

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 March 2013

**Public Authority:** HS2 Ltd  
**Address:** Eland House  
Bressenden Place  
London  
SW1E 5DU

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

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1. The complainant requested a full organisation chart from High Speed Two (HS2) Ltd. HS2 Ltd refused to provide a full copy of its internal organisation chart citing section 21 (information accessible to applicant by other means) and 40(2) (personal information).
2. The Commissioner's decision is that the exemption at section 40(2) is engaged and that disclosure would breach the Data Protection Act (the 'DPA').
3. He requires no steps to be taken.

#### **Request and response**

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4. HS2 Ltd is the company responsible for developing and promoting the UK's new high speed rail network. The requests for information in this case were made in the context of earlier correspondence between the complainant and HS2 Ltd about its organisation chart.
5. The complainant wrote to HS2 Ltd on 16 November 2012 and requested information in the following terms:

*"Thanks for your response. However, it is not complete. The following have attended forums and are not on your list.  
[redacted], Country Environment Manager.  
[redacted], Country South Senior Engineer.*

*[redacted], Country South Area Manager.  
There may well be others from other forum areas, which please  
check.  
Please now send me a complete list".*

6. On 19 November 2012 he wrote:

*"Dear HS2Enquiries,*

*Further to my email of 16 November, I now know that 6 more  
people have been involved in forums, so should have been included  
in your organisation chart. They are:*

*[redacted], Country North Senior Engineer  
[redacted], Country North Environmental Manager  
[redacted], Country North Senior Environment Manager  
[redacted], Area Manager North  
[redacted], Facilitator  
[redacted], Area Engineer*

*Please let me have a full organisation chart".*

7. The Commissioner understands that the reference to 'forums' in the requests relates to the community forums set up by HS2 Ltd along the London to West Midlands line of route.
8. Following the Commissioner's intervention, HS2 Ltd responded on 23 January 2013. It confirmed that, as previously stated, it was relying on section 21 (information accessible to applicant by other means) and section 40 (personal information) of FOIA as its reasons for not providing a full copy of its internal organisation chart. It also confirmed that it had already provided the complainant with the extract from its chart that covers those whose primary role in HS2 Ltd is public facing.
9. In the circumstances of this case, HS2 Ltd advised the complainant to contact the Commissioner's Office in the first instance if he was not happy with its response of 23 January 2013.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 7 February 2013 to complain about the way his request for information had been handled. He told the Commissioner:

*"I do not see their problem. The information should be readily  
available."*

11. The Commissioner acknowledges that, as well as providing the complainant with an extract from its chart covering those employees whose primary role is public facing, HS2 Ltd also guided him to the publically available sources of information about its employees, including its published organisation chart and community forum minutes.
12. Therefore, the Commissioner considers the scope of his investigation is whether or not HS2 Ltd was correct to withhold the details of those staff which it classed as being non-public-facing junior staff.
13. In this respect, the Commissioner has published guidance on requests for information about public authority employees. This can be found on his website<sup>1</sup>.
14. He has also considered the disclosure of information about non-public-facing junior staff on another occasion. He considers that his decision in that case – case reference FS50317876 - is relevant here. That decision can be found on his website<sup>2</sup>.

## **Reasons for decision**

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### *Section 40(2) – Personal data of which the applicant is not the data subject*

15. In this case, HS2 Ltd has cited the exemption at section 40(2) of FOIA in relation to its staff who are below executive grade and not in a public facing role.
  16. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under FOIA would breach any of the data protection principles.
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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Practical\\_application/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx)

2

[http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50317876.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50317876.ashx)

17. HS2 Ltd's arguments centre on its view that disclosure of the personal data in question would not be fair – in other words the application of the first data principle.
18. The definition of personal data is set out in section 1 of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
19. The Commissioner has considered the nature of the request in this case. Having viewed the withheld information, he is satisfied that individuals are clearly identifiable from that information.

*Would disclosure breach one of the Data Protection principles?*

20. The first data protection principle states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met'.*

21. Having established that the information constitutes personal data, the Commissioner has examined whether the disclosure would comply with the first data protection principle's requirement that it be fair to the data subject.

*Would disclosure be fair and lawful?*

22. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.
23. Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between this case and FS50317876 is such that he is able to reach the same decision about disclosure without the need for further analysis.
24. The decision in that case was that the public authority dealt with the request for information in accordance with FOIA. It follows that he finds that HS2 Ltd dealt with the request in this case in accordance with FOIA – in other words that section 40(2) was correctly applied to the withheld information.

## Right of appeal

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25. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**