

Regional Investment Programme
(South East)
Highways England
Bridge House
1 Walnut Tree Close
Guildford GU1 4LZ

4 February 2019

Dear [REDACTED]

A27 Arundel Bypass Scheme

I am writing to confirm that we do hold the information you requested on 5 January 2019 but have decided that some of this information cannot be disclosed.

The information that can be released is data that includes species, numbers, hibernation and maternity roosts, flight-lines etc. as established in the latest specialist bat surveys and ecological reports.

The relevant list of documents that contains the data requested is as follows:

1. A27 Arundel - Bat species and consenting issues - PowerPoints Presentation MAPS
2. BAT RADIO -TRACKING INTERIM_BASELINE_REPORT
3. BAT ACTIVITY INTERIM BASELINE SURVEY REPORT
4. BAT STRUCTURES INTERIM BASELINE SURVEY REPORT
5. BAT HABITAT AND TREE ROOST INTERIM-BASELINE REPORT
6. Environmental Assessment Report – chapter 8 Biodiversity (This is an older version of this document. A new version will be produced as part of repeating Stage 2 of the project's lifecycle)

Copies of the above documents are attached. However, due to their they will be sent in subsequent emails.

The information being withheld falls under the exceptions in regulations 12(4)(d), 12(5)(b) and 12(5)(g) ([The Environmental Information Regulations 2004](#)) because the release of incomplete information could mislead the public due to the incomplete nature of the documents, the release of legal advice we have received from our lawyers would breach the legal professional privilege and the release of exact roost locations would adversely affect the protection of the environment. In addition, under regulation 12(3) all personal information has been redacted.

In applying these exceptions, we have had to balance the public interest in withholding the information against the public interest in disclosure. The key public interest factors for and against disclosure can be found below:

EIR A27 Arundel Bypass Exception 12(4)(d) Material in the course of completion, unfinished documents and incomplete data	
<i>Factors supporting disclosure</i>	<i>Factors supporting non-disclosure</i>
<ul style="list-style-type: none"> • There is public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way; • There is public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse; • There is public interest in releasing information which shows the criteria used when assessing options to illustrate that the processes used were fair and appropriate. • There is public interest to understand how and what initial surveys and evaluations are completed during the early stages of scheme development • There is public interest to evaluate of the overall potential impact of the scheme 	<ul style="list-style-type: none"> • The project team is still in the process of analysing information to identify the options and require appropriate time and a safe space to undertake this work. Disclosing information at this stage would make it difficult to bring the process to a proper conclusion. • Disclosing drafts would mean that those producing them will be less frank and candid in giving their views or presenting information in future, and so the quality of the advice and information provided to the project teams would suffer impacting the quality of decision making. • Disclosing incomplete information at this time will not enable meaningful public involvement and debate. In line with Highways England’s Project Control Framework, a full list of options will be published for public consultation at a future date for debate and to help inform a preferred route. • Whilst we recognise the public interest in this project, we strongly believe that the incomplete information could mislead the public due to the incomplete nature of the documents. This could cause unwarranted alarm, requiring a disproportionate effort by Highways England to correct that view.

**EIR A27 Arundel Bypass Exception 12(5)(b)
The course of justice and inquiries exception**



<i>Factors supporting disclosure</i>	<i>Factors supporting non-disclosure</i>
<ul style="list-style-type: none"> • There is public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way; • There is public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse; • There is public interest in releasing information which shows the criteria used when assessing options to illustrate that the processes used were fair and appropriate. • There is public interest to understand how and what initial surveys and evaluations are completed during the early stages of scheme development • There is public interest to evaluate of the overall potential impact of the scheme 	<ul style="list-style-type: none"> • Legal professional privilege (LPP) exists to ensure complete fairness in legal proceedings. LPP protects advice given by a lawyer to a client and confidential communications between them about that advice. • We should ensure that we have genuine ‘without prejudice’ negotiations in an attempt to secure DCO approval. Disclosure of legal advice that we have received would adversely affect the course of our application, undermining the confidence in the general principle of ‘without prejudice’ negotiations.

EIR A27 Arundel Bypass Exception 12(5)(g) Protection of the environment	
<i>Factors supporting disclosure</i>	<i>Factors supporting non-disclosure</i>
<ul style="list-style-type: none"> • There is public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way; • There is public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse. • There is public interest in releasing information which shows the criteria used when assessing options to illustrate that the processes used were fair and appropriate. • There is public interest to 	<ul style="list-style-type: none"> • To release the information would be to release it into the wider public domain which does not guarantee that information will not be used adversely by others. • Bats are an endangered and protected species. By publicly disclosing their presence at a specific location there is increased risk for disturbance by members of the public wishing to view them, placing the bats at increased risk of disturbance. • Disturbance of bats is a criminal offence (punishable by up to 6 months in prison and a £5000 fine –

understand how and what initial surveys and evaluations are completed during the early stages of scheme development

- There is public interest to evaluate of the overall potential impact of the scheme
- There is a public interest in disclosing information about rare and endangered species as to do so will increase public understanding of their plight and encourage conservation

per bat disturbed) so there is an argument that, in publicly disclosing the requested data, we could be viewed as contributing to the committing of numerous (unintentional and intentional) criminal offences, and potentially prosecuted in relation to that.

As the A27 Arundel Bypass scheme is in Stage 2 for further consultation, we are still developing the options, including completing the required assessments and the resulting proposed mitigations. Therefore we do not have available information on the current financial implications.

If you are unhappy with the way we have handled your request you may ask for an internal review within 2 months of the date of this response for Freedom of Information requests and within 40 days for Environmental Information Regulations requests. Our internal review process is available at: <https://www.gov.uk/government/organisations/highways-england/about/complaints-procedure>

If you require a print copy, please phone the Information Line on 0300 123 5000; or e-mail info@highwaysengland.co.uk. You should contact me if you wish to complain.

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

If you have any queries about this letter, please contact us. Please remember to quote reference number CRS 768,227 in any future communications.

Yours sincerely

The A27 Arundel Bypass Project Team

Highways England | Bridge House | 1 Walnut Tree Close | Guildford | GU1 4LZ

Web: <https://highwaysengland.co.uk/projects/a27-arundel-improvement/>



Registered in England and Wales No. 9346363

Via phone: Customer Contact Centre (CCC) on 0300 123 5000

Via email: info@highwaysengland.co.uk

Or find out more on our website: <https://highwaysengland.co.uk/projects/a27-arundel-improvement/>