



Name: Nick Kempe  
Email: nickkempe1@gmail.com

FOI Review Ref: 2025-022

8<sup>th</sup> August 2025

Dear Mr Kempe

## **REQUEST FOR REVIEW OF DECISION UNDER FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

I am writing in response to your request, dated 11 July 2025, for a review of the handling of your above referenced information request under the Freedom of Information Act (Scotland) 2002 (FOISA).

### **Original Request**

Your original request read: *"I am writing to lodge a request under the Freedom of Information Act for a recording of the Board meeting today [09 June 2025] before it is discarded."*

Our response, issued on 24<sup>th</sup> June 2025, confirmed that the National Park Authority holds the information you requested; however, the information was withheld in accordance with Section 38(1)(b) and Section 27(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

The response went on to set out that a Section 38(1) exemption is not subject to the public interest test and offered you the opportunity to come to our office and view the recording.

### **Your Request for Review**

In requesting this review, you wrote:

*"This is to request you review your decision (attached) not to provide me with a copy of the video of the Board Meeting of 9th June 2025 on the grounds that personal data needs to be processed fairly and lawfully and therefore Section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA), the exception which allows personal information to be withheld, applies.*

*In your response you claim "the video recording contains the personal information of multiple individuals who have not consented to their data being processed in this way (i.e. they have not*

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consented to a permanent recording of their names, images and voices being made permanently available in video format)". First, it is important to clarify that having viewed the meeting the video camera was at the back of the room and the "multiple individuals" all consisted of Board Members and staff who were involved in a meeting that was performing a public function and required to be held in public

Second, the Data Protection Act is a UK Act of Parliament and UK Governments have for the last 11 years been very clear that filming and broadcasting public meetings of public authorities is not contrary to data protection principles and processing such information through filming and broadcasting it is quite consistent with data protection processing principles (article 5 of GDPR is appended below). Despite its somewhat misleading title, I would refer you to the House of Commons library briefing <https://commonslibrary.parliament.uk/why-cant-i-film-meetings-at-my-council/> and the Openness of Local Government Regulations 2014 which allow any member of the public to record and broadcast public meetings in England. On this link [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207528/Your\\_councils\\_cabinet\\_-\\_going\\_to\\_its\\_meetings\\_seeing\\_how\\_it\\_works.pdf#page=6](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207528/Your_councils_cabinet_-_going_to_its_meetings_seeing_how_it_works.pdf#page=6) you will find the following from 2013:

"Can I film the meeting?

Council meetings are public meetings. Elected representatives and council officers acting in the public sphere should expect to be held to account for their comments and votes in such meetings. The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public.

The Data Protection Act does not prohibit such overt filming of public meetings. Councils may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees should be informed at the start of the meeting that it is being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

The council should consider adopting a policy on the filming of members of the public speaking at a meeting, such as allowing those who actively object to being filmed not to be filmed, without undermining the broader transparency of the meeting".

While there is no such right to record meetings in Scotland, the relevance to this information request is that it shows there should be absolutely no in principle with the LLTNPA processing such data by broadcasting board meetings (which explains why Dr Heather Reid, the Convener, did not have to ask the consent of those present to the meeting being recorded) or making those recordings available over time.

In the last ten years and partly as a result of Covid things have moved on and councils in both England and Scotland have decided that rather than allowing or getting into disputes about allowing the public to film meetings, it would be better to record such meetings themselves and make those recordings available on their websites. Many Councils in Scotland now do this as a matter of course and the Cairngorms National Park Authority has done so on occasion.

The point of all this in respect to my information request is that while there is no law in Scotland which obliges decision making bodies publish recordings of meetings, where they choose not to do as the LLTNPA as done, they should be provided in response to Freedom of Information requests. My own personal view is that it would be much better for the LLTNPA to follow the example of other public authorities and make recordings of meetings available for a reasonable period of time and add this to your publication scheme.

Your offer of allowing me to view the recording at your HQ is I am afraid no use at all because I wish to refer the public to parts of that meeting, as allowed under data protection law and as encouraged by the UK Government in the name of transparency. While I would prefer to do this

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by referring to a recording on your website and highlighting what point in the recording I suggest they view (which I have done in other cases), failing that I would like to broadcast clips of the meeting.”

### Assessment of Relevant Information

To make an assessment, we have reviewed:

1. Your original request
2. The response to your original request
3. Your request for review

### Decision

Firstly, we need to address a typographical error in the original decision that was shared with you. On page two, at line two, the letter reads “*The minutes of our Board meeting held on the 09 June 2024 are still being finalised...*”. This is a typographical error, and the line should instead read “*The minutes of our Board meeting hold on the 09 June 2025 are still being finalised...*”. We apologise for this oversight.

The UK GDPR Article 4(1) defines personal data as: “*any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.*”

The definition of personal data is not restricted to factual information about an individual. Opinions and inferences are also personal data if the individual can be identified from that data, either directly or indirectly, and the information related to that individual. For example, if you are attaching inferences or opinions to individuals’ names, then this information is very likely to be considered personal data, regardless of how certain you are that these inferences or opinions are correct. Given that our Board and staff have shared opinions and drawn inferences within the context of the Board meeting that are related to their names, we consider that this information is personal data.

Having reviewed the original response, we are upholding the decision that Section 38(1)(b) applies to the recording of the Board Meeting on the 9<sup>th</sup> June 2025.

As explained in the original response, this exemption is not subject to the public interest test. We do, however, recognise that there is public interest in what was discussed at the meeting. Members of the public were able to attend the meeting and the meeting minutes will be published on our website in due course. However, in undertaking the review, we have considered the public interest in disclosure.

Whilst we acknowledge that there is general public interest in transparency and accountability of public bodies, we have concluded that, in this instance, the public interest does not override the legitimate privacy rights of the individuals identifiable in the requested recording. The information requested contains opinions and inferences expressed by identifiable individuals, some of which relate to sensitive and candid discussions. These contributions constitute personal data under the UK GDPR and the Data Protection Act 2018.

We accept that scrutiny of decision-making can serve a public interest. However, in this case:

1. The individuals involved in this meeting, which included a young person from our Youth

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Committee, have no expectation of public dissemination of the raw recording.

2. The recording was made solely to assist in the production of accurate minutes, which will be available to the general public within the next 30 days. Disclosure of the recording itself goes beyond what is necessary to ensure transparency and would expose unfiltered personal data, including tone, voice, and potentially identifiable context, which individuals may reasonably expect to remain private.
3. The last part of the meeting was confidential and held in closed session. Any recording of that part of the meeting would not be released.
4. There is insufficient evidence that disclosure of any part of the meeting would serve a broader public benefit rather than a private interest.

Given the above, disclosure of the full recording would be unfair and unlawful, and would breach the data protection principles under Article 5(1)(a) of the UK GDPR. Therefore, the information is exempt under Section 38(1)(b), and the public interest does not justify overriding this exemption.

In order to redact the footage to release it to you, it would render the footage unusable for any purpose, as both the image and audio would need to be altered. In addition, the National Park Authority does not possess the appropriate software to appropriately redact the personal data contained within the recording, and releasing the unedited footage would breach data protection principles as set out above.

As explained in the original response, these recordings are used to assist with the production of meeting minutes and are routinely destroyed upon completion of this task. However, as access to this recording has been requested under FOISA, we will retain it for a further period, in line with the relevant requirements. The minutes of our Board meeting held on the 09 June 2025 are still being finalised and will be published at the following link in advance of our next Board meeting, which is due to take place on 15 September 2025; [Board & Committee meetings - Here. Now. All of us. - Loch Lomond & The Trossachs National Park](#)

In the same spirit of transparency, we would again like to offer you the opportunity to come to our office and view the recording which we believe is a reasonable compromise between releasing the recording and withholding it. If this would be of interest to you, please let us know (with at least five working days' notice) the time and date that you would like to attend. Providing the viewing commences before 12pm, we can accommodate you any day of the working week (Monday to Friday).

#### Review Procedure

If you are dissatisfied with this decision, you are entitled to appeal to the Scottish Information Commissioner. Please note that in order for an appeal to take place you must lodge that appeal within six months of the date of receipt of this letter. For more information about lodging an appeal please visit [www.itspublicknowledge.info/YourRights/AppealingtoCommissioner.asp](http://www.itspublicknowledge.info/YourRights/AppealingtoCommissioner.asp) or contact the Scottish Information Commissioner:

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

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Telephone: 01334 464610  
Fax: 01334 464611  
e-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Yours sincerely

**Samantha Stubbs**  
**Head of People & Assets**

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