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Mr Nick Kempe
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Your ref: 16/01829
17 February 2017

Dear Mr Kempe

Freedom of Information Request (16/01829)

Please find below our response to your request for information under the Freedom of Information (Scotland) Act 2002 contained in your letter of 15 November 2016. As this included a request to conclude previous correspondence on the issue of 'information relating to the development of camping management byelaw proposals and how this would be managed', our reply also addresses this issue.

In addition, your letter of 6 February 2017 asked for a review of our failure to respond to your letter of 15 November. I have now completed this review and our response is set out below.

Your Request

In addition to your request for conclusion of previous correspondence, you also requested:

1) 'Was there any communication between the LLTNPA and the Scottish Government before or after any of the secret Board Briefing sessions and Strategy Group meetings that considered the byelaws (list attached plus please not the LLTNPA failed to include on this list two earlier meetings that took place in 2013) ABOUT visitor management in general or the camping bye-laws. If so, please provide this'.

2) 'In the slides from the Board Briefing session in September 2015 there is a reference to "Focus on supporting Sponsor team with additional material for Minister" (see below). The LLTNPA had previously told me under FOI that the only evidence it had provided on the byelaws was that accompanying Linda McKay's letter to the Minister recommending their adoption and the photos of abandoned campsite. Please could you confirm ALL additional material provided by the Park to the Minister or officials relating to the Your Park proposals whether before or after this meeting'.

- 3) 'The slides also mention liaison with the Scottish Government legal team on wording of the proposed byelaws. Please provide me with any written information relating to this which relates to the POLICY intention of the byelaws (I am aware that legal advice per se is exempt from FOI legislation).'
- 4) 'A further slide in that presentation refers to Scottish Govt approval for discretionary spend, campsite lease arrangements and grant in aid confirmation. The Park's camping development strategy falls well short of the number of campsite places originally promised and I believe therefore its of interest what role the Scottish Government has had in this. Please therefore provide me with all information the Government holds on approval for the financing of the Your Park proposals (which I assume must ultimately have been authorised at senior level).'
- 5) 'A further slide refers to system design. Please confirm whether the Scottish Government had any input, at whatever level, about the "Your Park monitoring programme" or baseline data gathered for 2015/16 and the "visitor management system design requirements" and if so what this was'.
- 6) 'These three points, along with the year-long delay in the production by the LLTNPA of their camping strategy, strongly suggests that there was other communication taking place between the Government and the National Park Authority about the implementation of the camping byelaw recommendations after they were approved by the Park Board. Please could you confirm what correspondence took place at a senior or Ministerial level about this and provide it to me'.
- 7) 'I was very grateful for your earlier FOI/EIR response where you gave me the dates when the Minister met the LLTNPA following the Your Park consultation and before the Board Meeting which approved the byelaws. (I was pleased to see the dates, 5th Feb and 19th March, correlated with the information on the Park slides from the secret Board Briefing sessions) I had not previously asked for any written information about those meetings: please provide me with any written communications before or after those meetings, any information that was considered at those meetings and any notes/minutes recording what was agreed'.
- 8) 'I would request explicit clarification of whether there was any correspondence from the Scottish Government to the LLNTPA about the fact that so much of the development of the visitor management proposals took place in Secret Board Briefing sessions or of what was covered in those sessions'.
- 9) 'I also attach a copy of the letter I received from Liam Davey last week in response to my attempt to correspond with Roseanna Cunningham. I will respond to Roseanna Cunningham to that separately but since the letter refers to both the protection of fragile loch shores and says the byelaws will be reviewed according to the same arrangements that were followed for the east Loch Lomond byelaws I would request confirmation that the information supplied in response to previous FOI requests on these two subjects is correct:
- a) My understanding is the Government does not hold any information on the alleged impact of campers on the environment apart from that supplied by the LLTNPA after the Board Meeting which approved the byelaws (which is in the public realm) and possibly the "additional material for the Minister" referred to in point 2 above. Is that correct? If not, please tell me what information you do hold and provide it to me.

b) In your response to my question on the review of the east Loch Lomond byelaws you told me the Scottish Government told me it held no information apart from the formal review report submitted by the LLTNPA (and I guess my critique of this which appears to have been ignored). Is that correct?’

10) ‘Lastly, a new FOI/EIR request. I had originally asked you about communications between the LLTNPA and Scottish Government but the Park’s secret Briefing Session slides make it clear that other agencies have been involved too and that raises questions on whether Government communications have taken place with them about the development of the Your Park proposals and current plans to implement them. Could you therefore let me know if there have been communications with the following public authorities on Your Park and plans to implement this (either campsites or byelaws) and if so provide these to me:

- a) Transport Scotland
- b) Procurator Fiscal (as referred to in one of the Park’s slides)
- c) Police Scotland
- d) SNH
- e) SEPA’

HANDLING OF YOUR REQUEST

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

REQUEST FOR A REVIEW OF FAILURE TO RESPOND

Your letter of 15 November 2016 requested information on a number of additional points over and above conclusion of previous correspondence about ‘information relating to the development of camping management byelaw proposals and how this would be managed’. Each of these additional points required due consideration and response. Unfortunately due to resourcing issues and a number of other competing priorities it was not possible to process your request within the required timetable. Again, I can only apologise for the delay in responding.

RESPONSE TO YOUR REQUEST

Conclusion of correspondence on ‘information relating to the development of camping management byelaw proposals and how this would be managed’

Your letter of 15 November requested resolution to previous correspondence on the issue of ‘information about the involvement of Ministers and senior civil servants in the development

of visitor management and camping byelaws within the National Park'. We sought clarification on how best to interpret that request in view of previous explanations provided to you setting out Ministers' role. Your letter of 6 December provided clarification that you are interested in obtaining 'Information relating to the development of the camping byelaw proposals or how this would be managed' and that you are 'not looking for information on visitor management matters that don't relate to the development of the camping byelaws'.

As you are aware, we have previously provided you with detailed explanations of Scottish Ministers' responsibilities in relation to the issue of camping/visitor management within Loch Lomond & The Trossachs National Park Authority and explained that Ministers played no role in the development of camping management byelaw proposals. We also sought to provide you with additional context and background on the nature of the sponsorship relationship between the Park Authority and Scottish Ministers. For the reasons outlined, the Scottish Government does not hold 'information relating to the development of the camping byelaw proposals or how this would be managed' as responsibility for this fell to the National Park Authority. Therefore, we are refusing your request under the exception at regulation 10(4)(a) of the EIRs. Further explanation as to why this exception applies is provided Annex B to this letter.

Responses to additional points contained in your letter of 15 November:

Questions 2 and 7

The information you have requested is provided in Annex A.

Question 1, 4,5,6,8 and 10

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.

Question 3

An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to the type of information you have requested because it is internal legal advice and disclosure would breach legal professional privilege. Further information is provided in Annex B.

Question 9(a) and 9(b)

I can confirm that previous responses provided to you on the subject of 'information that would count as evidence as damage/impact of campers' and on the review of East Loch Lomond Byelaws are correct. There is nothing further that can be provided on these issues.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 month of receiving this letter. You can contact the Commissioner at:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Email: enquiries@itspublicknowledge.info

Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Robertson', written in a cursive style.

GORDON ROBERTSON

Question 2

Scottish Government Officials wrote to the Park on 5 October 2015 to request further information on aspects of the Park Authority's byelaw proposals. The Park Authority responded on 9 October 2015. A copy of the correspondence is attached.

An exception under regulation 11(2) of the EIRs (personal information) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998. This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.

Question 7

Meetings between the Minister and the Park Authority on 5 February 2015 and 19 March 2015 were part of the routine sponsorship relationship, details of which were outlined in the 'Communication Overview' provided to you in my letter of 12 April 2016. These meetings were not specifically about the 'Your Park' project, but an opportunity for the Minister to engage with the Chief Executive and Convener on a range of National Park related work. The main purpose of the meeting on 5 February was to provide an introductory meeting with Gordon Watson in his new capacity as Chief Executive. Other commitments meant that Linda McKay was unable to join this meeting, hence the subsequent session on 19 March where both Linda and Gordon met with the Minister. Routine meetings between Ministers and their sponsored bodies are relatively informal and no formal minutes are taken. Updates were provided to the Minister on a range of issues, including:

- National Park Partnership Plan
- Supporting Scottish Government Priorities
- Your Park
- Land Reform
- Participation beyond the Park
- Community Empowerment/National Park Skills Partnership

REASONS FOR NOT PROVIDING 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. Further details of why this exception has been applied to the specific points in your request are provided in the paragraphs below:

'Information relating to the development of the camping byelaw proposals or how this would be managed'

Collectively, our letters of 12 April, 17 June, 1 July and 3 October 2016, together with the explanations of the 'Communications Framework and Formulation of Key National Park Policy', sought to make clear that Scottish Ministers played no role in relation to the formulation/development of camping management byelaw proposals or in the decision to make use of the Park Authority's statutory byelaw-making powers as a solution to long-running issues around visitor management. Both the decision to make use of byelaws and subsequent work to develop them and the detail of how they would operate were matters entirely for the Park Authority.

As previously explained, Ministers were aware of the Park Authority's emerging thinking on solutions to visitor management issues, which included an understanding that the use of byelaws was always an option open to the Park Authority to progress – subject to approval by the Park Authority's Board. My letter of 3 October provided clarity on this point.

The Scottish Government's overarching sponsorship role in relation to all of the public bodies it sponsors, including Loch Lomond & The Trossachs National Park Authority, is to ensure delivery of relevant National Outcomes and other relevant Scottish Government outcomes and priorities (as set out, for example, in the annual Programme for Government). In practical terms, this is achieved via the sponsorship relationship which, essentially, is oversight of activity/spend against agreed priorities (whether set out in corporate or business plans or, in the case of the Park Authority also its approved Partnership Plan) at an administrative level. So, while the Scottish Government was aware of the Park Authority's work to tackle the issue of visitor management (as identified in its Partnership Plan) and subsequent plans to progress the issue, for example its plans to consult, hold discussions with stakeholders etc, it was not involved in any of the work or discussions which led to the decision to make use of byelaws or, following approval of that decision by the Board, the development of the byelaws themselves. For the avoidance of doubt, this means that Ministers had no input to the development of ideas around management zones (or their number, size or location), the use of a permit system, or the number/nature of camping places within each zone.

An essential element of the 'arm's length' relationship between the Scottish Government and its sponsored bodies is that Ministers do not become involved in operational delivery. Visitor management is clearly an operational matter for the Park Authority to consider and manage. Ministers' formal role in relation to any request for use of byelaws under the provisions contained in the National Parks (Scotland) Act 2000 is to consider whether to approve, modify or reject such proposals.

For the reasons outlined above and those provided in previous correspondence, the Scottish Government does not hold the type of information/communications you have requested relating to the 'development of the camping byelaw proposals or how this would be managed'.

Questions 1, 4,5,6,8 and 10

1) Your clarification letter of 6 December confirms that you are interested in obtaining any communications between the Park Authority and the Scottish Government before or after any of the Board briefing sessions 'relating to the development of the camping byelaw proposals or how this would be managed' within the time period 1 October 2013 to 30 April 2015. You have confirmed that you are 'not looking for information on visitor management matters that don't relate to the development of the camping byelaws'.

The Scottish Government does not hold any information between these date which was about the development of the byelaw proposals. The main reason for this is that development of the byelaw proposals was a matter for the Park Authority to consider and Scottish Ministers were not involved in that process (I refer you to previous explanations). In addition, the management and organisation of meetings within the Park Authority, for whatever purpose, are operational matters and not something in which the Scottish Government would become involved.

4) Funding to Loch Lomond & The Trossachs National Park Authority, including relevant capital allocations forms part of the overall Scottish Government's budget approved by the Scottish Parliament. It is an operational matter for the Park Authority to determine how it allocates resources to specific projects and programmes. Within the Park Authority's overall budget allocation, specific Scottish Government approval is only required where the sums involved are beyond established delegated limits or are part of Scottish Government financial controls. The Scottish Government is kept apprised of all relevant spend and lease arrangements via a combination of routine sponsorship liaison meetings and monthly financial monitoring returns.

5) The 'Your Park monitoring programme' and the baseline data gathering for 2015/16 were operational matters for the Park Authority. The Scottish Government had no input or involvement with these aspects of the Park Authority's work.

6) Development of the camping strategy was an operational matter for the Park Authority to progress and the Scottish Government had no involvement in its production or timetable. In approving the byelaws, Ministers agreed an implementation date for the byelaws of 1 March 2017 which the Park Authority is expected to meet.

8) Meetings of the Park Authority's Board are an operational matter for the Park Authority and the Scottish Government does not hold the type of information you have requested on this issue. The Scottish Government does not recognise the description of 'Secret Board Briefing sessions'. Scottish public bodies routinely conduct their business via a combination of open and closed sessions of their Boards, in a similar way to Committees of the Scottish Parliament holding some of their discussions in private. While it is good practice to ensure that there are open Board meetings and that decisions are communicated in an open and transparent way, there will always be instances where a closed session may be required in order to allow free and frank exchange of views and opinion to support and inform the formulation of policy and decisions to be taken by the Board.

10) Responsibility for the 'Development of the Your Park proposals and current plans to implement them' sit with the National Park Authority; the Scottish Government has not communicated with any of the organisations listed in your request on this issue.

Question 3

Prompted by a Park Authority slide, you have asked for any written information relating to liaison with the Scottish Government legal team on wording of the proposed byelaws. I should explain that the Scottish Government Legal Department (SGLD) does not provide legal advice to external bodies. SGLD's role is to provide legal advice to Scottish Ministers. Further, SGLD do not provide comment or advice on policy related issues. An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to the type of information you have requested because it is internal legal advice and disclosure would breach legal professional privilege.

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. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.