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**My ref:** JG / 011486  
**Your ref:**  
**Date:** 20 December 2018

Dear Thomas Coward

**Re: REVIEW OF EIR/ENV/10/18/16407 and EIR/ENV/11/18/16556**

I have been informed that you have requested a review of the above request made by you on 17 October 2018 and in a slightly different format on 22 November 2018.

I am a solicitor employed by Hertfordshire County Council and I have reviewed your request under our internal review procedures. In carrying out such a review I have had sight of your original request and our response.

**History**

On 17 October 2018 the Council received the following request from you:

*"The use of road below refers to regarding High Leigh Garden Village Development and Dinant link Road in Hoddesdon, Hertfordshire.*

*It is known that you have given permissions to Lands Improvement Holdings to close roads in your County.*

*Therefore, please could you provide the agreement(s), contract(s), letter(s), email(s) or other data sources where you explicitly agree to allow Lands Improvement Holdings to close the road between 8 am till 5 pm numerous times this year (2018)."*

On 12 November the Council wrote to you:

"Your request for information has been considered under the Environmental Information Regulations 2004. I can confirm that Hertfordshire County Council does not hold the information you have requested. We do not have any agreements, contracts, letter, emails or any other data sources where we explicitly agree to allow Lands Improvement Holdings to close the road

between 8am till 5pm numerous times this year (2018).”

On 22 November you further wrote:

“I am writing to request an internal review of Hertfordshire County Council's handling of my FOI request 'Lands Improvement Holdings Permissions'.

It is likely this information exists and is held by Hertfordshire County Council, specifically within Hertfordshire County Highways. Please do not conceal this information.”

On 22 November 2018 you wrote again:

“The use of road below refers to regarding High Leigh Garden Village Development and Dinant link Road in Hoddesdon, Hertfordshire.

It is known that you have given permissions to Lands Improvement Holdings or their associated third parties such as Breheny to close roads in your County.

Therefore, please could you provide the agreement(s), contract(s), letter(s), email(s) or other data sources where you explicitly agree to allow Lands Improvement Holdings or their associated third parties such as Breheny to close the road between 8 am till 5 pm numerous times this year (2018).”

On 4 December 2018 the Council wrote sending you redacted information:

“Your request for information has been considered under the Environmental Information Regulations 2004. I can confirm that Hertfordshire County Council does not hold any agreements, contracts, letters emails or other data sources that explicitly agree to allow Lands Improvement Holdings or their associated third parties to close Dinant link road between 8am and 5pm numerous times this year. To advise and assist please see the attached a pdf which contains all correspondence relating to the closure of Dinant link road, this also includes the applications to close the road between the hours of 8pm and 5am. Apologies for not including this information in the response to your original request EIR/ENV/10/18/16407.

Please note that we have redacted some contents of the attachment under the following exemption:

Regulation 13 (1) - Personal Data

This exception applies because you have requested information that contains data that relates to third party individuals.

The public interest arguments for releasing this information are as follows:

- To release the information would show accountability for the actions of the Council and its officers

The public interest arguments for withholding the information are as follows:

- That the public interest in withholding the information outweighs the public interest in disclosing it.
- Disclosure would be an unfair and unwarranted interference with the individual's privacy

On balance we feel the public interest is better served by withholding this information.”

On 6 December 2018 you wrote again:

“I am writing to request an internal review of Hertfordshire County Council's handling of my FOI request 'Lands Improvement Holdings Permissions'.

I am concerned by the level of redaction of information that you deem 'personal'. I contest that the emails of all Hertfordshire Council employees are in fact public information and must be released.

Could you additionally state if any documents were redacted in their entirety for the correspondence?

I contest any redaction of documents in their entirety and request that all and any correspondence is provided. Please could you state how many documents, emails or other correspondence have been redacted from this FOI request?”

### **The Law**

Regulation 5 of the Environmental Information Regulations 2004 (EIR):

5.— Duty to make available environmental information on request

(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and [Part 3](#) of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 13.— Personal data

(1) To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if—

(a) the first condition is satisfied, or

(b) the second or third condition is satisfied and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(2A) The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

(a) would contravene any of the data protection principles, or  
 (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(2B) The second condition is that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—  
 (a) Article 21 of the GDPR (general processing: right to object to processing), or  
 (b) section 99 of the Data Protection Act 2018 (intelligence services processing: right to object to processing).

(3A) The third condition is that—  
 (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018,  
 (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section, or  
 (c) on a request under section 94(1)(b) of that Act (intelligence services processing: rights of access by the data subject), the information would be withheld in reliance on a provision of Chapter 6 of Part 4 of that Act.

(5A) For the purposes of this regulation 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, to the extent that—  
 (a) the condition in paragraph (5B)(a) is satisfied, or  
 (b) a condition in paragraph (5B)(b) to (e) is satisfied and in all the circumstances of the case, the public interest in not confirming or denying whether the information exists outweighs the public interest in doing so.

(5B) The conditions mentioned in paragraph (5A) are—  
 (a) giving a member of the public the confirmation or denial—  
 (i) would (apart from these Regulations) contravene any of the data protection principles, or  
 (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;  
 (b) giving a member of the public the confirmation or denial would (apart from these Regulations) contravene Article 21 of the GDPR or section 99 of the Data Protection Act 2018 (right to object to processing);  
 (c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in paragraph (3A)(a);  
 (d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section;  
 (e) on a request under section 94(1)(a) of that Act (intelligence services processing: rights of access by the data subject), the information would be withheld in reliance on a provision of Chapter 6 of Part 4 of that Act.

(6) In determining for the purposes of this regulation whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.

## **Review**

I have looked at your request and all the documents that were used in responding to your requests. No documents were redacted in their entirety. You have received redacted copies of all documents held.

You contest that the emails of all Hertfordshire Council employees are in fact public information and must be released. The emails have been released to you but the names have been redacted as have the names of people from the company acting for Lands Improvement Holdings. Mobile and direct dial telephone numbers as well as personal email addresses have also been redacted.

The names were redacted as the people have not given their consent to their names to be divulged. Employees of the Council have the same rights under the Data Protection Act 2018 as do all other living persons. None of the people whose names were redacted are considered to be decision makers or their names are not in the public domain.

The reason for the redaction should have been detailed as 13(1)(a) as the people had not given their consent.

## **Decision**

I find that Hertfordshire County Council did comply with regulation 13(1)(a) of EIR.

## **Conclusion**

This now brings the County Council's internal review into the handling of your request for information to an end. However, if you remain dissatisfied you are entitled to ask the Information Commissioner to investigate your complaint. You can write to him at **FOI / EIR Complaints Resolution**, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

A handwritten signature in grey ink that reads "Judith Gower". The signature is written in a cursive, flowing style.

**Judith Gower**  
**Solicitor**  
**Commercial Law**