

Access to Information Request – Assertion of Alleged Public Right of Way at Green Road between Rousky and Greencastle

Portions of information have been redacted for the following reasons:

- **Section 40(2) of the Freedom of Information Act (FOIA) 2000 – Personal information of Others**
- **Section 42 of the FOIA 2000 – Legal Professional Privilege**
- **Section 40(2) of the FOIA 2000 – Personal information of Others**

Personal information that has been provided has been redacted due to the possible consequences of disclosure on the individual(s) concerned and the reasonable expectations of the individual, taking into account: their expectations both at the time the information was collected and at the time of the request; the nature of the information itself; the circumstances in which the information was obtained; whether the information has been or remains in the public domain; the FOIA principles of transparency and accountability.

- **Section 42 of the FOIA 2000 – Legal Professional Privilege**

The Council believes this exemption (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information) applies to some of the documentation and has been redacted accordingly.

This exemption is qualified by the public interest test. In considering the Public Interest Test, Officers considered the weight which should always be given to the general principles of accountability and transparency which are achieved through the disclosure of information. However, officers also considered the outcome of the case of *Bellamy v Information Commissioner and Secretary of State for Trade and Industry (EA/2005/0023)*, when the Information Tribunal described legal professional privilege as, “a fundamental condition on which the administration of justice as a whole rests”.

Section 42 Legal Professional Privilege

Legal Professional Privilege applies whenever complying with a request would reveal information that is subject to ‘legal professional privilege’ (LPP) or the equivalent Scottish rules. LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice or for ongoing or proposed legal action. These long-established rules exist to ensure people are confident they can be completely frank and candid with their legal adviser when obtaining legal advice, without fear of disclosure. There are 2 types of privilege within LPP:

Litigation privilege

Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. There must be a real prospect or likelihood of litigation, rather than just a fear or possibility. For information to be covered by litigation privilege, it must have been created for the

dominant (main) purpose of giving or obtaining legal advice, or for lawyers to use in preparing a case for litigation. It can cover communications between lawyers and third parties so long as they are made for the purposes of the litigation. Litigation privilege can apply to a wide variety of information, including advice, correspondence, notes, evidence or reports.

Advice privilege

Advice privilege applies where no litigation is in progress or contemplated. It covers confidential communications between the client and lawyer, made for the dominant (main) purpose of seeking or giving legal advice. The legal adviser must have given advice in a legal context; for instance, it could be about legal rights, liabilities, obligations or remedies. Advice from a lawyer about financial matters or on an operational or strategic issue is unlikely to be privileged, unless it also covers legal concerns, such as advice on legal remedies to a problem.

Please note further information will be uploaded as and when it is available.