



EIR REVIEW Ref: 2017/021

12<sup>th</sup> April 2017

## **REQUEST FOR REVIEW OF DECISION UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (the “Regulations”)**

We refer to your request for review received on 17<sup>th</sup> March 2017 relating to your original request for information with the reference EIR 2017/021.

### Basis of Request for Review

The points that you raised in your emails, which form the basis of this review are:

1. You have questioned why your request was managed as a request under the Environmental Information (Scotland) Regulations (EIRs).
2. You believe that our statement that we do not record the number of people using the beach/launch area to be incorrect and that we incorrectly applied the exception under S10(4)(a) of the EIRs and ask us to review our decision.
3. You believe that we must hold further papers related to the decision to close the Milarrochy Bay slipway than provided and ask us to review and rectify our decision.
4. You also ask for further information which did not form part of your original request. As the further information requested is closely related to the original request we have decided to cover the points within the review rather than create a new request.

### Assessment of Relevant Information

#### 1. Application of the Environmental Information (Scotland) Regulations

In our response letter of 16<sup>th</sup> March 2017, the Section 39(2) exemption under the Freedom of Information (Scotland) Act 2002 was applied, which enabled us to handle your request under the terms of the Environmental Information (Scotland) Regulations 2004 (EIRs).

The Scottish Information Commissioner has interpreted environmental information under

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the EIRs to apply widely and it was concluded that your information request fell under the terms of the Environmental Regulations – as do most requests that we deal with about the National Park. The application of the relevant legislation is the responsibility of the Park Authority, and in this case, there would have been no material difference to the information that was provided to you, should your request have been processed under the Freedom of Information (Scotland) Act 2002.

2. Records of use of Milarrochy Bay

As we stated that we did not record the number of people using the beach/launch area at Milarrochy Bay you asked us to verify this and carry out a review based on the statement in Appendix A to our response that about "Having staff based on site at **peak periods** to deal with **high visitor numbers**". We correctly stated that the Park Authority does not record numbers, however it is clear to the Rangers deployed on East Loch Lomond that at peak periods the beach is extremely popular with many visitors in the area.

3. Minutes of meetings

You state that you believe that there must be minutes of the meeting which discussed the closure of Milarrochy Bay. You believe that there must be other papers or documents related to the decision. You were previously provided with the paper which was prepared for the meeting. The advice from SEPA which was referred to in Appendix A to our response was not provided in writing to the meeting. As you were previously advised minutes of Executive Team meetings are not held. We have reflected on the intentions of your review request and have widened the scope of your request to incorporate the "actions" that were agreed following the discussion. Action points were taken at the Executive meeting in August 2016 and at later Your Park Project Board meetings in October and November 2016 which note the decision being made. The extracts are below with explanatory notes:

Executive Meeting 15<sup>th</sup> August 2016

Simon [Director of Conservation and Visitor Operations] presented a paper compiled by Martin Page, seeking Executive decision surrounding boat launching facilities at Millarrochy Bay. Simon advised as a result of budget constraints for 2016 season the site is only manned at weekends and peak holiday days, this is primarily to make available the resources required to conduct Your Park operational trials in this current season and deploy the required patrolling resources needed for March 2017.

H&S are concerned about boat launching whilst the site is unmanned highlighting several issues, the proposal is for the site to be closed when not staffed. In essence the Executive support the recommendation of the paper presented, however, are keen to know of how many people use the site and that refunds [of fees paid in 2016] are offered to those affected by this [if closed in 2016]. Consideration should be given to the communication of this change, especially with local user groups, it was also suggested that this change be built into the registration renewal process for next year [2017 season]. **Action:** Simon to seek clarity on the points raised and discuss with Anna [Head of Communications] on her return regarding the communication of this.

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Your Park Project Board Meeting 25<sup>th</sup> October 2016

PB [Project Board] agreed:

Milarrochy not operating motorised vehicle access/BVC [Balmaha Visitor Centre] to operate with 1 member of staff & volunteers & that DDMS [Duncan Mills Memorial Slipway] is the site which is required to stay as close to current operating model as possible.

Your Park Project Board Meeting 8<sup>th</sup> November 2016

PB agreed:

Milarrochy Bay - agreed to option presented but highlighted the need for clear communications around the change; comms team to lead

#### 4. Additional information

You asked for further information as follows:

- a) **a copy of the health and safety advice provided by Brian Mitchell at SEPA with respect to Milarrochy Bay Slipway.** This has been made available online at this link <http://www.lochlomond-trossachs.org/rr-content/uploads/2016/07/March-Health-and-Safety-advice.pdf> I advise you under R6(1)(b) that this information is therefore already publically available and accessible.
- b) **details of the arrangement, briefing or request for support from SEPA by which Mr Mitchell's input was sought or supplied.** Mr Mitchell's expert input was sought during a conversation, accordingly I have to advise you under S10(4)(a) that this information is not held. The email that he wrote by way of follow up to the conversation has been published as above, accordingly I advise you under R6(1)(b) that this information is therefore already publically available and accessible.
- c) **details of Mr Mitchell's qualifications, experience and competence to perform this task.** Mr Mitchell is a qualified Health and Safety Adviser and therefore competent to make such an assessment. Mr Mitchell's qualifications and experience constitute his personal data. Release of the information would contravene one or more of the data protection principles as set out in Schedule 1 of the Data Protection Act 1998, therefore I have to advise you that under R11(1) of the EIRs this information will not be released.
- d) **any statistics the park authority may have on accidents or near misses at this slipway.** The Park Authority does not have a record of any accidents or near misses at the slipway as the Rangers have managed any risks to seek to prevent accidents and near misses occurring, therefore I have to advise you under S10(4)(a) of the EIRs that this information is not held.
- e) **any statistics the Park Authority has to substantiate the claim made in Appendix A, that there was "increased levels of conflict between recreational users."** The Park Authority does not hold records which show the increased level of conflict, the deployed Rangers have observed that recreational users have been coming into increased conflict. I have to advise you under S10(4)(a) of the EIRs that this information is not held.
- f) **the number of complaints received by members of the public about boat launching at Milarrochy (as referred to in Appendix A).** Most of the complaints have been made in conversation with Rangers deployed at Milarrochy and have not been recorded. You have not stated a time period for your request and while we could have sought clarification from you, we did not want to delay responding to your request; therefore figures for the last two years (2015 and 2016) have been

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provided. In total there were 3 written formal complaints by members of the public about boat launching at Milarrochy (as referred to in Appendix A). No written formal complaints about conflicting use have been received so far in 2017.

### Decision

Having completed a full assessment of your initial request and request for review, it is concluded that it was correct to handle your request under the Environmental Information (Scotland) Regulations 2004 and we hope that you understand that this has not materially affected the way that we dealt with your request. We have concluded after reviewing your correspondence that we perhaps interpreted your request too narrowly in the first instance and have now been able to provide you with further information which we hope that you find helpful.

### Review Procedure

If you are not satisfied 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 your appeal within six months of the date of receipt of this letter.

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KY16 9DS  
Tel: 01344 464 610  
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Yours sincerely,

Governance and Legal Team  
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