



The Planning Inspectorate

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Mr H Craddock

Your Ref:

Our Ref:

RFI 1807

Sent via e-mail

Date:

11 October 2017

Dear Mr Craddock

Freedom of Information Act 2000 (FOI)/Environmental Information Regulations 2004 (EIR) – Rights of Way Notes

Thank you for your e-mail of 5 June, requesting information from the Planning Inspectorate (PINS). Please accept my apologies for the time taken to respond. As previously advised, it became apparent that the work involved in the task was initially underestimated as your revised request was progressed. The nature of the information contained in the Notes and associated documents required detailed consideration of the documents and the subsequent redaction of sensitive or personal information. Further to this liaison with Defra was necessary where a Note contains information which has been provided by them.

You have made the following revised request:

"...I am therefore content to restrict my request to those rights of way notes issued since January 2015, also to exclude from scope any attachment not forming part of the text contained in the advice note itself (such as copies of Waymark or Byway and Bridleway), and also to exclude any information relating solely to staffing arrangements (such as notice of staff arriving or leaving, holiday cover or geographical responsibilities). Please would you also include rights of way notes 13/2010, 02/2010, 09/2009, as these appear to refer to hitherto undisclosed legal cases."

Response:

Please find attached the Rights of Way Notes requested, together with the related attachments. Further to the redaction of staff information, redactions have been made and referenced documents not provided under the following exemptions:

- The minutes of internal meetings have been withheld. As this information requested relates to Rights of Way casework, it is considered to be Environmental information, as defined in regulation 2(1)(c) of the EIR. Whilst PINS holds this information, regulation 12(4)(e) provides an exception to the

disclosure of environmental information where the requests involves the disclosure of internal communications. In accordance with Regulation 12(1) and 12(2) of the EIR, this is subject to the public interest test, and information can only be withheld where the public interest for withholding the information exceeds that for disclosure. Public interest factors for disclosure - it is accepted that there is a public interest in transparency, and understanding how decisions are reached. It is acknowledged disclosure would provide further background information and transparency regarding internal communications. However, there is public interest in protecting the integrity of the Rights of Way procedures, allowing communications without fear that such exchanges will be disclosed. Releasing the information may inhibit free and frank discussions in the future, and the loss of frankness and candour would damage the quality of advice and lead to poorer decision making.

- FOI section 35 – exemption to preserve a safe space for the formulation of policy. Whilst there is public interest in the disclosure of background information on policy and accordingly the promotion of accountability, information is withheld to protect the integrity of the policymaking process, avoiding disclosure which would result in the formulation of less robust and well considered policies.
- FOI section 41 – exemption for information provided to a public authority in confidence.
- FOI section 42 – exemption for confidential communication conveying information and/or advice between a legal advisor and client. Whilst there is a public interest in accountability and transparency in the quality of decision making, together with knowing if legal advice has been followed, safeguarding openness in such communications ensures confidence that full and frank legal advice may be obtained without fear of disclosure.

None of the High Court judgments referenced the Notes have been copied and attached. The referenced judgements may be viewed via the British and Irish Legal Information Institute website (BAILII).

The following table lists the ROW notes and the related attachments. Applied exemptions are noted in the comments section:

Number	Note covers & attachments	Comments
05/2017	1. Revised advice regarding the form of order for Section 119 orders 2. OMA checklist 3. Schedule 14 Direction Decisions Template 4. Procedure Team List	
04/2017	1. Schedule 14 Directions 2. Judgment – Ramblers’ Association v SSEFRA CO/421/2016	The referenced judgment available on BAILII.
03/2017	1. Waymark 2. DRDS Decision Templates	
02/2017	1. Schedule 14 Directions	
01/2017	1. Minutes of sub-group meeting 2. Opening announcements 3. Legal judgments and reports	Minutes and announcements withheld as internal communications.

	<ul style="list-style-type: none"> 4. Index of PINS reference material for rights of way 5. Minutes of PINS/Defra Meeting held on 18 January 2017 6. Revised guidance booklet 7. Revised OMA checklist 	
15/2016	<ul style="list-style-type: none"> 1. Team List 2. Horizon 3. S31(6) Highways Act 1980 statements 4. Review of rights of way guidance 	<p>Team list not required by request.</p> <p>Attachments withheld under FOI section 35 – formulation of policy.</p> <p>FOI section 41 – information provided to a public authority in confidence.</p>
14/2016	<ul style="list-style-type: none"> 1. Staff changes 2. Charting emails 3. Minutes of last PINS/Defra Liaison meeting 4. OMA Document Checklist 5. Return Forms 6. Diary requests 	Attachments withheld as internal communications.
13/2016	<ul style="list-style-type: none"> 1. Legal judgments and reports – updated version 2. Index of PINS Reference Material, Guidance and Advice on Rights of Way and Related Matters – updated version 3. Deregulation Act 2015 – draft revised circular 1/09 guidance 4. Modification minute – clear instructions required from Inspectors 	<p>Attachments withheld under FOI section 35 – formulation of policy.</p> <p>FOI section 41 – information provided to a public authority in confidence.</p>
12/2016	<ul style="list-style-type: none"> 1. Deregulation Act 2015 – draft statutory instruments 2. Staff news 3. Procedure team list 	<p>Attachments withheld under FOI section 35 – formulation of policy.</p> <p>FOI section 41 – information provided to a public authority in confidence.</p> <p>Staff information not required by request.</p>
11/2016	<ul style="list-style-type: none"> 1. Estimated date for issue of decisions not to be given by Inspectors 2. Judgment – TRF v SSEFRA and Dorset EWHC 3. Correct web link for the bottom of order decisions 	Referenced judgement available on Bailii.
10/2016	<ul style="list-style-type: none"> 1. CIR 1s 2. Waymark 3. Returning files 	

09/2016	1. Draft Regulations and amended Defra Guidance	Attachments withheld under FOI section 35 – formulation of policy. FOI section 41 – information provided to a public authority in confidence.
08/2016	1. High Court judgment – Wright & Villiers-Smith v SSEFRA	Referenced judgement available on Bailii.
07/2016	1. Cost Reports in proposed modification cases	
06/2016	1. Amended Advice Notes 16 (Width) and 22 (notation) 2. Invoicing for Rights of Way work 3. Waymark 4. Minutes of meetings with stakeholders 5. Minutes of the last PINS/Defra Liaison Meeting	Minutes withheld as internal communications.
05/2016	1. Amended Training Notes 2. Attendance Sheet 3. Procedure Team - update	Training notes will be sent in a separate e-mail to the ROW notes.
04/2016	1. Revised Defra guidance for fact checking 2. Accommodation move	Attachment withheld under FOI section 35 – formulation of policy.
03/2016	1. Revised Defra guidance for fact checking 2. Procedure Team contact list	Attachment withheld under FOI section 35 – formulation of policy. Staff information not required by request.
02/2016	1. Amended Advice Note 20 2. Amended Sections 7 and 5 of the Consistency Guidelines 3. Inquiry/Hearing notes 4. New Attendance Sheet	
01/2016	1. Draft amendment to Advice Note 20 2. Draft versions of Sections 7 and 5 of the Consistency Guidelines 3. Initiation of an Award of Costs 4. Waymark 5. Circular 1/09 re-write 6. Charting following Kevin's departure in March 7. Accommodation Move	Attachments withheld under FOI section 35 – formulation of policy.
08/2015	1. Compensation and adjacent Landowners 2. Quality of orders and submissions 3. Latest edition of Waymark	FOI section 42 – confidential communications between lawyers and clients
07/2015	1. Powell and Irani judgement – feedback from Defra on request for advice	

	<ul style="list-style-type: none"> 2. Revised versions of Section 4 and 12 of the Consistency Guidelines 3. Rights of Way Guidance Index 4. Revised Guidance Booklet 5. Procedure Team contact list 	
06/2015	<ul style="list-style-type: none"> 1. Schedule 14 Appeal Procedure in Wales 2. Asghar Ali v Secretary of State for Environment, Food and Rural Affairs, Essex County Council and Frinton and Walton Council 	Referenced judgement available on Bailii.
05/2015	<ul style="list-style-type: none"> 1. R (on the application of Trail Riders Fellowship and another)(Respondents) v Dorset County Council (Appellant) 	Referenced judgement available on Bailii.
04/2015	<ul style="list-style-type: none"> 1. Amended Section 2 of the Training Notes 	
03/2015	<ul style="list-style-type: none"> 1. Proposed amendment of sections 4 and 12 of the Consistency guidelines 	
02/2015	<ul style="list-style-type: none"> 1. New Matrices 2. Schedule 14 application for Costs – non statutory inquiry 3. Summons – validity of when issued by another party 4. Powell and Irani 5. Slip rule 	<p>FOI section 41 – information provided to a public authority in confidence.</p> <p>Referenced judgement available on Bailii.</p>
01/2015	<ul style="list-style-type: none"> 1. Schedule 14 decisions 2. Revised Section 12, Glossary and Contact details of the Consistency Guidelines 	
13/2010	<ul style="list-style-type: none"> 1. Consistency Guidelines – Section 5 2. Consent order – Northumberland County Council v Secretary of State for Environment Food and Rural Affairs(2) 3. Consent order – Graham Plumbe v Secretary of State for Environment, Food and Rural Affairs 4. Staff changes 	<p>Attachments withheld - FOI section 35 - safe space for the formulation of policy.</p> <p>FOI section 41 – information provided to a public authority in confidence.</p>
02/2010	<ul style="list-style-type: none"> 1. Advice Note 21 2. Modification of combined orders 3. James Wild v SSEFRA and Dorset County Council 4. Definition of 'owner/occupier' 5. Site Notices for inquiries into proposed modifications 6. Draft revised marking scheme (4 box system) 7. Policy issues under consideration by Defra - update 8. Structures guidance 	<p>Referenced judgement available on Bailii.</p> <p>Attachments withheld - FOI section 35 - safe space for the formulation of policy.</p> <p>FOI section 41 – information provided to a public authority in confidence.</p>
09/2009	<ul style="list-style-type: none"> 1. June Jones v Naw judgment 2. Sub group (SG) meeting minutes 	Referenced judgement available on Bailii.

	3. Consistency Guidelines (CG)– Section 5 4. Advice Note 15	Minutes withheld as internal communications.
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Internal Review Process:

If you are unhappy with the way we handled your request, then you can ask for an internal review. Details of our review procedures and contact details for the Information Commissioner’s Office are set out in the attached leaflet.

Yours sincerely

Chris Pritchard

Planning Inspectorate