



Mr Nick Kempe
nickkempe1@gmail.com
EIR Ref: 2016/057 REVIEW

19th January 2016

Dear Mr Kempe,

REQUEST FOR REVIEW OF DECISION UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (the “Regulations”)

The Park Authority received your request for review on 16th December 2016 relating to your request for information Ref EIR 2016/057.

Basis of Request for Review

You requested a review of the following part of your original request:

“I am not sure you are right to treat this as being under the EIRs rather than FOI; this is about the Park’s intention to prosecute. Moreover, under the legislation if a request is too general you can ask for a clarification. You have failed to do so”.

“I now wish to ask for a formal review. It is quite clear the Park does hold information on this because one of the slides provided to me about the Board Briefing sessions stated you had been in communication with the Procurator Fiscal. What I was asking was a very specific question about the Park’s intention to prosecute people in contravention of the byelaws laws and in contravention of the Scottish Outdoor Access Code. I suggest I drop the latter part and simply ask for all information relating to any intention to prosecute whether internal, discussions or communications with the police, procurator fiscal, Forestry commissioner anyone else who might be involved in enforcing the byelaws.”

Decision

An independent review of the initial response by the Park Authority has been carried out by a member of staff that was not involved in the initial response. Having carried out an independent review, the original response has been upheld.

As part of my review of this matter, I firstly considered whether the decision to deal with the information request under the Environmental Information (Scotland) Regulations 2004 was correct. The Scottish Information Commissioner has made it clear in various decisions that the application of the EIRs is to be interpreted widely and I believe that it was correct to deal with your request under the EIRs in this case.

Although we did provide advice and assistance under R9 of the EIRs, I acknowledge that we did not offer you the opportunity to provide clarification to your response in order to make it less general before applying the exception under R10(4)(c). In your review request you have now provided clarification and this has been considered as part of the review. Additional searches

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY

National Park Headquarters, Carrochan, Carrochan Road, Balloch, G83 8EG Long: 4°34’24”W Lat: 56°00’12”N
t: 01389 722600 f: 01389 722633 e: info@lochlomond-trossachs.org w: lochlomond-trossachs.org

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Page 1 of 2

have been carried out in relation to your clarification:

“all information relating to any intention to prosecute whether internal, discussions or communications with the police, procurator fiscal, Forestry commissioner anyone else who might be involved in enforcing the byelaws.”

It is not within the Park Authority's remit to decide whether to prosecute a breach of the byelaws or not – this is the role of the Crown Office. As referred to in our response letter Ref EIR 2016/065 dated 10th January 2017, Rangers have the authority to enforce the camping byelaws, and will, as a last resort when efforts to gain compliance have been unsuccessful, be able to report a contravention of the byelaws to the Procurator Fiscal. Any decision regarding whether or not to prosecute a contravention of the byelaws will be taken by the Crown Office. As the decision about whether to prosecute is not one that falls within the Park Authority's remit, we do not hold any information about this issue. The original response in this case is therefore upheld.

You are correct that the Park Authority has engaged with the Crown Office previously, but this was regarding the process for reporting breaches of the Byelaws and evidential requirements. As a result the Park Authority holds an email between our in-house solicitors summarising how the reporting process should work, but this does not fall within the scope of your request for information. In any event, it 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. I have considered the public interest in respect of the withholding of this information and have determined that the public interest in withholding what is legally privileged information which does not fall within the scope of your request outweighs the public interest in its release into the public domain.

Finally, given your interest in the enforcement of the byelaws, the Your Park project team is currently in the process of developing an Enforcement Policy. This will be released to the public in due course via our website.

Review Procedure

If you are not satisfied with this decision you are entitled to appeal to the Scottish Information Commissioner. Please note that in order for an appeal to take place you must lodge your appeal within six months of the date of receipt of this letter.

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

Yours sincerely

Governance and Legal Team
Loch Lomond & The Trossachs National Park Authority
E-mail: info@lochlomond-trossachs.org

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