

Mr Nick Kempe  
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29 April 2016

Dear Mr Kempe

### **Freedom of Information Request (16/00508): Loch Lomond & The Trossachs National Park**

Further to my letter of 19 April please find below our response to your request for information under the Freedom of Information (Scotland) Act 2002 contained in your letter of 20 March 2016 to Dr Aileen McLeod, Minister for the Environment, Climate Change and Land Reform. I apologise for the delay in replying.

#### **Your Request**

You have requested:

1. Any information the Government hold on the review of the East Loch Lomond camping byelaws (apart from the review report itself which is public) e.g. any evaluations or comments on the Park's report whether in the form of papers, emails etc. and any information on actions taken as a result of this. More specifically could you confirm whether or not the Scottish Government had developed any criteria by which the review undertaken by the LLTTNPA was to be evaluated and, if so, whether this was before or after the Review was received?
- 2) Any communication the Government had with other bodies about the review of the East Loch Lomond byelaws.
- 3) Any evaluation or comments the Government holds on my critique of the review of East Loch Lomond byelaws.
- 4) All information held by the Scottish Government that would enable the public to understand the reason for reducing the period of the byelaws by one month (that of October).

5) Has the Scottish Government developed any requirements about what information should be provided by the Park in relation for the annual reports on the operation of the camping byelaws as set out in your letter of 26th January to the LLTNP? If so, please provide this. If not, please confirm whether or not you intend to issue guidance to the Park about what should be contained in these reports and who it should consult on this.

6) Has the Government developed any criteria for how the formal three year review of the byelaws would be evaluated? If so please provide these criteria and any information which shows how they were developed.

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under these Regulations. We are applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not have to deal with your request under FOISA.

This exemption is subject to the public 'interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes.

This is essentially a technical point and has no material effect on the outcome of your request.

## **Response to your request**

### Question 1 and 4

The information you have requested is provided at Annex A.

### Question 2,3,5 and 6

While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. Therefore we are refusing your request under the exception at regulation 10(4) (a) of the EIRs. The reasons why that exception applies are explained in Annex B to this letter.

### Your right to request a review

If you are unhappy with this response to your EIRs request, you may ask us to carry out an internal review of the response, by writing to Bridget Campbell, Director of Environment and Forestry at [director.enfor@gov.scot](mailto:director.enfor@gov.scot) Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your rights is available on the Commissioner's website at: [www.itspubliknowledge.info](http://www.itspubliknowledge.info).

Yours sincerely



**GORDON ROBERTSON**

## Question One

The production of a report into the operation of the East Loch Lomond Byelaws was a condition of the Minister's decision to approve the byelaws, with modifications, in 2011. The Loch Lomond & The Trossachs National Park Authority was asked to monitor the operation of the byelaws and to provide a report to Scottish Ministers reviewing the position. There were no specific conditions attached to the production of the report.

The 3 year report to Ministers was reviewed and approved by the National Park Authority Board and provided to the Scottish Government on 22 August 2014.

The then Minister for Environment and Climate Change, Paul Wheelhouse, thanked the National Park Authority for the report in a letter to Linda McKay dated 31 October 2014.

A copy of the relevant correspondence is attached to this letter.

## Question Four

The decision taken to reduce the period of operation of the byelaws by 1 month was a policy decision taken by Ministers in line with their options to approve, approve with modifications or reject the byelaw proposals submitted by the National Park Authority. While the National Park Authority's preference was for the byelaws to be in place between 1 March to 31 October as per the operation of the existing East Loch Lomond byelaws, Ministers decided that in approving the new measures they wished to see a reduction in the period of operation by 1 month across all the proposed zones, including those operating in East Loch Lomond. This decision was based on a view that visits to the National Park and the affected areas naturally start to tail off in October, in part due to falling overnight temperatures.

## REASONS FOR NOT PROVIDING INFORMATION – QUESTION 2,3,5 and 6

### The Scottish Government does not have the information

Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. The Scottish Government does not have the information you have requested as:

- the 3 year report of the East Loch Lomond Byelaws was a matter for the National Park Authority to action as per the conditions attached to the Ministerial approval given in 2011, and no other bodies were involved in that process;
- a range of views and opinions were expressed to the Scottish Government on the byelaw proposals by individuals and some organisations. While these were given due consideration as part of the overall process, individual personal opinions were not subject to separate evaluation.
- requests for information under FOI or EIRs gives the applicant the right of access to information held by a Public Authority at the time of receipt of a request. You are requesting guidance on possible future policy decisions relating to the content of future reviews of the byelaws and how they could be evaluated. Information in relation to the content of future reviews of the byelaws and how they could be evaluated is not currently held by the Scottish Government.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about the Loch Lomond & The Trossachs National Park's camping management byelaws, clearly we cannot provide information which we do not hold.