



Mr Nick Kempe
nickkempe1@gmail.com
EIR Ref: 2018/002

3rd April 2018

Dear Mr Kempe

REVIEW REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

Information Request

On 14 January 2018 you made the following request for information,

"During the Out of Doors programme on Saturday, I noted that you and Lea Hamilton made statements which are very relevant to the questions I raised under point six below about the warnings that have been issued for breach of the camping byelaws. I explain the issues below and would be grateful for your response, either as an explanation or under Freedom of Information Laws if necessary:

1) Lea Hamilton stated that information on the 828 people warned by the LLTNPA will be held for three years. I would be grateful if you could explain or provide me with a) the legal authority under which the LLTNPA as a National Park Authority is able to hold such information and for this length of time b) who within the LLTNPA made this decision (I have checked and this was never discussed at a Board Meeting so it appears either this decision was taken at a secret meeting of the Board or else staff took the decision) c) if the decision was taken by staff, what authority staff had to do so under the scheme of delegation and d) the date on which the warning system was implemented.

2) On the programme you stated that of the 15000 people camping (with permits) "we gave warnings to over 800 of these". This cannot be right and I assume in the heat of the moment - and its very easy to do so I am not holding it against you, I am just seeking the truth - you made a mistake. For, if what you said was correct that would suggest (again relating to my question under 6 below) that the LLTNPA ONLY issued warnings to people who had been issued with permits. The interviewers concluded from this that a very high proportion of campers had been warned which you then went on to half rectify when you said it was not such a high proportion of campers as the interviewers suggested. What you didn't provide though is the information which the LLTNPA has been refusing to

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release and that is how what information you hold on the numbers camping without any permit which would have enabled you to explain what has been really going on. What I would expect is that most of the people issued warning did NOT have permits and were either camping outside a permit area or were within a permit area without a permit and refusing to buy one (which is why I asked for a breakdown of that data on the 9th). I would suggest the most appropriate way the LLTNPA could clarify the position is by providing the data I have requested. Your response however raises a further question which I had not considered when drafting my information request of 9th January and that is how many people were camping in a permit area with a permit but breached the terms of that permit and were warned for that? I would be grateful therefore if you could either explain this or add to the list of questions I submitted on the 9th the following: "Of the 828 warnings issued, please provide me with the information you hold on how many of were to people who had a valid permit and, of these, a breakdown of which were for a) in breach of camping byelaw 9 on the lighting of fires b) a breach of one of the terms of the permit" or c) both of these."

Response

On 12th February 2018 the Park Authority provided the following response to you:-

"I refer to your request for information, received by email on 14th January 2018. The information you have requested is environmental information, as defined in Regulation 2 of the Environmental Information (Scotland) Regulations 2004 (EIRs). The Park Authority has an obligation to deal with your request under the EIRs and an option to also deal with your request under the Freedom of Information (Scotland) Act 2002 (FOISA), unless the public interest lies in dealing with your request solely under the EIRs. We consider that the public interest in dealing with your request solely under the EIRs outweighs the public interest in also dealing with your request under FOISA, on the basis that the public interest is not served by duplicating consideration of your request under both regimes. We have therefore applied the exemption in section 39(2) of FOISA and dealt with your request under the EIRs alone.

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

"Lea Hamilton stated that information on the 828 people warned by the LLTNPA will be held for three years.

I would be grateful if you could explain or provide me with a) the legal authority under which the LLTNPA as a National Park Authority is able to hold such information and for this length of time

The legal authority under which the Park Authority is entitled to hold information is set out in section 27 of the National Parks (Scotland) Act 2000 which set out our legal obligations in term of records.

The Loch Lomond and The Trossachs Camping Management Byelaws 2017 (the "Byelaws") permit the Park Authority to hold the information to which you refer. Byelaw 9 relates to the provision of personal details when there are reasonable grounds for believing that a person has committed an offence under the Byelaws.

The processing of this personal information is permitted under Schedule 1 of the Data Protection Act 1998 which permits the processing of personal information. The length of time that the Park Authority is entitled to hold this information is determined by a records

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retention schedule, which is maintained in compliance with the Public Records (Scotland) Act 2011.

b) who within the LLTNPA made this decision (I have checked and this was never discussed at a Board Meeting so it appears either this decision was taken at a secret meeting of the Board or else staff took the decision)

The Byelaws provide the authority to collect this information. The Byelaws were approved by the Park Authority Board and signed off by Scottish Ministers in January 2016.

In relation to how long the information is retained for, the record retention schedule is a required element of the Park Authority's records management plan, which has been approved by the Keeper of the Records. This was reported to the Board on 11th December 2017 in the Governance update section of the organisational update.

c) if the decision was taken by staff, what authority staff had to do so under the scheme of delegation and

As outlined in response b above, the authority to hold this information was created by the Byelaws which were approved by the Park Authority Board.

The collection and processing of this information is delegated to staff as outlined in Part 4 of the Scheme of Delegation relative to the Byelaws, which was approved by the Board on 12th December 2016, and can be found on our website at:

http://www.lochlomond-trossachs.org/rr-content/uploads/2016/07/Board_20161212_Agenda6_Appendix-2_Scheme-of-Delegation-for-Loch-Lomond-The-Trossachs-Camping-Management-Byelaws-2017.pdf

An accompanying paper submitted to the Board on the same date, sets out further details regarding the Scheme of Delegation, which can be accessed at:

http://www.lochlomond-trossachs.org/rr-content/uploads/2016/07/Board_20161212_Agenda6_Schemes-of-Delegation-for-Park-Authority-Byelaws.pdf

d) the date on which the warning system was implemented.”

The Ranger service has been able to issue warnings in relation to infringements of the Byelaws since they were introduced on 1st March 2017.

"Of the 828 warnings issued, please provide me with the information you hold on how many of were to people who had a valid permit

There were no warnings issued to people who had a valid permit. Accordingly I have to advise under Regulation 10(4)(a) of the EIRs that this information is not held.

Of the 828 warnings issued - a breakdown of which were for a) in breach of camping byelaw 9 on the lighting of fires

Section 8 of the Camping Management Byelaws 2017 applies to the lighting of fires. Section 9 of the Camping Management Byelaws 2017 is for refusal to provide personal details.

There were 21 warnings issued for a breach of camping byelaw 8 on the lighting of fires.

Of the 828 warnings issued, which were for

b) a breach of one of the terms of the permit

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There were no warnings issued for a breach of one of the terms of the permit, as stated above, there were no warnings issued to people who had a valid permit.

Of the 828 warnings issued, which were for

c) both of these. (i.e a breach of Section 8 on lighting of fires as well as a breach of one of the terms of the permit)

None

Yours sincerely

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

Review Procedure

On 5 March 2018 you requested a review in the following terms:-

“Thankyou very much for this response which, besides containing helpful information, also in several places explains that information in context which I found particularly helpful and helped me understand that the LLTNPA may have the power to hold some information on people it has warned for breach of the byelaws (reference to National Parks Act, Date Protection Act etc). Your response does seem to me however to contain several significant gaps:

1) You state "The Loch Lomond & The Trossachs Camping Management Byelaws 2017 (the "Byelaws") permit the Park Authority to hold the information to which you refer. Byelaw 9 relates to the provision of personal details when there are reasonable grounds for believing that a person has committed an offence under the Byelaws." Byelaw 9 does contain provisions to require people to give their name and address, place date of birth and vehicle details, but NOT for how this should be used and says nothing about warnings being given to people breaching the byelaws. It is therefore simply not true that Byelaw 9 allows the Park to hold information on warnings. The LLTNPA's ability to do so must come from some other law.

2) In response to my question of who authorised records of warnings to be kept for three years, you also state that the Records Management system was approved and sent to the Keeper of Records last year. This fails to answer the question of who within the LLTNPA authorised that such records was kept. If the implication of what you are saying is that the Keeper of Records approves decisions which could affect civil liberties, I would be grateful if you could explain this further. Whatever the response to that I would be grateful if you could answer the question of WHO authorised the decision that information on warnings could be recorded and kept for three years (as it clearly wasn't the Board) and to treat this email as a formal REVIEW request under the EIRs that you should do so.

3) In response to my question on what authority did staff have to take the decision to retain warnings on record for three years you referred me to the scheme of delegation. As far as I can see there is NOTHING in the scheme of delegation which enables staff to take such a decision. There are sections on exempting land, exempting groups and authorising individual staff to act as authorised officers but NOTHING which would allow staff to set up the type of warning system that the LLTNPA has created. It therefore appears to me whatever the legality of the warning system, if LLTNPA staff had no authority to set up a warning system without authority from the Board then whoever took the decision has been acting ultra vires. While I appreciate the implications of this are not

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purely an information matter, I would ask you to REVIEW your decision with a view to establishing whether the Park does any information which could have provided staff to act with lawful authority. I can then take up elsewhere."

Review Response

I have now considered your review request and I would respond to you in the following terms,

Thank you very much for this response which, besides containing helpful information, also in several places explains that information in context which I found particularly helpful and helped me understand that the LLTNPA may have the power to hold some information on people it has warned for breach of the byelaws (reference to National Parks Act, Data Protection Act etc). Your response does seem to me however to contain several significant gaps:

First, I have considered the terms of your review request. I do not agree that the response contained any gaps. The information requested by you was provided.

Secondly, I would advise "*environmental information*" is defined in the environmental information Regulations as being information "*in written, visual, aural, electronic or any other material form*".

Regulation 5 of the EIRs states that "*Subject to paragraph (2) a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.*"

While the Park Authority has a duty to make environmental information available on request, (subject to any exemptions which apply) the provision of advice is not covered by this definition other than as set out in regulation 9.

The original response took the time to provide you with an explanation of the issues you raised in your request, to assist your understanding of matters, however there was no requirement to provide this advice.

For the avoidance of doubt, I consider that a number of the points you raise in your review request are in fact requests for legal advice and not for information.

Turning now to the specific points you raise:-

1) you state "The Loch Lomond & The Trossachs Camping Management Byelaws 2017 (the "Byelaws") permit the Park Authority to hold the information to which you refer. Byelaw 9 relates to the provision of personal details when there are reasonable grounds for believing that a person has committed an offence under the Byelaws." Byelaw 9 does contain provisions to require people to give their name and address, place date of birth and vehicle details, but NOT for how this should be used and says nothing about warnings being given to people breaching the byelaws. It is therefore simply not true that Byelaw 9 allows the Park to hold information on warnings. The LLTNPA's ability to do so must come from some other law.

Byelaw 9 provides the Park Authority with the legal authority obtain the personal data stipulated in that byelaw, thereafter the legal authority to hold it arises from the following pieces of legislation and relevant documentation,

- the National Park (Scotland) Act 2000,
- the Local Government (Scotland) Act 1973
- the Data Protection Act 1998,

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- the Public Records (Scotland) Act 2011;
- Loch Lomond and the Trossachs National Park Camping Management Byelaws 2017;
- the Park Authority's Records Management Plan;
- the Keeper's Assessment Report of the Park's Authority's Records Management Plan September 2017
- the Park Authority's Records Retention Schedule;
- the Park Authority's Registration with the Information Commissioner's Office - **Z6815521**

I would direct you to:-

Section 9 of the 2000 Act which sets out the Park Authority's general purpose and functions;

Section 27(1) (b) of the 2000 Act which sets out that "the authority must... make arrangements for the preservation and management of the records and must ensure that the records are preserved and managed in accordance with those arrangements.;

Schedule 2 of the 2000 Act which sets out the general powers of the Park Authority which includes at paragraph 8 the Park Authority powers to make byelaws (and provides advice on the purposes for which the byelaws can be made).

Section 203 of the Local Government (Scotland) Act 1973 which provides for offences against byelaws.

The Public Records Act 2011 which requires a public authority to prepare and put in place a records management plan detailing how it will manage its records.

The Data Protection Act 1998 which regulates the basis on which we are entitled to hold personal data.

Section 16 of the Act 1998 Act requires that a data controller provides the Information Commissioner with certain information, including a description of the personal data being or to be processed by or on behalf of the data controller and of the category or categories of data subject to which they relate; a description of the purpose or purposes for which the data are being or are to be processed, ...

Schedule 2 the 1998 Act sets out the conditions relevant for purposes of processing data, including that the processing is necessary— The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract; The processing is necessary in order to protect the vital interests of the data subject; The processing is necessary—(a)for the administration of justice, (b)for the exercise of any functions conferred on any person by or under any enactment, ... (d)for the exercise of any other functions of a public nature exercised in the public interest by any person.

There are also a number of data protection principles which apply to the holding of personal data.

The Information Commissioner's (ICO) Registration Certificate for the Park Authority shows the matters covered by data processing by the Park Authority. Details can be found on the ICO website: <https://ico.org.uk/about-the-ico/what-we-do/register-of-data-controllers/>

So having regard to the above, the Park Authority, are required to carry out their duties, this can include making and then enforcing byelaws.

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The Park Authority are entitled to process information including personal information, so long as it is lawfully processed under Data Protection legislation and that it is disposed of in accordance with our Records Retention Schedule.

The holding of personal data collected where warnings have been given under Regulation 9 of the Camping Byelaws is lawful processing for the following reasons, the processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract; the processing is necessary in order to protect the vital interests of the data subject; the processing is necessary—(a)for the administration of justice, (b)for the exercise of any functions conferred on any person by or under any enactment, ... (d)for the exercise of any other functions of a public nature exercised in the public interest by any person.

Turning now to the length of time that data is retained, I would refer you to the Public Records Act 2011. It requires every authority to which this Part applies to (a)prepare a plan (a “records management plan”) setting out proper arrangements for the management of the authority's public records, (b)submit the plan to the Keeper for agreement, and (c)ensure that its public records are managed in accordance with the plan as agreed with the Keeper.

(2)An authority's records management plan must include— (i) the procedures to be followed in managing the authority's public records, and (ii) maintaining the security of information contained in the authority's public records.

Please find a link to the Keeper's assessment report of the Park Authority's Public Records Management Plan <https://www.nrscotland.gov.uk/files/record-keeping/public-records-act/keepers-assessment-report-loch-lomond-and-the-trossachs-national-park-authority.pdf>

Please find a link to the Park Authority's Records Management Policy (<http://www.lochlomond-trossachs.org/rr-content/uploads/2017/02/Records-Management-Policy.pdf>)

The Records Management Plan makes reference to the Park Authority's Records Retention Schedule. Information about the Records Management Plan including the retention schedule has been provided to you in the response to your request Ref EIR 2018/008. You will note that under Legal – Byelaws –Enforcement we have made provision to keep records for 5 years after the date a matter is concluded. It is acceptable therefore for this warning information to be held.

In the event that a member of the public requires to be warned about their conduct in relation to the Camping Byelaws, and when they have provided details under Regulation 9, the Park Authority are entitled to hold this information (warnings (i.e. an alleged contravention) and personal details) having regard to the legislation set out above. The Data Protection Act provides the basis for the holding of the personal data.

2) In response to my question of who authorised records of warnings to be kept for three years, you also state that the Records Management system was approved and sent to the Keeper of Records last year. This fails to answer the question of who within the LLTNPA authorised that such records was kept. If the implication of what you are saying is that the Keeper of Records approves decisions which could affect civil liberties, I would be grateful if you could explain this further. Whatever the response to that I would be grateful if you could answer the question of WHO authorised the decision that information on warnings could be recorded and kept for three years (as it clearly wasn't the Board) and to treat this email as a formal REVIEW request under the EIRs that you should do so.

The Records Management Plan confirms that the Director of Corporate Services has ultimate responsibility for the Records Management Plan and accordingly has responsibility for agreeing the management of records, including the retention of them.

The Keeper discharges his duties in accordance with the Public Records (Scotland) Act 2011, if you consider that he is taking decisions which affect people's civil liberties, and then I would respectfully suggest that you take this matter up directly with the Keeper's Office.

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Your question as to “WHO” authorised the decision that information on warnings could be recorded and kept for three years, the simple answer is no one, as the decision (having regard to the records management plan and retention schedule) was taken that information on warnings could be recorded and kept for 5 years (not 3) and advice will be given to the ranger for this error.

In terms of WHO authorised the decision that information on warnings could be recorded and kept for five years, I would again refer you to relevant legislation, namely

- the National Park (Scotland) Act 2000

and having regard to Schedule 2 paragraph 17 “delegation of powers”, it states that *“anything authorised or required... to be done but the Park Authority may be done by any of its committees which, or by any of its members or employees who, is authorised for the purpose by the Authority”*.

I would refer you to the Public Records (Scotland) Act 2011 which requires as a public authority to create and maintain a Records Management Plan. Under Element 1 of the Records Management Plan, we must identify a senior member of staff who has overall responsibility for records management. The Chief Executive of the Park Authority therefore delegated overall strategic responsibility for records management within the Park Authority to the Director of Corporate Services, as stated in the evidence of our compliance with Element 1 of the Plan.

3) In response to my question on what authority did staff have to take the decision to retain warnings on record for three years you referred me to the scheme of delegation. As far as I can see there is NOTHING in the scheme of delegation which enables staff to take such a decision. There are sections on exempting land, exempting groups and authorising individual staff to act as authorised officers but NOTHING which would allow staff to set up the type of warning system that the LLTNPA has created. It therefore appears to me whatever the legality of the warning system; if LLTNPA staff had no authority to set up a warning system without authority from the Board then whoever took the decision has been acting ultra vires. While I appreciate the implications of this are not purely an information matter, I would ask you to REVIEW your decision with a view to establishing whether the Park does any information which could have provided staff to act with lawful authority. I can then take up elsewhere.

As more particularly set out above the Park Authority is entitled to discharge its functions, included in that it is entitled to enforce the byelaws; give warnings to persons for alleged contraventions of the byelaws; seek personal details under Byelaw 9; and retain that information in accordance with the Records Retention Schedule.

In conclusion, therefore and for all of the reasons set out above I do not uphold your review request.

Yours sincerely

Governance Manager

Loch Lomond and the Trossachs National Park Authority