

CALDBECK PARISH COUNCIL

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Ms Katherine Fairclough
Chief Executive
Cumbria County Council

21 August 2018

Dear Ms Fairclough

Thank you for your letter dated 15 August 2018 and also for Helen Blake's letter emailed and dated 16 August 2018 from your Information Governance Team.

We are very grateful for your prompt replies although, as I am sure you will appreciate, we are disappointed with the content of both letters.

As regards our request for a meeting, you have clearly restated your position that all internal processes have been exhausted. When the County Council made that statement on 10 July 2018, the letter went on to suggest that if we were dissatisfied we should contact the Local Government Ombudsman. But that recourse is not available to local government organisations such as parish councils.

This was set out in my letter dated 2 August 2018 and why we requested a meeting to see if there might be scope for finding a way forward working in collaboration. Rory Stewart and Sue Hayman had offered to attend such a meeting. We met Rory Stewart in Caldbeck this morning and he was very much of the view that there ought to be a way of making the footpath work, given Caldbeck Parish Council has in place the funding for the construction, compensation and ongoing maintenance of the path. I would trust all parties are agreed that the footpath would be a great public sector asset for the benefit of the local community and many visitors for generations to come.

Turning to the outcome of your review of the decision to claim exemption from releasing Dan Barton's report dated 21 February 2018, I should emphasise that the Parish Council's objective is to see the footpath established. Securing a copy of the report may help as we would then see what has changed between the report prepared in February and the report sent dated 26 April 2018. Given Dan Barton's assurances we would expect the February report to have a very different scope to the April report as Dan Barton made crystal clear that he would review the merits of the decision not to pursue a Footpath Creation Order and he appeared sympathetic to the case we were making.

In preparing our case to go to the Information Commissioner it also appears that the County Council has treated the request for information which we made on the 29 May 2018 as a request for information governed by the Environmental Information Regulations 2004. Your response dated 10 July 2018 is so headed and in it you claim the exemption for a draft report under those Regulations. The information we requested on the 29 May 2018 is not governed by those Regulations - it is not environmental information as defined in those Regulations. The information requested falls under the Freedom of Information Act 2000, under which there is no exemption for a draft report. Our request for the report is to establish whether the scope of the County Council's review changed and what conclusion was drawn as to the reasonableness of an officer decision. These are

essentially questions about the workings of administration and the subject matter, whether land might be used for a footpath, is secondary.

As Caldbeck Parish Council has not to date raised this point with you, we therefore ask for a further review of your response dated 10 July 2018 on the basis that an incorrect exemption has been claimed and the provisions of the wrong regulations have been applied. If your Information Governance Team maintains that the County Council was correct in considering our request for information dated 29 May 2018 under the Environmental Information Regulations 2004 rather than Freedom of Information Act 2000 I would be grateful for an explanation of the reasoning so this matter can also be put to the Information Commissioner.

Helen Blake's letter emphasises the draft nature of Dan Barton's February report. Dan Barton's email to me dated 26 February 2018 is as follows:

"I've completed the report and submitted to the Chief Exec. I think it will be OK for me to share this with you, but I would need to wait until I have the go-ahead to do this from her – or it may not be 'proper'."

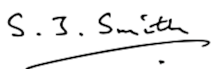
If the County Council followed its procedures under Review Stage (numbered para 3.4.2 in its Corporate Compliments, Comments and Complaints Procedure) the report could not have been a draft. My reading is therefore that Dan Barton had completed his report but he is awaiting confirmation that he can send a copy of the report, not that the report is draft requiring additional work.

We would further argue that there is a strong public interest test in releasing the report, even if considered draft, as our complaint was about the merits of the decision, not the processes followed, and we were given assurances that the merits of the decision would be considered with the reviewer agreeing that his report would be able to recommend reversing the decision not to support the footpath if that was his reading of the evidence. If the County Council has indeed changed the scope of the review part way through, that is very much a matter of public interest.

And as set out above, there is a question as to whether the County Council was correct in choosing to consider our Freedom of Information request under Environmental Information Regulations.

I am copying this letter to Rory Stewart MP and Sue Hayman MP given their interest in attending a meeting which we requested but you have declined. I am also copying the letter to Helen Blake and trust that she will be able to consider whether the County Council was correct in reviewing our request for release of the February report under Environmental Information Regulations and would ask for a reply by 5 September 2018.

Yours sincerely

A handwritten signature in black ink that reads "S. J. Smith". The signature is written in a cursive style and is underlined with a single horizontal line.

Simon Smith