



Mr Nick Kempe
nickkempe1@gmail.com
EIR Ref: 2017/001

2nd February 2017

Dear Mr Kempe

REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

I refer to your request for information, received by email on 5th January 2017.

We have applied the exemption under Section 39(2) of the Freedom of Information (Scotland) Act 2002 as we have determined that the information sought in your request is environmental information. We are therefore handling your request under the terms of the Environmental Information (Scotland) Regulations 2004 (EIRs). In this case the public interest in maintaining this exemption and in dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.

Your specific requests and the response from the National Park Authority are provided below

The proposed byelaws make lighting of fires and collection of wood a criminal offence if these are likely to cause damage.

Fires

(9) No person shall without lawful authority:

(a) light or cause a fire within a Management Zone causing damage or likely to cause damage to a Management Zone; or

(b) collect or use wood from within a Management Zone that causes damage or is likely to cause damage to a Management Zone.

“Please provide me with what definitions the Loch Lomond and Trossachs National Park Authority has for what constitutes damage in both these cases (ie when collection of wood and lighting of fires cause damage), what guidance the LLTNPA is going to issue to staff about this and what proof they will be required to supply in order to refer someone to the procurator fiscal.”

Byelaw (8) of the Loch Lomond & The Trossachs National Park Camping Management Byelaws 2017 includes definitions and interpretations (Section 5, page 4) from where the interpretation and meaning assigned to the term ‘damage’ is stated. The byelaws are publically available at: <http://www.thisisyourpark.org.uk/download/byelaws-2017/?wpdmdl=2306>

Park Authority Rangers receive training on the new byelaws, including byelaw (8), and have copies of the byelaws including the definitions. The matter of “what proof they will be required” to

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give to the Procurator Fiscal will vary from case to case. Accordingly I have to advise under R10(4)(a) of the EIRs that there is no information held.

More specifically, I would like to know:

- whether and in what circumstances the Park will treat someone who has collected some dead twigs from the ground as causing damage?
- whether someone who collects wood from road verge cutting of vegetation will be treated as a criminal?
- whether someone who lights a fire on a stony surface (eg rock or pebble beach) will be regarded as causing damage and if so on what basis?
- whether someone who lights a fire on bare earth (eg vegetation killed by walkers feet) will be regarded as causing damage and if so on what basis?
- in what circumstances someone who brings their own fire pit/barbecue will be regarded by the Park as causing damage?

The Park Authority does not hold any information on any of the above hypothetical scenarios. Accordingly I have to advise under R10(4)(a) of the EIRs that there is no information held.

Under Freedom of Information/Environmental Information Regulations I would like to request from you all written information you hold on this including all communications with the Procurator Fiscal and Police Scotland on the definition of damage and all communications you have had with SNH on what constitutes damage. I would also like to request if you have sought any legal opinion as to what constitutes damage, either directly yourself or indirectly through the Scottish Government.

As stated above, the legal definition of damage is included in the camping management byelaws which are publically available.

A legal representative for the Park Authority and another officer met with the Crown Office in relation to the introduction of the new byelaw legislation and the definition of damage was considered. External legal advice was also taken in relation to the definition of damage. Correspondence with the Crown Office and external legal advisers on the definition of damage is legally privileged and as such falls within the exception for confidential information. Accordingly I have to advise that this information has been withheld under R10(5)(d) of the EIRs.

The public interest in the release of this information has been considered. It has been concluded that the public interest in ensuring that the correct legal definition of damage was formed, based on appropriate legal guidance, which is legally privileged information, outweighs the public interest in its release into the public domain.

The Park Authority did not communicate with Police Scotland on the definition of damage. Accordingly I have to advise under R10(4)(a) of the EIRs that this information is not held. However, the response by Police Scotland to the Your Park consultation references damage and this is publically available on the Your Park website.

The Park Authority holds the following written comments from Scottish Natural Heritage on the definition of damage as discussed during the drafting of the byelaws.:

Wording for comment	SNH comment
damage” means any damage within a	“Suggest include words ‘death or injury or

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Designated Area , including: death or injury to or the taking of any wildlife ; death or injury to any person; or any damage or adverse effect whatsoever to any property ;	<i>harassment</i> ’ of wildlife. (NB: we considered using ‘disturbance’ but that can be done unintentionally whereas harassment implies a deliberate act.)”
nuisance” means any <u>unreasonable</u> act or omission which causes or is likely to cause annoyance, disturbance, <u>obstruction</u> or damage to any person;	Definition is too broad. Needs to be better defined. Adding in ‘unreasonable’ makes it clear that its not everything that might annoy somebody else but only things which the law might regard as unreasonable
Nuisance, Damage litter and firelighting	Better reflects the content of this part of the byelaws (natural and cultural heritage aren’t mentioned explicitly below)`
No person shall without lawful authority light or cause a fire within a Designated Area causing damage or likely to cause damage to a Designated Area ; collect or use wood from within a Designated Area in a manner that causes damage or is likely to cause damage or injury to a Designated Area .	

Email correspondence with Scottish Natural Heritage is attached in Appendix A.

The Park Authority did not communicate directly or indirectly with Scottish Government on the definition of damage. Accordingly I have to advise under R10(4)(a) of the EIRs that this information is not held.

Yours sincerely

Governance & Legal Team
Loch Lomond & The Trossachs National Park Authority

Review Procedure

If you are dissatisfied with this response, or the way in which the Authority has dealt with your request, you are entitled to ask the Authority to review its decision. Please note that in order for a review to take place you must:-

- Lodge a written request for a review within 40 working days of either the date on which you received a response from the Authority or the date by which you should have received a response under the terms of the Environmental Information (Scotland) Regulations 2004, whichever is the later.
- Include your name, address for correspondence, a description of the original request, and the reasons why you are dissatisfied; and

address your review request to:

Governance & Legal Team
Loch Lomond & the Trossachs National Park Authority
National Park Headquarters
Carrochan

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Please note that links provided to information available elsewhere are intended to assist you. Requests for information held by other public authorities, and any complaints regarding access to such information should be addressed to that authority. These review procedures relate only to information which is directly under the control of Loch Lomond & the Trossachs National Park Authority.

The review of your request will be handled by staff who were not involved in the original decision. You will receive notice of the result of your review within 20 working days.

If you are not satisfied with the response to your request for review, you can contact the Scottish Information Commissioner, the independent body which oversees the Environmental Information (Scotland) Regulations 2004, at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Tel: 01344 464 610
Website: www.itspublicknowledge.info
E-mail: enquiries@itspublicknowledge.info
Online appeal portal: www.itspublicknowledge.info/Appeal

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