Mr N Kempe

Longmore House

Salisbury Place

Edinburgh

EH9 1SH

andy.sharp@hes.scot

T: +44 (0) 131 668 8600

By email

5th August 2022

Dear Mr Kempe,

**REQUEST FOR A REVIEW UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRS REGARDING THE HOLYROOD PARK REGULATIONS NOT BEING AMENDED TO BRING THEM INTO LINE WITH THE LAND REFORM (SCOTLAND) ACT 2003**

Further to my colleague Roger Green’s email of 11th July 2022, I was asked to undertake a review of our response to your initial request of 21st May 2022.

I was asked to undertake this review as I had no previous involvement in this subject matter. I have therefore looked at your request completely afresh, examined the documents withheld by Historic Environment Scotland (HES) and paid particular attention to the content of your email seeking a review of the previous decision.

**The Review**

I have now completed my review of our response to your request.

Having reviewed all related correspondence provided, I consider that HES applied exceptions 10(4)(e) (disclosure of internal communications), 10(5)d (confidentiality of proceedings) and 11(2) (personal data) correctly. I also consider that HES met Regulation 13(b) by making it clear that where a public authority is withholding information on public interest grounds, the refusal must state how the public authority reached its decision with respect to the public interest test.

In your request for review, you indicated that it was not clear from the information you received whether the legal correspondence with the Scottish Government concerned the powers that HES has under the Holyrood Park regulations to control recreational access or some other matter. You also indicated that if it was confirmed that none of the exempt correspondence related to the closure of the Radical Road or how the Holyrood Park regulations fit with the Land Reform Act then you would be happy to withdraw your review request.

Having reviewed all the correspondence made available to me, I can confirm that:

1. none of the legal correspondence between HES and Scottish Government related to the closure of the Radical Road; and
2. none of the correspondence related to how the Holyrood Park Regulations fit with the Land Reform (Scotland) Act 2003.

Although I consider that HES has applied the exceptions correctly, there was one sentence in one document that I reviewed that I consider is relevant to your concerns. I have taken the view, exceptionally, that this should be disclosed. The sentence states “*The general “right to roam” under the Scottish Outdoor Access Code does not apply in the Park to the extent that access to the Park is prohibited, restricted, or excluded in terms of the Regulations or the 1979 Act*”.

As you are aware, Holyrood Park is a Property In Care as described in the [Holyrood Park Statement of Significance](https://app-hes-pubs-prod-neu-01.azurewebsites.net/api/file/bd3db9ec-6d19-4c7d-9cb0-ab0200e6f921). The regulations surrounding our obligations to our Properties in Care are very clear and they are available in our publication [Managing Access to Properties in Care](https://www.historicenvironment.scot/media/5959/managing-access-to-properties-in-care.pdf) (Section 1.2).

**The Right to Appeal**

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 months of receiving this letter. You can contact the Commissioner at:

The Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

E-mail: 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

**ANDY SHARP**

Information Security Manager