take over 80 hours". It goes on to say in its reply of 20 November 2019 that "9 columns would need to be interrogated" within its material to identify personal data.
52. The complainant questions whether it would take 80 hours to interrogate nine columns of a spreadsheet, even of 2000 lines, when it is possible to search, sort and automatically delete data at the click of a button. The complainant says that even if each line was individually examined rather than collectively after a sort by the spreadsheet, 80 hours allows for 2.4 minutes per line. In the complainant's view, if a member of HS2 Ltd's dedicated FOI team is unable to assess columns of data in 2.4 minutes then it raises questions as to whether HS2 Ltd take their FOI responsibilities seriously.
53. The complainant goes on to discuss the matter of proportionality - whether the amount of effort required to make the necessary redactions is disproportionate. He asks the question: "proportionate to what?".
54. The complainant considers that "a few days work by an office junior does not seem disproportionate where £170m conflicts of interest are concerned, nor does it seem disproportionate given HS2 Ltd's vast resources."

55. But most importantly to the complainant, the amount of work is in his view proportionate to the size of "the problem". The work involves examining a spreadsheet and the complainant considers that it is not an unnecessary or disproportionate amount of work to do per line of data. He notes that this takes longer the more lines of data there are, but he considers it does not follow the spirit or intention of the FOIA legislation if a longer Register is therefore exempted from release.
56. In the same correspondence to Commissioner the complainant has also put forward the following public interest arguments.
- Parliament has said that improving engagement with the public should be of "*primary importance*" to HS2, with the Public Accounts Committee highlighting the need for a "*fundamental shift in how HS2 Ltd communicates and engages with the public*"
 - HS2 Ltd itself claims its core values include "*Acting fairly, transparently and consistently*" and "*doing the right thing, even in difficult circumstances*"
 - Paragraph 61 of the Commissioner's guidance on section 14(1) discusses where: "*Serious failings at the authority have been widely publicised by the media, giving the requester genuine grounds for concern about the organisation's actions.*" There have been widespread media reports regarding a £170m contract awarded by HS2 Ltd that had to be withdrawn due to potential conflicts of interest. HS2 Ltd went so far as to say it would tighten up disclosure procedures due to the furore this scandal caused.
57. Finally, the complainant notes that the above case only came to light because of a whistle blower. It therefore gives him genuine grounds for concern that these documents could provide further evidence of failings by HS2 Ltd, making them "crucial" in meeting the targets of the Public Accounts Committee, HS2 Ltd itself and the Commissioner.

Conclusion

58. The information the complainant requested on 20 September 2019 catches three Registers in Excel format. HS2 Ltd considers that some of the information in at least two of these Registers is exempt information and it would need to: review a significant number of cells in the Registers, identify any exempt information and redact this before disclosing the Registers. HS2 Ltd considers that the burden of this work is disproportionate and that the request can therefore be categorised as a vexatious request under section 14(1) of the FOIA. HS2 Ltd has offered to provide the complainant with versions of the Registers with whole columns likely to include exempt information entirely removed.

The complainant has preferred to progress his complaint about HS2 Ltd's reliance on section 14(1) ie he has not accepted HS2 Ltd's offer of Registers with columns removed.

59. The Commissioner accepts that the complainant has requested a substantial volume of information, that some of the requested information may be exempt information and that this information cannot be easily be isolated as it is scattered throughout the requested material. The Commissioner has therefore considered the burden to HS2 Ltd of reviewing and redacting information it considers is exempt and whether this burden is a grossly oppressive one.
60. HS2 Ltd has estimated it would take over 100 hours to review the three Registers and redact any exempt information. HS2 Ltd has based this figure on the time taken to review each row of the spreadsheets.
61. The Conflicts of Interest Register comprises over 1,800 rows and 30 columns. The 'Description of Conflict' and 'Name of Supplier/Event/Individual' columns appear to be the columns most likely to contain potentially exempt information in that Register. These columns contain free text.
62. The Hospitality Register comprises over 1,400 rows and 28 columns. Of the columns, the 'Recipient name', 'Organisation offering hospitality', 'Line Manager name' and 'Hospitality description', 'Recipient', 'Line Manager' and 'Compliance team note' columns appear to be those most likely to contain potentially exempt information, with the 'Hospitality description' and 'Compliance team note' columns containing free text.
63. Given it is clear what columns potentially contain exempt information, in the Commissioner's view it is not necessary to review each row of these Registers, column by column, horizontally. She considers the task would involve moving down certain columns vertically, reviewing these, identifying any exempt information and redacting this information. In addition the columns containing only individuals' or organisations' names could be withheld in their entirety or easily filtered to identify the names of, for example, senior managers and larger organisations which could be released, with the remaining names being withheld.
64. The Commissioner estimates that 7,800 cells across the above two Registers would need to be individually reviewed. If it took 10 seconds to review and redact information from each of these cells, it would take approximately 22 hours to complete this work. Even if it took twice as long, that would still be half the time that HS2 Ltd has estimated. The Commissioner therefore agrees with the complainant on that particular matter: that it is not likely to take 111 hours to review and redact information.

65. Nevertheless, the Commissioner has considered whether the more likely burden involved in preparing the material remains grossly oppressive. She has balanced the impact of the request against its purpose and value to determine whether the effect on HS2 Ltd would be disproportionate.
66. Preparing the requested material with release would, the Commissioner has estimated, take a minimum of 22 hours and possibly up to 44 hours. It would also involve a number of HS2 Ltd staff from different business areas, drawing them away from their core duties.
67. The Commissioner acknowledges the matter the complainant has raised about the £170m contract that was withdrawn because of a potential conflict of interest but she notes that this was reported in early 2017, more than two years before he submitted his request. She has not been made aware of any similar concerns that were live at the time of the request.
68. She also notes that HS2 Ltd publishes its Executive team's Register of Business Interests, which includes those individuals' travel data, expenses and gifts and hospitality. There is also a process in place – through its Compliance Team – to manage potential conflicts of interest, and that team also has had oversight of gifts and hospitality matters since 2017.
69. In addition, the redacted material, once released, is likely to be of limited usefulness. While the names of larger companies and senior staff might be released, there may (or may not) be conflicts of interest or concerns about hospitality and gifts involving smaller companies and less senior staff. But with the names of those companies and individuals redacted, it would not be possible to determine if, for example, there *had* been a potential conflict of interest. That said, HS2 Ltd has nonetheless offered to provide the complainant with information from the Registers that it can provide without it being onerous to do so.
70. On balance, the Commissioner has decided that the burden caused to HS2 Ltd by reviewing, identifying, consulting on and redacting potentially exempt information is disproportionate to the request's value. She therefore finds that HS2 Ltd is entitled to rely on section 14(1) of the FOIA to refuse to comply with the request of 20 September 2019. The complainant has the option of submitting a new request for related information that HS2 Ltd has indicated it is less burdensome to provide.

Other matters

71. The Commissioner has found that complying with this request is a disproportionate burden because of the way HS2 Ltd records information in the three Register spreadsheets ie because of the ability to enter free text into certain fields. This makes managing and filtering information in the spreadsheets more difficult. Given the scale and profile of the High Speed Two rail project, and the interest in it, HS2 Ltd may therefore want to consider reviewing its design of the Registers. In the Commissioner's view it should be possible to record in an Excel spreadsheet all the information HS2 Ltd considers to be necessary, either without a free text facility or with a reduced free text facility, and with additional columns if necessary. It would then be possible both to manage any similar requests in the future more easily, without having to rely on section 14(1), and potentially to release more information in response to such a request.

Right of appeal

72. 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

73. 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.
74. 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

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