



FOI 2018/013

19th October 2018

REQUEST UNDER FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

We refer to your request for information, received by email on 22nd September 2018 and our response dated 26th September 2018.

We would like to clarify our response dated 26th September, so we have provided further commentary below.

2. “Please supply copies of any brexit planning documentation held by the organisation or consumed by senior management. This may include, but should not be limited to, Risk Assessments, Action Plans, Meeting minutes, Reports and presentations.”

Our response initially advised that the Park Authority did not hold any Brexit planning documentation, but we have since been advised that we have referred to Brexit in our corporate risk register, as a potential risk that we are monitoring. The attached Appendix A shows the references to Brexit extracted from our corporate risk register. (available on request)

4. “Please supply copies of any technical or advisory documentation that has been supplied to the agency from other public bodies that relates to Brexit contingency planning.”

As advised in our letter of 5th October 2018, environmental/economic impacts in relation to Brexit that may affect the National Park are shared via the Environment, Economy Leaders Group (EELG) within Scottish Government. The EELG established a sub-group to consider EU-exit matters. This group first met in June 2018. Details of agenda items and papers from these groups that relate to Brexit contingency planning are attached in Appendix B. (available on request).

Papers for discussion at these meetings were circulated with the agendas. Some of these papers do not fall within the scope of the request. Of those papers which do fall within the scope of the request, some are attached, others have been withheld from release as the Park Authority has been provided with this information in confidence from the Scottish Administration, and they have been exempt from disclosure under sections 28, 29 and 30 of the Freedom of Information (Scotland) Act 2002 (FOISA).

In addition please note that under section 3(2)(a)(ii) of FOISA papers listed as Defra documents are not held by the Park Authority, and we would advise that you should contact the Department

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY

National Park Headquarters, Carrochan, Carrochan Road, Balloch, G83 8EG Long: 4°34'24"W Lat: 56°00'12"N
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for Environment, Food & Rural Affairs to make a request under the UK FOI Act for this information.

All of the exemptions in sections 28 and 30 of FOISA are subject to the public interest test. This means that, even if the exemption applies, the information must be disclosed unless the public interest in withholding the information outweighs the public interest in disclosing it. The application of each exemption is considered in further detail as follows.

S28(1) Information is exempt information if its disclosure under this Act would, or would be likely to prejudice substantially relations between any administration in the United Kingdom and any other such administration.

In subsection (1), “administration in the United Kingdom” means
(b) the Scottish Administration

We are required to consider the public interest test when the exemption in Section 28(1) of FOISA is invoked. The ‘public interest’ has been described as something that is of serious concern or benefit to the public and not merely of individual interest. It has also been stated that the public interest does not mean ‘of interest to the public’ but ‘in the interests of the public’.

Guidance from the Scottish Information Commissioner on the application of this exception states that:

“Although the exemption in section 28 focuses on the harm to relations between UK administrations, its use is not restricted to information held by the Scottish Government. There may be cases where Scottish public authorities (other than the Scottish Government) hold information or have been supplied with information from another UK administration disclosure of which would be exempt under section 28.”

Ref: <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section28/Section28.aspx>

The following public interest factors favour the release of the information in this case:

- the public interest in individuals being able to exercise their rights under FOISA in order to enhance their understanding of the work of a public authority
- the public interest in members of the public knowing how a public body performs its functions, in this case in terms of the working relationship between the Park Authority and the Scottish Administration
- the public interest in ensuring openness, transparency and accountability in relation to the use of public resources and
- the public interest in the consequences of Brexit and the contingency planning currently being discussed in relation to the impending departure of the UK from Europe

The following public interest factors favour withholding the information in this case:

- the public interest in avoiding the premature disclosure by a public authority of correspondence in relation to the formulation of policy by the Scottish Administration
- the public interest in the Park Authority being able to communicate with the Scottish Administration freely and frankly in confidence, with a view to performing its statutory functions effectively and
- the public interest in the Park Authority maintaining an effective working relationship with the Scottish Administration in its position as a non-departmental body within the portfolio of the Department for the Environment

The public interest factors are considered in more detail below:

The Park Authority was invited to participate in a sub group of the Environment, Economy Leaders Group within Scottish Government. The EELG established this sub-group to consider EU-exit matters. The Park Authority recognises the ongoing public interest in the progress of the

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Brexit negotiations, which attract an ongoing high level of reporting in the media.

The papers held by the Park Authority, were provided in confidence by Scottish Government, for the purpose of involving the Park Authority in discussions regarding the potential impact of Brexit on public authorities, and to exchange views on this. The Park Authority recognises the public interest in the ongoing discussions on Brexit taking place at government level. However it has been concluded that there is a greater public interest in withholding the information provided to the Park Authority by the Scottish administration in confidence for the purpose of seeking input from the Park Authority in these important discussions, to avoid damaging the relationship between the Park Authority and the Scottish Administration, as well as the wider relationship between the Scottish Administration and the UK Government.

S29(1)(a)

Information is exempt under section 29(1)(a) if it relates to the formulation or development of government policy.

The guidance from the Scottish Information Commissioner on the application of this exemption states that:

“The Commissioner has interpreted “formulation or development of policy” as the consideration or development of options and priorities for Scottish Ministers, who will subsequently determine which of these should be translated into political action and/or legislation and when. The formulation of government policy suggests the early stages of the policy process where options are identified and considered, risks are identified, consultation takes place and recommendations and submissions are presented to Scottish Ministers.

Development suggests the processes involved in reviewing, improving upon or amending already existing policy. It could involve piloting, monitoring, analysing, reviewing or recording the effects of existing policy. “

<http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section29/Section29.aspx>

We are required to consider the public interest test when the exemption in Section 29(1)(a) of FOISA is invoked. The ‘public interest’ has been described as something that is of serious concern or benefit to the public and not merely of individual interest. It has also been stated that the public interest does not mean ‘of interest to the public’ but ‘in the interests of the public’.

The following public interest factors favour the release of the information

- the public interest in individuals being able to exercise their rights under FOISA in order to enhance their understanding of the work of a public authority
- the public interest in members of the public knowing how a public body performs its functions, in this case in terms of the working relationship between the Park Authority and the Scottish Administration
- the public interest in ensuring openness, transparency and accountability in relation to the use of public resources
- the public interest in the consequences of Brexit and the contingency planning currently being discussed in relation to the impending departure of the UK from Europe

The following public interest factors favour withholding the information in this case:

- the public interest in avoiding the premature disclosure by a public authority of correspondence in relation to the formulation of policy by the Scottish Administration
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- the public interest in the Park Authority maintaining an effective working relationship with the Scottish Administration in its position as a non-departmental body within the portfolio of the Department for the Environment

The public interest factors are considered in more detail below:

Taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on future EU policy will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.

S30(b)(i)(ii) and (c)

Information is exempt information if its disclosure under this Act

(b) would or would be likely to, inhibit substantially –

(i) the free and frank provision of advice; or

(ii) the free and frank exchange of views for the purposes of deliberation; or

(c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs

The guidance from the Scottish Information Commissioner on the application of this exemption states that:

“Whatever their individual views on a matter may be, the Scottish Ministers are understood to make collective decisions and are required to abide by and defend those decisions, presenting a united front. The constitutional value of the convention of collective responsibility is that it promotes strong government and ensures that decisions at Cabinet level are a result of informed debate.”

Ref: <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section30/Section30.aspx>

We are required to consider the public interest test when the exemption in Section 30 of FOISA is invoked. The ‘public interest’ has been described as something that is of serious concern or benefit to the public and not merely of individual interest. It has also been stated that the public interest does not mean ‘of interest to the public’ but ‘in the interests of the public’.

The following public interest factors favour the release of the information

- the public interest in individuals being able to exercise their rights under FOISA in order to enhance their understanding of the work of a public authority
- the public interest in members of the public knowing how a public body performs its functions, in this case in terms of the working relationship between the Park Authority and the Scottish Administration
- the public interest in ensuring openness, transparency and accountability in relation to the use of public resources and
- the public interest in the consequences of Brexit and the contingency planning currently being discussed in relation to the impending departure of the UK from Europe

The following public interest factors favour withholding the information in this case:

- the public interest in avoiding the premature disclosure by a public authority of correspondence in relation to the formulation of policy by the Scottish Administration

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- the public interest in the Park Authority being able to communicate with the Scottish Administration freely and frankly in confidence, with a view to performing its statutory functions effectively and
- the public interest in the Park Authority maintaining an effective working relationship with the Scottish Administration in its position as a non-departmental body within the portfolio of the Department for the Environment

The public interest factors are considered in more detail below:

The papers held by the Park Authority, were provided in confidence by Scottish Government, for the purpose of involving the Park Authority and other public authorities in discussions regarding the potential impact of Brexit, and to exchange views on this. The Park Authority has been asked to contribute to the discussions currently underway to refine the Government position on Brexit. The disclosure of the withheld information is considered likely to prejudice substantially this process.

Decisions made at government level are best achieved after informed debate, which the Park Authority has been asked to contribute to. Given the significance of the UK withdrawal from Europe, it has been concluded that the public interest in disclosing the requested information is outweighed by the greater public interest in allowing the free and frank exchange of views where officials with relevant knowledge can assist to enable all options to be properly considered, based on the best available advice, so that good decisions can be taken. The release of the requested information would undermine the nature of these discussions and in turn undermine the quality of the decision making process.

Additional documents within scope of request

Questionnaire on the impact of EU withdrawal on public sector workforce

We hope that this further clarification will be of assistance.

Yours sincerely

Governance & Legal Team
Loch Lomond and the Trossachs National Park Authority

Review Procedure

If you are dissatisfied with this decision, or the way in which the Authority has dealt with your

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request, you are entitled to require the Authority to review its decision. Please note that in order for a review to take place you are required to:

- Send your request for review in writing, setting out in full the reasons why you are requesting a review.
- Submit your review request within 40 working days of either the date on which you received a response from the Authority or the date by which you should have received a response under the terms of the Freedom of Information (Scotland) Act 2002, whichever is the later.
- address your review request to:

Governance & Legal Team
Loch Lomond & The Trossachs National Park Authority
National Park Headquarters
Carrochan
Carrochan Road
Balloch
G83 8EG
E-mail: info@lochlomond-trossachs.org

The review will be handled by staff who were not involved in the original decision. You will receive notice of the result of your review within 20 working days.

If you are not satisfied with the response to your request for review, you can contact the Scottish Information Commissioner, the independent body which oversees the Freedom of Information (Scotland) Act 2002, at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Tel: 01334 464610
Website: www.itspublicknowledge.info
E-mail: enquiries@itspublicknowledge.info

Online appeal portal: www.itspublicknowledge.info/Appeal

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