

## Freedom of Information failures, the Scottish Government and our National Parks

### Description

The debate on the failure of our Freedom of Information laws in the Scottish Parliament this afternoon on a motion proposed by the Labour (Corbyn supporting) MSP Neil Findlay, following pressure from journalists and the recently retired Information Commissioner Rosemary Agnew is very welcome ([see last business of day](#)). Here's the latest evidence from the Loch Lomond and National Park Authority of why its needed:

***“Please provide me with any information the LLTNPA holds about the secret Board Briefing sessions held on the Cononish goldmine on 13/12/2010 and 20/06/2011”***

*The Park Authority does not hold secret Board Briefing sessions. Accordingly I have to advise under S10(4)(a) of the EIRs that this information is not held for sessions as you describe. However, informal Board Business sessions are held in private which are for officers to have time with Board members to help develop strategy by providing opportunities for informal input before formal officer recommendations are presented for decision at our Board meetings, which are held in public.*

Extract from [EIR 2017-041 Response](#)

Its 1984 and this is parkspeak. Secret Board meetings (they are not advertised and you can only find out what could have happened at them by Freedom of Information requests such as I made) are described as “private business sessions” by public officials who won't put their names to the letters send out. What a load of tosh. This public authority held 13 secret meetings to develop the camping byelaws compared to the two held in public.

The information extracts in the response to my information request provided as an appendix [EIR 2017-041 Informal Board Meeting Agenda + Cononish Actions](#) rather gives the game away. Back in 2010 soon after the Park under Mike Cantlay – he has just been appointed chair of SNH, one of the few remaining public bodies which does appear committed to transparency – introduced the practice of holding Board Meetings in secret, they were called “Informal Board Meetings”. Besides Cononish, the agenda shows that the LLTNPA discussed Local Access Forum Membership, school closures, the A82 upgrade consultation. These are all matters, like the camping byelaws, that should have been discussed in public – in fact there are dozens of such matters over the last 7 years [FOI 2016-002 Appendix A list topics at Board Briefing session](#).

At least back in 2010 the LLTNPA kept a record of what it was deciding, although they have only provided me with the extract about Cononish. At some point they stopped taking any record of what was discussed or decided, which is precisely one of the points of concern highlighted in the motion to the Scottish Parliament, that the Scottish Government is “*not recording or taking minutes of meetings*”.

## The role of the Scottish Government in National Park decision making

For over two years now I have been trying to understand the role of the Scottish Government in the development of the camping byelaws. We know they had an important role because Linda McKay, the retired convener, in her letter to Aileen McLeod recommending the byelaws stated:

*In 2013, our previous Minister, Paul Wheelhouse, while visiting East Loch Lomond to see the changes and meet residents, partners and local businesses, encouraged us to bring forward a comprehensive set of proposals for those other areas in the Park blighted by these problems.*

What I haven't been able to find out is whether Mr Wheelhouse was set up – in other words the Park deliberately misled him that it was the camping byelaws which had led to the improvement on east Loch Lomond (rather than a package of measures) – or whether it was Mr Wheelhouse who took the initiative. What does seem clear though is that the go-ahead – and remember this was just soon after the Land Reform Review Group had concluded there was no need to change our access laws – the important decision, was made outside any formal decision-making structures. This is no different to how Donald Trump takes decisions.

I won't bore readers with an attempt to recount my attempts over two years to extract information from Scottish Government officials about the Scottish Government role in the process. What I have learned is that they hold no information about how important decisions are made [Mr Kempe FOI \(November\) Response February 2017](#). A good example is east Loch Lomond where they confirmed (in response to my question 9) they hold no information about the Review of the east Loch Lomond byelaws apart from the document supplied by the LLTNPA. In other words not one official has put in writing any comment or recorded any view or asked for information from any other body about the the alleged success of the byelaws on east Loch Lomond DESPITE the reported interest of the Minister at the time. Or maybe that's BECAUSE the Minister in effect took the decision on the hoof and if the Scottish Government had recorded any written information this would have exposed them to legal challenge.

A current example concerns the Scottish Government's role in the repeal of the old east Loch Lomond byelaws in favour of the new byelaws ([see here](#)) The Scottish Government has told me [Fol \(6 Mar2017\) repeal of byelaws response](#) they hold nothing in writing about this but, purely by chance apparently, "a more general point on legal mechanisms for revoking byelaws emerged in discussion". The Scottish Government then want us to believe that, quite independently of the LLTNPA, which just so happened to need to revoke the east Loch Lomond byelaws, they sought legal advice on how to revoke byelaws and needless to say, because legal advice is exempt from FOI, they won't make anything public. I have put in a review request asking for the reasons for that legal advice. However, where it comes to questions about application and enforcement of laws that criminalise people, my own view is that such information should be made public. The criminal law should be made by the people, not something done to the people.

These FOI examples are part of a much bigger problem about secrecy and lack of accountability, not just in our National Parks or the Scottish Government, but across public authorities. The Trump approach to decision making has been flourishing in Scotland for some time, its just that unlike Trump

our public authorities have not wanted to advertise the fact. I hope the debate in the Scottish Parliament leads to some actions to put this right.

I have appended the motion, which is worth reading:

### ***Leading Journalists Criticise the Scottish Government over FOISA***

*That the Parliament notes with great concern the letter from whom it understands are 23 prominent Scottish journalists to the selection panel for the appointment of the Scottish Information Commissioner, which was published on 1 June 2017 by The Ferret and Common Space and details what they argue are the failures of the Scottish Government and its agencies in relation to the Freedom of Information (Scotland) Act 2002 (FOISA); understands that it suggests that the application of FOISA by ministers and officials is questionable at best and, at worst, implies a culture and practice of secrecy and cover up, including, it believes, through routinely avoiding sharing information, often through not recording or taking minutes of meetings that are attended by ministers or senior civil servants; considers that this flies in the face of what it sees as the Scottish Government's much-vaunted assessment of itself as open and transparent, including through the Open Government Partnership Scottish National Action Plan and its role as one of 15 pioneer members of the Open Government Partnership's inaugural International Subnational Government Programme and legislation such as the Public Records (Scotland) Act 2011; understands that the Scottish Government introduced its Record Management Plan to comply with the 2011 Act; notes the view that the journalists' criticism of FOISA shows that it is time to have a review of whether the legislation remains robust or has been diminished, whether it should be extended and strengthened and whether elements of it are still appropriate, such as the level set for the cost exemption, whereby the Scottish Government may refuse to provide information if the cost of doing so exceeds £600, a figure that hasn't been updated since FOISA came into force, and further notes the view that, by doing so, this would ensure that people in Lothian and across the country who use their freedom of information rights could be confident that FOISA would be improved and applied in a way that was consistent with the spirit intended when the law was established.*

### **Category**

1. Loch Lomond and Trossachs
2. National Parks

### **Tags**

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

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