

The secret development of the camping bye laws

Description

On 6th October the Information Commissioner for Scotland ordered the Loch Lomond and Trossachs National Park Authority in Decision 209/2016 ([see here](#)) to provide me with written information from ten Board Briefing Sessions that had developed the camping byelaws which it wanted to keep secret. It was only when I received a letter from the Commissioner informing me of the decision that I learned that the written information consisted of a number of powerpoint slides presented to the Park Board. While my appeal was classified as being “partially upheld” this is because the Commissioner decided the LLTNPA was entitled to withhold just one slide out of the 119 presented to the secret Board meetings. Basically the Commissioner agreed with me that the LLTNPA should not have withheld the information – a small victory. This follows two other cases where the Commissioner did not reach a formal decision against the LLTNPA because they at the last minute decided to provide me with the information. That information included extracts from the minutes of the Strategy Group meetings which discussed the byelaws [foi-2015-021-response-appendix-a-strategy-group-notes](#)

I have still not seen the slides, which I will publish on parkswatchscotland, because the law gives public authorities six weeks to provide information once they have been ordered to do so by the Commissioner. Its now well over 4 weeks since the LLTNPA received the Commissioner’s decision and the fact that I have still not received the 118 slides in my view says a great deal about the way the LLTNPA operates. But then the Commissioner’s report makes clear (paras 14-20) that while the LLTNPA claimed during the investigation that 77 slides were already in the public domain, when asked to send them to me the LLTNPA declined to do so on two occasions.

While regular readers will know what I think about the governance of the LLTNPA, I am pleased to say that the Information Commissioner has now joined the Standards Commission ([see here](#)) in having critical things to say about the way this National Park operates:

“the investigating officer was unable to locate the withheld information which LLTNPA was now claiming to be publicly available”.

“46. The Commissioner is somewhat confused by LLTNPA’s submissions. On the one hand, it considers the information in the 52 slides is now in the public domain. On the other, it has been unable to confirm that the information in the public domain is identical, or even substantially similar, to that recorded on the slides.”

“50. In any event, LLTNPA has been asked to identify where in the publicly available information the information in the 52 slides is to be found. It has been unable to do so with any

remotely appropriate degree of specification. The Commissioner can only therefore conclude that the information in the slides is not publicly available, never mind easily accessible to Mr Kempe: some of it may be, but the onus must be on the publicly authority to satisfy the Commissioner that this is the case. It has failed to do so."

"117. The Commissioner is concerned that, in this case, LLTNPA has been unwilling to disclose to Mr Kempe the information which, during the investigation, it had identified as suitable for disclosure, and similarly unwilling to provide him with details describing where he could access other information which it claimed was now publicly available. This was not good practice."

The public interest and the development of the byelaws

In my view the most important part of the Commissioner's decision is where she says the information the Park withheld should have been subject to public scrutiny and that the LLTNPA needs to be accountable and transparent:

93. The Commissioner considers there is a strong public interest in allowing public scrutiny of the information withheld under this exception. In her view, this would add to the public's understanding of how the proposals for the camping development plan and byelaws were progressed, particularly in light of their impact on the environment and the community. There is a public interest in ensuring that LLTNPA is accountable and transparent, and in understanding what matters were presented to Board members at Board Briefing Sessions, in this process.

This puts in a nutshell everything that has been wrong with the development of the camping byelaws – Scottish Ministers and politicians take note! Unfortunately, its outwith the powers of the Information Commissioner to require public authorities to operate in an open and transparent way unless one is prepared to go through very lengthy processes. While my appeal to the Commissioner was lodged in April 2016 (and might have taken less than 6 months to decide if the Park had been more co-operative) the original response to my FOI request was received in May 2015. It took me almost a year before I was able to lodge a valid appeal with the Commissioner.

Part of the problem is asking the right questions. I asked for the dates of all the meetings involving Board Members which considered the Your Park proposals and received this extensive list [foi-2015-021-response-appendix-a-meetings-that-discussed-ban](#) in response in May 2015. It did NOT contain the first two Board Meetings which discussed the byelaws but I only found this out later – the Park

would no doubt justify omitting these two meetings because they were held before the “Your Park” concept was created and I had asked about “Your Park” meetings. The letter [foi-2015-021-response-project-board](#) accompanying the list of meetings stated there were NO “meeting notes” or “papers” relating to the Board Briefing sessions but, in their usual helpful way, the Park avoided letting me know there might be other written information which did not fit these categories. It was only when I explicitly asked for copies of any presentations given at the Board Briefing Sessions that the Park admitted in January 2016 [foi-2015-058-response](#), that “Presentations and briefing documents were produced for some of the Board Briefing sessions that considered the Your Park proposals”. Their refusal to provide this information led to my successful appeal to the Commissioner.

What all this shows is that although the LLTNPA may abide by the letter of the FOI/EIR legislation, they don’t abide by its spirit and their Board and senior management are doing everything they can to obstruct people who are questioning how they operate.

What should happen now

While one might hope that after this decision the LLTNPA would review its practice and start to operate more openly, I am afraid all the signs are the opposite will happen. The Information Commissioner noted *“the LLTNPA’s arguments that making the information available would likely lead to fewer updates being provided to Board members, resulting in their involvement in matters, such as the formulation of policies, becoming inhibited.”* In effect the LLTNPA were saying to the Information Commissioner that if you make us disclose information from secret meetings, we will stop circulating ANY information at those meetings. In other words, the Park will deliberately avoid committing anything to paper that might result in them subject to public scrutiny or held accountable for their actions.

The LLTNPA are not the only public authority who are doing this in Scotland and this way of operating threatens to drive a coach and horses through our Freedom of Information legislation. It will also result in Board Members and senior staff becoming less and less accountable.

The Scottish Government has the power under the National Parks (Scotland) Act 2000 to issue Directions and Guidance to our National Parks:

16 Directions and guidance

(1)The Scottish Ministers may give a National Park authority directions of a general or specific character as to the exercise of the authority's functions; and the authority must comply with those directions.

It should now use this power to issue directions on transparency and accountability.

Category

1. Loch Lomond and Trossachs

Tags

1. Camping bye laws
2. Freedom of Information
3. Governance
4. LLTNPA
5. Scottish Government
6. secrecy

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