

16<sup>th</sup> October 2019

Dear Mr Kempe,

## **REQUEST FOR REVIEW OF INFORMATION PROVIDED BY HIGHLANDS AND ISLANDS ENTERPRISE**

I refer to your email dated 18 September 2019 requesting a review of HIE's response regarding '*Approximate costs of dismantling the funicular railway*'.

In conducting my review, I have considered your original request, HIE's response dated 30 August 2019, and your request for review as noted above.

### **HIE's Original Decision**

As you are aware, following your initial request for information received by HIE on 5<sup>th</sup> August 2019 HIE responded under the Freedom of Information (Scotland) Act 2002 (FOISA) providing some information in response to your enquiries.

### **Decision**

I have reviewed the facts of the case and have found that HIE's original response endeavored to provide a summary answer to each of your enquiries insofar as HIE felt they were able to at the time. However, having considered your request for review, I believe that HIE could have interpreted your request more broadly and provided more details of the relevant information that was held. In taking this more wide-ranging approach, I have taken the view that your request was initially considered under the incorrect legislation, for which I apologise. Your request should have been considered exempt from FOISA under section 39(2)(b) and processed in accordance with the Environmental Information (Scotland) Regulations 2004 and it is on that basis that I have responded below.

I have dealt with each of the enquiries within your request separately.

1) *What work HIE has undertaken on the costs of removing the funicular (whether inhouse or commissioned)?*

I have found that while some information was provided to you, HIE did not explain what other relevant information was held at the time your request was made. HIE also holds the **Cairngorm Funicular Railway (Railway Dismantling Report) May 2019**.

This report is being withheld under Regulation 10(4)(d) – material which is still in the course of completion, to unfinished documents or to incomplete data.

This is because this report was created for the purpose of developing a business case to present to the Scottish Government, and that work is ongoing. It is anticipated that the business case will be ready for consideration by the HIE Board and the Scottish Government in December 2019 or January 2020. To disclose the information will prejudice substantially HIE's ability to bring the matter to a successful conclusion and their position in negotiations with third parties.

Additionally some information within the report is being withheld under Regulation 10(5)(e) - the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest. This is because disclosure of financial information at the time will substantially prejudice HIE's position in negotiations with third parties.

The application of these exceptions requires consideration of the public interest and in this case, it has been decided that the public interest is in withholding the information. While HIE recognises the significant public interest in the funicular railway, the content of this report is central to HIE's ongoing course of action. It is vital that HIE does nothing to prejudice its ability to successfully pursue best value for the investment of public funds.

## 2) *What the estimated cost for removal is?*

I have found that an estimated high-level cost for removal was held at the time your request was made. While it could not have been provided at the time (being part of the report referenced [ds](#) above), HIE has since released some of the information which is provided below.

*'I can confirm that HIE's current, high level estimate of the potential cost of physically dismantling the funicular railway and reinstating the hillside is up to £13.3m, excluding professional fees. It is important to note that this figure is also an early assessment that relates solely to the railway and not any buildings. It does not include the cost of replacing the funicular with any alternative uplift.'*

## 3) *and on what basis that estimated cost has been worked out (i.e. total or partial removal of infrastructure, cost of applying environmental standards etc.)?*

Please see the answer to Question 2 above. As with the first enquiry, HIE provided some information as a response although did not confirm what relevant information was held at the time of your request.

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I can confirm that the **Cairngorm Funicular Railway (Railway Dismantling Report) May 2019** was held which provided a basis for the costings.

## **Conclusion**

In conclusion, I have found that your original request could have been interpreted more widely and because of this was processed under the incorrect legislation, for which I apologise. As you will be aware, the situation regarding the funicular railway at Cairngorm Mountain remains extremely dynamic and it is vital that HIE remains in a position where it can achieve the best possible outcome for the public funds that have been invested while ensuring a sustainable future for the facility. I have therefore found that the relevant information would not have been disclosed in response to the original request for the reasons explained in my decision above. This remains the case and HIE continues to hold the view that it is in the public interest to withhold this information.

If you are not content with the outcome of our internal review, you have right to apply directly to the Scottish Information Commissioner for a decision.

The Scottish Information Commissioner can be contacted at:

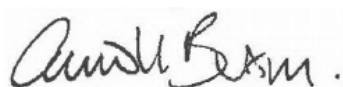
[www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal)

or

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

You also have a subsequent right of appeal to the Court of Session on a point of law.

Yours sincerely



**Carroll Buxton**  
**Interim Chief Executive, Highlands and Islands Enterprise**