

Helen Hamilton

Our ref: 310260

By email at: [request-979502-  
ad885598@whatdotheyknow.com](mailto:request-979502-ad885598@whatdotheyknow.com)

Date: 9 June 2023

Dear Helen,

**RE: Request for information under the Freedom of Information Act 2000 (FOIA)/  
Environmental Information Regulations 2004 (EIR)**

Thank you for your request (dated 10 May 2023) for information about meetings with the Herefordshire Council Interim Delivery Director.

We respond to requests for information that we hold under the Freedom of Information Act 2000 (FOIA) and the associated Environmental Information Regulations 2004 (EIR).

You have requested:

- *Records of all meetings and correspondence with Herefordshire Council's Interim Delivery Director Rachael Joy between 21/7/2022 and 2/3/2023*
- *Copies of all correspondence and records of all meetings, and any minutes of those meetings with this director.*
- *Copies of any evidence the Environment Agency has provided to this director.*

**Information held**

I enclose correspondence between the Environment Agency and Rachael Joy between 21 July 2022 to 2 March 2023.

Please refer to the [Open Government Licence](#) which explains the permitted use of this information.

We have redacted the names of identifiable living individuals. This information has been withheld under EIR Exception 13(1) as we are unable to provide you with information in respect of third parties, which is classed as personal data – see Appendix.

There is no requirement to conduct a public interest test where the refusal relates to the exception for personal data.

### **Information withheld**

Amongst the correspondence, we have found that some of the information is not suitable for release. We are unable to provide you with the following information:

- Correspondence between the Environment Agency and Rachael Joy relating to material which is still in the course of completion, to unfinished documents or to incomplete data.

We are withholding this information because we consider this material to be information created as part of formulating and developing policy, where the process is not complete. Releasing this information which is in draft form could be misleading to the public. Therefore, we are withholding this under EIR Regulation 12(4)(d) – Drafts.

As a public body under FOI/EIR, we must provide reasons for this refusal. We also share how we have considered the Public Interest for refusal and disclosure. You can find details in the appendix.

### **Rights of appeal**

If you are not satisfied you can contact us within 2 calendar months to ask for our decision to be reviewed. We shall review our response to your request and give you our decision in writing within 40 working days.

If you are not satisfied following this, you can then make an appeal to the Information Commissioner Office (ICO), the statutory regulator for EIR/FOI. The address is: ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF. Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate) | Fax: 01625 524 510 | Email: [casework@ico.org.uk](mailto:casework@ico.org.uk) | Website: <http://www.ico.org.uk>

Yours sincerely,

Customers & Engagement team  
West Midlands Area

For further information please contact the Customers & Engagement team on  
Tel. 02084 747856

Direct e-mail:- [enquiries\\_westmids@environment-agency.gov.uk](mailto:enquiries_westmids@environment-agency.gov.uk)

## Appendix

### Relevant exceptions

The exceptions that apply to the withheld information are:

- **EIR Regulation 13(1) – Personal data** - We are unable to disclose information relating to third parties as this is personal data under the Data Protection Act 2018 (DPA 2018) and to disclose it would breach the First Data Protection Principle of the DPA 2018. The information requested is therefore exempt due to Regulation 13(1) of the Environmental Information Regulations 2004, which explains that:

“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...”

The ‘first condition’ referred to above is further explained in Regulation 13(2)(a):

“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...”

- **EIR Regulation 12(4)(d) – Drafts** - This exception applies because the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data. To release information at this stage would be misleading to the public and although this information may be in final stages, they are not separate and complete documents in their own right and not distinct from material still to be completed.

## The Public Interest Test

We have weighed the public interest factors in favour of maintaining the exceptions and find that they outweigh the public interest factors in disclosing the information. In carrying out the public interest test we have considered:

### 1. Factors in favour of releasing the information:

- **General presumption of openness** - The Environment Agency would only withhold information if it is sure that disclosure would cause substantial harm. Here the harm is whilst this information is in the course of completion or draft form, this information could be misleading to the public.
- **General need to promote accountability and transparency** - We recognise that to release the information would have value in terms of informing public debate and promoting transparency. However, this factor is also fundamental in informing our decision to withhold the information, as we consider releasing it (as it is material still in the course of completion as it is not in final form) could harm public debate surrounding the issue. It is not in the public interest to release material that is unfinished, as it does not allow those who would like to contribute to a such debate to do so in an informed manner.
- **Whether the information is already public** - In the case of the Cabinet Commission – Restoring the Wye document, this information has already been released to the public. A commitment has been given to public consultation on any proposals but at this stage all is exploratory.

## 2. Factors in favour of withholding the information:

- **Whether information would be misleading or cause alarm** - There is a public interest in ensuring that any documentation we disclose is factually correct and not likely to be misleading to the public. This factor is relevant to the release the information we have withheld which is in the course of completion or in draft form. In relation to the supply of a draft document the effect of disclosing this information would be to provide information which might change significantly, and potentially confuse the public or distract from the issue by re-visiting out-dated discussions.

We have considered the benefits of releasing the information to inform the public debate around this subject matter, despite this, there is a stronger public interest in releasing information that is complete, and in an agreed form as this prevents misleading the public. We considered that the information should be released at a time, and in a form, where it would not risk presenting a misleading picture, or result in harm to our ongoing decision making relating to the issue.

We also note that some of the information has been released to the public as a final document. This further strengthens the reason in favour of withholding this information.

- **Private thinking and a 'safe space'** - a public authority may need a 'safe space' in which to do this away from public scrutiny, and that disclosing this material would harm that safe space. Non-disclosure at this stage supports us in protecting the integrity of the decision-making process. Public bodies are in a series of negotiations with other representative bodies and residents in relation to matters referred to in the correspondence, which is still being debated, formulated and finalised. With decisions still being made, a safe 'thinking space' is required to formulate and develop the policy away from public scrutiny. The disclosure of this information at this time would harm this process and make it difficult to bring decisions to a proper conclusion in a timely manner.

Disclosure at this stage would prejudice these discussions, carry a reputation risk as no one would engage with us with confidence if such information were disclosed to the world at large at this time, and disclosure would cause further delay to this work. Disclosure of this information would have an adverse effect on all parties involved.

As indicated, upon assessing the factors in the public interest test, we have assessed that in relation to the **information in the course of completion or draft form** and in relation to the **supply of potentially misleading information** we find that the factors in favour of withholding information outweigh the public interest factors in disclosing the information.