

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

Date: 9 June 2022

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

Decision (including any steps ordered)

1. The complainant has requested from High Speed Two Ltd (HS2) information about where woodchips produced by "de-vegetation" are sent to and later asked which companies were involved in this process. Although HS2 initially provided the requested information in response to the complainant's first request and information regarding part of the second request, it withheld under regulation 12(5)(a)(public safety) the names of the companies the woodchips go to in order to generate electricity.
2. The Commissioner's decision is that HS2 has correctly cited regulation 12(5)(a).
3. He does not require HS2 to take any further steps.

Request and response

4. On 3 March 2021 the complainant made the following request for information under FOIA:

“I would like to know where the vast amounts of woodchips produced from HS2's de-vegetation, including ancient woodlands, go to?”

5. HS2 provided the information on 19 March 2021.

6. The complainant responded on 25 March 2021 and made another information request as follows,

“Could you elaborate on the woodchip biomass chain please? Do they stay in the UK or are they transported abroad? Are they used to provide electric and gas, and which companies are involved?”

7. HS2 provided some information on 26 April 2021, explaining that the HS2 biomass chain stayed in the UK and is used to provide electricity but withheld the names of the companies involved under regulation 12(5)(a).

8. On 27 April 2021 the complainant asked for an internal review.

9. HS2 provided a review on 6 May 2021 in which it maintained its position.

Scope of the case

10. The complainant contacted the Commissioner on 4 August 2021 to complain about the way their request for information had been handled.

11. The Commissioner considers the scope of this case to be HS2's citing of regulation 12(5)(a) of the EIR.

Reasons for decision

Is the information environmental information for the purposes of the EIR?

12. Regulation 2(1) of the EIR defines environmental information as any information in any 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)"

13. The requested information relates to measures and activities affecting or likely to affect the elements and factors referred to in (a) and (b). This clearly relates to the environment.

Regulation 12(2) – Presumption in favour of disclosure

14. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.

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

15. Regulation 12(5) states:

'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'.

16. HS2 has provided the Commissioner with the withheld information. It considers the disclosure of this information would adversely affect public safety.
17. To show that disclosing information would harm one of the interests in regulation 12(5)(a) HS2 needs to:
 - identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
 - show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
 - show that the harm is more likely than not to happen.

HS2's view

18. HS2's view is that the release of the information would result in its misuse. It outlined the potential misuse as vandalism, attacks, and interference from protesters regarding employees and the public at large. HS2 provided instances where this had occurred.
19. HS2 refers to the Commissioner's guidance on regulation 12(5)(a) where it states at paragraph 49 that:

"The term public safety is not defined in the EIR. But in broad terms this limb of the exception will allow a public authority to withhold information when disclosure would result in hurt or injury to a member of the public. It can be used to protect the public as a whole, a specific group, or one individual who would be exposed to some danger as a result of the disclosure."¹
20. It further points out that the guidance draws parallels between regulation 12(5)(a) and section 38 FOIA. HS2 quotes the following:

"...material identifying individuals who might be targeted as a result of disclosure. For example, those involved in controversial work such as animal experimentation".

The guidance also lists "details about potential targets for terrorists" as raising safety issues and the circumstances where this exception may apply:

¹ [International relations defence national security or public safety \(regulation 12\(5\)\(a\)\)-v1.1- EIR guidance - 20203112 \(ico.org.uk\)](https://ico.org.uk/for-organisations/articles-and-guidance/subject-access/20203112-international-relations-defence-national-security-or-public-safety-regulation-12(5)(a)-v1.1-eir-guidance)

- sites of controversial scientific research where disclosure could lead to sabotage and therefore there would be risks to the physical safety of staff.
21. The Commissioner notes that the guidance referred to has been superseded by new guidance². However, the references made by HS2 are relevant because they are largely included in the updated guidance.
22. HS2 contends that, although it is not directly involved in scientific research, it is considered a controversial project by those that disagree with it. It has been the target of significant violent protester activity which resulted in court proceedings and convictions. Revealing the details of the companies using woodchip derived from HS2 de-vegetation for electricity would place those working there at risk. HS2 argues that these companies would become a target due to their involvement with the project.
23. The Commissioner's guidance on regulation 12(5)(a) is cited from which HS2 quotes from [The Office of Communications and the Information Commissioner and T-Mobile \(UK\) Limited \(EA/2006/0078 4 September 2007\)](#) that:

“relatively mundane information about primarily civil infrastructure could also be of use to terrorists and therefore could attract the exception provided by regulation 12(5)(a)”.³

HS2's view is that the withheld data contains information which details electricity infrastructure and should be afforded the same protection provided by this regulation.

24. HS2 states that the level of risk should be taken as comprising of the probability of an event happening and the severity of the consequences of that event occurring (i.e. the 'adverse effect'). It underpins its argument by quoting from [EA/2017/0160](#), where it says the Tribunal, citing a previous Tribunal (Natural England v Dale and the Information Commissioner ([EA/2014/0094](#))), concluded that it is correct to refuse to adopt an artificial boundary between actual harm and increased risk of harm “but rather to consider the entire spectrum of risk and decide

² [Section 38 – Health and safety | ICO](#)

³ [International relations defence national security or public safety \(regulation 12\(5\)\(a\)\)-v1.1- EIR guidance - 20203112 \(ico.org.uk\)](#)

whether, on the facts, an adverse effect on public safety in either way was demonstrated" (paragraph 56).

25. HS2 then set out its arguments as to why disclosure would result in the adverse effect. It set out the test that is in paragraph 17 of this decision notice.
26. Release of the requested information would reveal the names of organisations that are involved in using woodchip biomass from the activity of HS2 Ltd. Its opinion is that this would severely adversely affect public safety and security by increasing the likelihood of protests and violent behaviour at their sites and/or towards those companies or persons undertaking this work. Once a company is known, the registered name and other business locations are not difficult to determine from publicly available information. HS2 says that the consequences of such behaviour would lead to serious adverse effect on the wider community.
27. HS2 believes that there is potential for serious harm to protesters or other members of the public should these premises be targeted. Any attack could render the power stations dangerous which would jeopardise public safety and security. Vandalism of the electricity infrastructure can result in substantial loss and power outage to homes, businesses or both resulting in fire, injury and even loss of life. HS2 provided an example from a newspaper involving the destruction of an electricity substation.⁴
28. HS2 underpinned its argument by providing links to articles about what it describes as politically motivated pressure groups and protesters as well as individuals directly impacted by the HS2 project:

[STOP HS2 – The national campaign against High Speed Rail 2 – HS2 – No business case, No environmental case, No money to pay for it.](#)

[Stand for the Trees – Stop HS2 – Extinction Rebellion UK](#)

It states that organised groups have regularly attempted to disrupt its work on their railway worksites :

[Treetop activists resist evictions as they fight to stop destructive HS2 - Socialist Worker](#)

⁴ [Vandals trash electricity substation causing over £20,000 in damage - Daily Record](#)

[HS2 construction workers attacked by 30-strong mob | Construction Enquirer News](#)

['Violent and disruptive HS2 protests cost taxpayers £75m' | The Independent](#)

[HS2: Swampy says protesters' tunnelling can halt project - BBC News](#)

[HS2: Protesters clash with security at Staffordshire camp - BBC News](#)

29. HS2 contends that the behaviour of some of these individuals is known to be violent and it details an incident on 26 March 2021 when a gang of 30 masked anti-HS2 activists attacked eight security officers which it describes as punching and stamping on them in the dark in the middle of the A413 (near Wendover), leaving eight people injured and one taken to hospital. The link it provided no longer exists. HS2 also provided a confidential annex to the Commissioner containing examples of violent and intimidatory behaviour directed towards HS2 staff and evidence of organised and disruptive planned behaviour of some protesters which cannot be detailed here.
30. It goes on to explain that aggressive and intimidatory behaviour is not isolated to sites where HS2 is undertaking works. Companies associated with HS2 have also been targeted and this has taken several forms:
 - Direct action onsite – HS2 outlined to the Commissioner an incident in 2020 when it says that two protesters visited a supplier associated with HS2, posting the name and location from the site on social media and other data potentially useful to individuals wishing to intimidate.
 - Direct action over the internet – the email address and phone number of the Health and Safety Executive (HSE) were circulated by protesters via their social media channels encouraging those who oppose the project to make contact with the HSE to complain that the eviction of HS2 protesters was not halted on health and safety grounds. People were asked to complain within a specified timeframe which HS2 suggests was to maximise pressure on the company and intimidate staff. This incident was reported to the police;
 - Doxing – HS2 details another incident that was reported to the police. Information was extracted from Companies House and this was posted online using social media to reach what it describes as the widest possible audience in the hope that somebody local to the individual being doxed would take some action against them;

- HS2 names what it describes as a “protest group” that encourages their supporters to search for HS2 employees on ‘Linkedin’ in order to drop them a message. HS2 considers it likely that this group, or some other group would use information in the public domain to cause unwarranted intimidation, harassment or abuse to individuals associated with the building of the railway.
31. The bullet pointed examples above show the level of violent and intimidatory behaviour directed at organisations associated with the HS2 project. HS2 states that releasing information about companies that use woodchip biomass to provide electricity would not only lead to their premises being the target of protest action but could also lead to the identification of individuals and organisations undertaking this work. This would be detrimental to the health and safety of individuals by increasing the chances of the organisations or staff being targeted by protesters. HS2 argues that the harm is substantial, given the level of violent behaviour and the consequences of disrupting power stations.
 32. HS2 cites the Commissioner’s decision notice [IC-40100-P6C4](#) which agreed with its citing of regulation 12(5)(a) to withhold the release of addresses of properties owned by HS2. In that decision, HS2 states, the Commissioner was satisfied that the increased risk of harm from release would constitute an adverse effect and that there is a causal link between release and the adverse effect.
 33. This decision was upheld at the Information Tribunal [EA/2021/0098](#) where the Tribunal, noting the evidence stated:

“what is also clear is that there has been a large number of incidents which involve HS2 Ltd owned or managed property, and some of these appear to have involved intimidation and violent behaviour aimed at HS2 Ltd” (paragraph 28).

HS2 highlights the Tribunal, at paragraph 29:

“having reached this conclusion, it seems obvious to the Tribunal that disclosure of a full list of HS2 Ltd properties, if it became generally available, would lead to more incidents at these properties whether involving basic criminal activity or HS2 Ltd related crime.”
 34. HS2 considers that if the withheld information was released some intimidatory behaviour would occur with respect to at least one of the companies identified. In fact, HS2 suggests that it is likely that such behaviour would occur at more than one site.
 35. HS2 argues that the release of the withheld information would place the names of companies using woodchips from the HS2 works into the public domain. Once a company name is known HS2 says that it is not

difficult to determine the registered office and other business locations from publicly available information. Its view is that it would be possible to work out the locations of power stations.

36. It is not just construction sites but also individuals and organisations connected with the rail project that have experienced a high level of protester activity. This activity adversely affects the safety of any individuals working there and is likely to endanger the security of the surrounding area. The identification of organisations that are connected with HS2 works increases the likelihood of those companies being targeted and exposing individuals who work there to intimidatory and violent behaviour. HS2 says that, given the nature of the work of these companies, violent or disruptive behaviour targeted at them is likely to cause widespread and, potentially catastrophic, disruption.
37. HS2 acknowledges that 'likelihood' refers to future behaviour as it is not possible to be absolutely certain that release will lead to the adverse effect it has identified. However, HS2 says that the incidents it has outlined shows that incidents of violence and harassment have occurred against several individuals, organisations and locations associated with HS2. Here HS2 points to the Commissioner's decision notice FS50092069 where he decided that the evidence of past behaviour (provided by the public authority in that case) was sufficient evidence to conclude that there was a likelihood that individuals would be singled out for harassment, intimidation and possible violence by others in the future.
38. HS2 contends that the number of incidents and the severity of violence against HS2 staff and contractors is increasing as work on the project increases. Referring to the Commissioner's decision IC-40100-P6C4 again which concerned HS2 owned properties, he was 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. [The Commissioner] 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" (paragraph 34).
39. The later Tribunal ([EA/2021/0098](#)) upheld the decision and noted the large number of incidents, some of which were specifically directed at those linked to HS2. HS2 says that the Tribunal accepted that violent behaviour had been targeted at sites not directly related to construction and that release of the information would lead to more incidents instigated by those who oppose HS2. HS2 believes that there is a direct relationship to this case. The release of the names of these organisations would be highly likely to lead to more harassment, intimidation and violent behaviour. It argues that there is therefore a

severe risk not only to the safety of individuals but to public security as it has a direct and adverse effect on the wider community.

The Commissioner's view

40. The Commissioner accepts that HS2 has identified an adverse effect that is significant in releasing information that identifies the names of organisations linked to the HS2 project in the way described. HS2 has shown a link between the disclosure and the negative consequence in that the locations of these organisations can be easily identified. He agrees that the harm is more likely than not to happen by citing IC-40100-P6C4 and EA/2021/0098 which are germane to this request. Although the request does not ask for locations, the disclosure of the information essentially means the disclosure of location and the harm that is more likely than not to occur. Additionally, in support of the potential harm, HS2 provided the Commissioner with confidential information that cannot be disclosed here. The exception is engaged.

Public interest test

41. Although the exception is engaged, the Commissioner will go on to look at the public interest in this matter. It may be in the public interest for the requested information to be released.

Public interest factors in favour of disclosing the information

The complainant's view

42. The Commissioner has set out below what he believes to be the complainant's public interest reasons for disclosing the requested information, even though they were not specifically identified as such.

43. The complainant explained to the Commissioner that,

"...ancient woodland is not renewable but that up to 63% of HS2 woodchip is burned as biomass to generate electricity. Ancient woodlands are a minimum of 400 years old and are irreplaceable. Removing vast swathes of carbon sink then adding to atmospheric carbon under the guise of 'carbon neutrality' is not climate friendly and is in fact exacerbating our precarious situation."

44. The complainant's view is that the opposition is due, in part, to false information portrayed by HS2 as a green project. They acknowledge that there have been over 170 arrests of HS2 protesters but that their belief is that "most charges are spurious and the majority that reach court are discharged for lack of evidence". The complainant states that the offences are exaggerated and that most protesters are peaceful and highly traumatised by the destruction witnessed. They state that this

contrasts with the “many acts of extreme violence and endangerment to life of protestors by security, the National Enforcement Team and the Police”. The complainant explained that the number of ancient woodlands is strongly disputed by the Woodland Trust. Seventy-eight will be affected by Phase 1 and 2a.

45. There are “secondary effects of disturbance, noise and pollution, which are devastating to an already rare and vulnerable environment in England”. The complainant explains that the “Woodland Trust’s ‘The State of the UK’s Woods and Trees 2021’ reported that only 7% of the UK’s native woodlands are in good condition”. They provide an example of destruction at Jones’ Hill Wood where only 0.7 hectares have allegedly been felled. When pristine, the ancient woodland was 1.8 hectares. The complainant contends that “Now the centre of the hilltop woodland is exposed, further trees have been lost in high winds and the entire ecosystem is at risk of collapse”. They add that, “the creation of new woodland and wildlife habitat is not being adequately maintained by HS2”.
46. In their internal review request the complainant provided what is another public interest factor in favour of disclosure. They said that -

“...as a citizen I have the right to make an informed choice as to where my electricity supply comes from. Furthermore, I do not wish to play a part in the burning of ancient woodlands, hedgerows and veteran trees when they are sustainable alternative sources available. By withholding this information I am prevented from making the ethical choice I wish to, and may well be contributing to this unsustainable biomass without even being aware. I am requesting that you reconsider your decision to withhold company details, and allow me to make an informed choice when purchasing an electricity supply.”

HS2’s view

47. HS2 accepted that there is a general public interest in the 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.
48. Releasing information would arguably provide greater transparency and accountability around the environmental mitigation work that is being undertaken by HS2. It acknowledges the complainant’s argument that release of this information would allow the public to make an informed decision regarding their electricity supplier.

Public interest factors in favour of maintaining the exception

HS2's view

49. HS2 states that the majority of the information requested by the complainant has been provided. Releasing the names of the organisations that are involved in biomass electricity generation work would encourage protester activity at premises associated with those organisations, protester activity would include violence and intimidation of those working there. Release would lead to the intimidation of staff, in person or via the internet, and is likely to endanger the safety of those individuals, by direct action or the publication of information leading to identification.
50. HS2 argues that it is not in the public interest to disclose the names of the organisations because it would allow groups and protesters to target specific areas with the purpose of disrupting or delaying the HS2 project. Activity of this kind would constitute a danger to the protesters themselves, the public and the personnel at these power stations.
51. Release of the information would compromise the correct operation of sites related to power generation and safe systems of work which would put the public at risk which could be dangerous and result in great loss. HS2 argues that the Commissioner's guidance on section 38 FOIA notes that one of the factors against disclosure is "information that would undermine the functioning of a system established to protect public health or safety"⁵. The Commissioner notes that his examples in this guidance are speed cameras and drug trials.
52. HS2 contends that making this information public and consequently making them susceptible to attack would have catastrophic and dangerous effects, resulting in injury to person and loss of life. Potential loss or injury extends far beyond workers at a given site or protesters themselves who could be endangered if power outage or failure results from protester activity.
53. In the interest of transparency, HS2 states that it provided a comprehensive response confirming the end use of the woodchip from HS2's de-vegetation, that the woodchip biomass chain remains in the UK and is used to produce electricity. What was withheld is the data that would lead to the identification of sites involved in generating electricity for woodchip biomass. HS2 argues that it has withheld this information though it supports peaceful and lawful protest because it would allow and encourage direct targeting and protester activity, much of which it

⁵ [Section 38 – Health and safety | ICO](#)

says is violent and aggressive. It is not in the public interest for a public authority to endanger public safety.

54. HS2 contends that release would allow for the identification of organisations undertaking this work. Many of the companies have removed identifying information from their vehicles when working with HS2 because of the risk of violence. The severity and frequency of attacks is increasing, according to HS2, and that as other methods of opposing the railway become less likely, it believes that those opposed to HS2 will increasingly resort to intimidation and violence.

The balance of the public interest

55. The Commissioner is aware of the level of interest amongst the public in HS2, its cost, and the effect on the British countryside. He has also taken into consideration that the EIR has a presumption in favour of disclosure and that individuals are entitled to be provided with information relating to HS2.
56. He has set against the above, the arguments of HS2 in order to assess where the balance of the public interest lies. The Commissioner has discounted the public interest argument from HS2 as set out in paragraph 51 because it seems to him that the correct operation of sites and safe systems of work is not the same as a system established to protect public health or safety. The determining factor here, even if the Commissioner does not take into consideration all the incidents provided by HS2, is the nature of the requested information and the unknown factor here is how that information might be used. HS2 has cited a previous decision of the Commissioner and the resulting Tribunal that upheld the Commissioner's decision. The link here is locational information. Although this request does not ask for location, the disclosure of the names of the organisations would inevitably lead to the disclosure of locational information that could be used by protesters to target sites, leading to incidents endangering individuals working at these sites and the protesters themselves. The Commissioner has therefore made his decision based on the need to protect public safety which, in this instance, outweighs the public interest in the disclosure of the requested information.
57. Finally, the Commissioner would like to make it clear that this decision does not reflect on the complainant. The reasons that the complainant gives for wanting the information in order to have control over what energy supplier they use and the environmental effects to the woodland that they have described are strong and reasoned arguments. The Commissioner accepts that these are reasons in favour of disclosure and he does not want to link the complainant or the individuals involved in legitimate protest with the incidents described by HS2. However, the fundamental fact of FOIA/EIR is that disclosure is to the world at large

Reference: IC-122093-M2Z1

and dissemination cannot be restricted to individuals wishing to vet organisations or peacefully protest for environmental reasons because of an organisation's links to HS2.

Right of appeal

58. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

59. 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.

60. 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

Janine Gregory
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