



EIR Review 2017-077

29th March 2018

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

Loch Lomond & The Trossachs National Park Authority received your request for review on 2nd March 2018 relating to your request for information about:

List of research or other reports that have been completed by external parties, for which they have been paid a fee by the Park Authority.

Request

On 21 November 2017 a request for information was received in the following terms:-

“Dear Mr Watson,

You may be aware that I have expressed some concerns on parkswatch about the levels of research in the LLTNPA compared to the CNPA which has, I believe, an important bearing on ensuring the National Park Partnership Plan is evidence based. I am aware that some research, such as the KSB litter audit, has eventually been published but the delays in doing so has made me wonder if the LLTNPA has commissioned further research reports in any area of its work which are not public. I would therefore request, under Information Laws, that the LLTNPA provides me with a LIST of all the research or other such reports it has commissioned from external parties over the last five years since the last National Park Partnership Plan was adopted in 2012 and which of these are published on the LLTNPA website. Where a report is not publicly available, including where its not yet been completed or agreed, I would ask that the reason for this could also be provided.

For the avoidance of doubt and to reduce work, I am not asking you to provide me with copies of any research which may be included in the report for Ministers on the Review of the Camping Byelaws which will be made public for the December Board Meeting.

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
t: 01389 722600 f: 01389 722633 e: info@lochlomond-trossachs.org w: lochlomond-trossachs.org

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Yours Sincerely,”

On 14 December 2017 a letter seeking clarification was sent to you in the following terms:-

“Dear Mr Kempe

**CLARIFICATION OF REQUEST UNDER ENVIRONMENTAL INFORMATION
(SCOTLAND) REGULATIONS 2004**

I refer to your request for information, received by the Park Authority on 21st November 2017. However we require more information in order to respond to your request. Please provide clarification of the following:

“LIST of all the research or other such reports it has commissioned from external parties over the last five years since the last National Park Partnership Plan was adopted in 2012 and which of these are published on the LLTNPA website. Where a report is not publicly available, including where its not yet been completed or agreed, I would ask that the reason for this could also be provided.”

It is unclear from your request what you mean by ‘research or other such reports’. Provisional searches of our electronic files using the search term ‘research’ retrieved 9,653 files. The KSB litter audit was not retrieved as it was an audit not a research report. This is therefore too broad a search term to undertake meaningful searches of our records.

Our website is split into the different areas of our work, and we publish reports from our Board and Audit reports to reports ranging from developing cycling in the National Park to the results of a biodiversity habitat audit.

The Sitemap at the foot of every page of our website provides a hyperlink to a full subject list of the contents of our website, from which you should be able to navigate to find relevant information.

The Partnership Plan sets out the Park Authority’s work with a range of external agencies. Our partners are listed at the front of the Partnership plan, and key achievements resulting from this work, are available on our website:

<http://www.lochlomond-trossachs.org/park-authority/publications/national-park-partnership-plans/>

It may also be helpful for you to look at the organisational update papers that are submitted to our Board, which provide ongoing details of projects we are involved in. Each area of the Park Authority contributes information about their specific area, including work with external parties.

These papers can be found on our website at: <http://www.lochlomond-trossachs.org/park-authority/our-board-committees/meetings/>

The large numbers of projects we are involved in delivering with our partners mean that we need you to be more specific about what information you are looking for. I hope that the sitemap will enable you to find all of the information you are particularly interested in on our website. If you can be more specific about the subject of research you are

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interested in and if you formulate a more clear and specific request, this would enable us to undertake more direct searches for relevant information.

I have to advise that under Regulation 10(4)(c) of the EIRs, your request in its current form is formulated in too general a manner and the Park Authority has complied with its duty under Regulation 9 of the EIRs to provide advice and assistance for you to make a more effective request for information.

Until we receive clarification the Authority will consider this request to be suspended. The 20 working days to respond will commence when we receive your clarification. If you do not provide clarification within one month from the date of this letter then we will consider your request to be withdrawn.

Yours sincerely

*Governance and Legal Team
Loch Lomond & The Trossachs National Park Authority"*

Your response on 14 December 2017 in the following terms:-

Dear Governance Manager,

I am afraid I think you have not understood my request and I am not surprised that if you did a search on "research" you came up with 9,653 files in your data base. I suspect if I did a search on your website as you suggest I would come up with probably hundreds of results. However, what I asked for was not what research the Park might have done or referred to in documents but what research or other such reports you had "COMMISSIONED FROM EXTERNAL PARTIES". The word "commissioned" has a very specific meaning, and covers cases where a public authority asks an external person/organisations to do something for a price. It does not cover research or other reports which might for example have been passed to the Park (from SNH, Sepa or whoever) for information. Sometimes commissioned reports may go through public procurement processes - in other words public authorities advertise a contract to do a specific piece of work - but public authorities can usually commission certain pieces of work without advertising, i.e. by going straight to a contractor. The reason I asked for "other such reports" was to cover pieces of work that had been commissioned but would not be described as research, such as the KSB litter audit. While obviously I might be wrong, my suspicion is that the number of pieces of such work the LLTNPA has commissioned from external parties is small.

SNH publishes ALL their commissioned reports on their website (their site is being changed but you can see what they do here https://www.nature.scot/information-library-data-and-research/information-library?f%5B0%5D=document_type%3A191). Each report has a number so you can find out exactly how many reports have been commissioned each year and on what and also search by subject. I had assumed the Park has some such list somewhere - its normal audit practice to keep lists of reports which have been commissioned, completed and paid for - and was simply asking for it along with any research or other such commissioned work that was unpublished/waiting completion. It seems to me that in terms of good governance if the LLTNPA don't have a list of such reports you have commissioned, it would be in both your and the public interest that you create one on the back of my information request.

I trust this clarifies what I am asking for and you can now proceed with my request.

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Yours Sincerely,

Response

On 17 January 2018 a response was sent in the following terms

"Dear Mr Kempe

REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

I refer to your request for information, received by the Park Authority on 21st November 2017, and your subsequent clarification of 14th December 2017. The information you have requested is environmental information, as defined in Regulation 2 of the Environmental Information (Scotland) Regulations 2004 (EIRs). The Park Authority has an obligation to deal with your request under the EIRs and an option to also deal with your request under the Freedom of Information (Scotland) Act 2002 (FOISA), unless the public interest lies in dealing with your request solely under the EIRs. We consider that the public interest in dealing with your request solely under the EIRs outweighs the public interest in also dealing with your request under FOISA, on the basis that the public interest is not served by duplicating consideration of your request under both regimes. We have therefore applied the exemption in section 39(2) of FOISA and dealt with your request under the EIRs alone.

We have carefully considered the additional points you made in your email of 14th December 2017, clarifying your request. We understand that you are asking for a list of research or other reports that have been completed by external parties, for which they have been paid a fee by the Park Authority, as distinct from reports that other organisations have shared with us for information.

We therefore understand that you are looking for a list of any work that has been commissioned by the Park Authority in the last five years from an external organisation, for which we have paid a fee and in return we have received a finished document such as the KSB litter audit, or a completed report.

We have previously explained that it is not possible to effectively identify a list of externally commissioned work through electronic searches of our files. Further advice was sought from our Procurement Manager, who advised that there is a research budget code. Searches were run on our financial records using this code. The results of this search however produced a large list of payments covering teams across the Park Authority, and the terms used to record these payments do not show if the fees paid were for work that would have resulted in research or other document.

Your reference to the information published by SNH, however, we do not have a comparable list of commissioned research. We are, however, keen to ensure that as much information as possible is published on our website so we will ask Managers to consider this when updating our publication scheme. . For the purposes of handling this information request, we are not required to create new information in response to an information request, therefore I have to advise that such a list is not held. The Procurement Manager has also advised that he is unaware of any audit requirement to keep lists of reports which have been commissioned, completed and paid for. Accordingly I have to advise under Regulation 10(4)(a) of the EIRs that this information is not held.

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In your clarification of 14th December 2017, you also asked for:
“any research or other such commissioned work that is unpublished or waiting completion.”

We have to advise that this part of your request is too general in its current form for us to identify relevant information. Accordingly we have to advise under Regulation 10(4)(c) of the EIRs that your request for information is formulated in too general a manner.

We have previously complied with our requirement to offer advice and assistance to you under Regulation 9 of the EIRs, in our clarification letter of 14th December 2017, where we suggested that you look at the organisational update papers that are submitted to our Board, which provide ongoing details of projects we are involved in. Each area of the Park Authority contributes information about their specific area, including work with external parties.

These papers can be found on our website at: <http://www.lochlomond-trossachs.org/park-authority/our-board-committees/meetings/>.

If there is a particular type of research that you are interested in, this would allow us to carry out more specific searches of our records.

Yours sincerely”

Review Request

On 2 March 2018 a review request was received in the following terms:-

Dear Melanie/Sandra,

I apologise for the delay in getting back to you on this but am within the 40 working day review period. I wish to request a formal review of your decision not to provide me with a "list of research or other reports that have been completed by external parties, for which they have been paid a fee by the Park Authority, as distinct from reports that other organisations have shared with us for information" or similar work that has not been published or is awaiting completion on the grounds that you cannot find it through electronic searches or a search of budget codes. That is not a reasonable grounds to refuse a request and all you would need to do is ask staff teams to get answers about what such work has been commissioned. Moreover, you have treated my request as falling under the EIRs and these are very clear, as a public authority you have a legal duty to organise and disseminate this information:

Active dissemination of environmental information

4.—(1) A Scottish public authority shall take reasonable steps to organise and keep up to date the environmental information, relevant to its functions, which it holds and at least the types of information listed in paragraph (2), with a view to the active and systematic dissemination of that information to the public and shall make that information progressively available to the public by electronic means unless it was collected before 14th February 2003 and is not available in electronic form.

(2) The types of information referred to in paragraph (1) are—

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(a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;

(b) policies, plans and programmes relating to the environment;

(c) progress reports on the implementation of the items referred to in sub paragraphs (a) and (b) when prepared or held by a Scottish public authority in electronic form;

(d) reports on the state of the environment;

(e) data or summaries of data derived from the monitoring of activities that affect or are likely to affect the environment;

(f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found;

(g) environmental impact studies and risk assessments concerning those elements of the environment referred to in paragraph (a) of the definition of "environmental information" in regulation 2(1); and

(h) facts and analyses of facts which the authority considers relevant and important in framing major environmental policy proposals.

The implication is if you do not hold this information you should be able to say so but if you do hold such information you should be able to locate it and disseminate it to me and others. I look forward to your response,

Regards,

Nick

Decision

I have reviewed the original decision together your review request. I do not uphold up your review for the following reasons:-

You requested a

"LIST of all the research or other such reports it has commissioned from external parties over the last five years since the last National Park Partnership Plan was adopted in 2012 and which of these are published on the LLTNPA website. Where a report is not publicly available, including where its not yet been completed or agreed, I would ask that the reason for this could also be provided."

"any research or other such commissioned work that is unpublished or waiting completion."

The Park Authority does not hold such a list as already confirmed in our letter of 17 January 2017. It was confirmed that searches had been made by the officers to identify if such a list existed, through electronic searches and specific additional searches made by officers in Finance. There is no such list. I consider therefore that Regulation 10(4)(a) of the EIRs is applicable that this information is not held.

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I also agree that your request is, in any event, too general in its current form for us to identify the relevant information you are seeking, your request stretches in effect across the whole of the Park Authority. I do not consider that this is a reasonable approach to take in making an information request. Accordingly, I consider that Regulation 10(4)(c) of the EIRs also applies, that your request for information is formulated in too general a manner.

I note that you have been given advice and assistance in the following terms :-

"We have previously complied with our requirement to offer advice and assistance to you under Regulation 9 of the EIRs, in our clarification letter of 14th December 2017, where we suggested that you look at the organisational update papers that are submitted to our Board, which provide ongoing details of projects we are involved in. Each area of the Park Authority contributes information about their specific area, including work with external parties.

These papers can be found on our website at: <http://www.lochlomond-trossachs.org/park-authority/our-board-committees/meetings/>.

If there is a particular type of research that you are interested in, this would allow us to carry out more specific searches of our records."

I note that you have not provided any further clarification on the information that you seek.

Turning to other points in your review request, I note that you state,

"That is not a reasonable grounds to refuse a request and all you would need to do is ask staff teams to get answers about what such work has been commissioned."

I do not agree as, as already advised, having carried out electronic searches this information is not held. You have been requested to be more specific in your research criteria, you have not done so. I consider that your request as presently drafted, would require every officer in the organisation to carry out a search over the last 5 years for any piece of ***"research or other such reports commissioned from external parties; and which of these are published on the LLTNPA website; where a report is not publicly available, including where its not yet been completed or agreed, I would ask that the reason for this could also be provided."***

"any research or other such commissioned work that is unpublished or waiting completion."

Accordingly, I consider that not only is your request too general but it is also, manifestly unreasonable, in terms of Regulation 10(4)(b). I consider that the burden on a small organisation of having to make a request of all officers within that organisation would be manifestly unreasonable. I consider that that fact weighed against a reasonable request asking you to be more specific about the type of information you seek, leads to the conclusion that regulation 10(4)(b) also applies in this matter.

Having regard to your comments in your review:-

"Moreover, you have treated my request as falling under the EIRs and these are very clear, as a public authority you have a legal duty to organise and disseminate this information: Regulation 4 Active dissemination of environmental information..."

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I consider that regulation 4 which requires an authority to “*take reasonable steps to organise and keep up to date the environmental information, relevant to its functions, which it holds and at least the types of information listed in paragraph (2),*”, imposes a duty, but not an absolute duty. In the case of the Park Authority, we take such steps as is required under regulation 4.

I consider that given that you have made in excess of 115 FOI/EIRs requests for information from this authority since January 2015, you are already well aware that the Park Authority complies with this duty. Further, we have a public website where much information relevant to our functions is held; available for public inspection; and updated regularly.

Thereafter the requirement for the “*active and systematic dissemination of that information to the public and shall make that information progressively available to the public by electronic means*”, again is not an absolute duty. I consider that the Park Authority complies with this duty.

Again I would refer you to the active dissemination of information provided to you since January 2015, together also with the Park Authority’s website, which is continuously updated to include additional reports and publications.

I do not consider that regulation 4 provides you with a right to demand information to be provided to you, when it is not held by the authority; or any right to insist that information is newly created where to do so would fail to have regard to your request being formulated in too general a manner; and further when it would be manifestly unreasonable to try and produce that information requested.

I would confirm that I do not consider that the public interest would be served by using public funds to try and create such a list, particularly when a more specific request could be easily formulated, and which could then provide relevant information to you.

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.

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Tel: 01344 464 610
Website: www.itspublicknowledge.info
E-mail: enquiries@itspublicknowledge.info
Online appeal portal: www.itspublicknowledge.info/Appeal

Should either the requester or the Park Authority subsequently wish to appeal against a final decision by the Scottish Information Commissioner, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of the Commissioner’s decision.

Yours sincerely

Governance and Legal Team
Loch Lomond & The Trossachs National Park Authority
E-mail: info@lochlomond-trossachs.org

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