



EIR Ref: 2019/004

6th June 2019

REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

We refer to your request for information, received by email on 9th April 2019, and subsequent clarification email of 8th May 2019. 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.

Your specific requests and the response from the National Park Authority are provided below.

Request dated 9th April 2019

“Please send me a copy of the letter(s) or email(s) containing the NPA's request(s) to the applicant, and any subsequent correspondence to or from the applicant, not including the actual information that has been received.”

As confirmed in our response of 24th April 2019, the letter from the Park Authority to the agent on behalf of the applicants can now be accessed via our online planning portal:

<https://eplanning.lochlomond-trossachs.org/OnlinePlanning/?agree=0>

We can therefore advise under R6(1)(b) of the EIRs that this information is publically available and easily accessible to you in electronic form.

Clarification dated 8th May 2019

“To clarify my first request for information, please send me copies of all the correspondence you hold, not including out-of-office replies, since the letter of 8 August 2018, (a) between you and the applicant and, in a separate folder, (b) between you and the

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY

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applicant's agent.

Please do not redact job titles of your staff or Scottish Enterprise staff (if you consider those to be personal data): it is legitimate for the public to see the post and level of seniority of public servants performing functions in the public interest.”

We have provided you with email correspondence in chronological order between the Park Authority and the applicants and between the Park Authority and the agent acting on behalf of the applicants since 8th August 2018, when the Park Authority’s letter requesting further information was sent. In addition, some emails refer to attached letters which have been put on the Park Authority’s online planning portal and are therefore already publically available at: <https://eplanning.lochlomond-trossachs.org/OnlinePlanning/?agree=0>

However, some of the information you have requested has been withheld from release under exceptions set out in the EIRs as follows:

- Some personal data;
- Email attachment from the agent to the Park Authority with details of the applicant’s communication plans; and
- Email attachment from the agent to the Park Authority with financial appraisal information

The duty to make environmental information available in Regulation 5(1) of the EIRs is subject to exceptions set out in Regulations 10 and 11.

In withholding the information referred to above from disclosure under the EIR’s, we have applied the exceptions in Regulation 11(2), when read with Regulation 11(3(a), and Regulation 10(5)(f).

Regulation 11(2) contains an absolute exception, with no requirement to apply the public interest test in order to claim that Exception. Regulation 10(5)(f) is subject to the public interest test, i.e. whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in making the information available. Our reasons for invoking these exceptions in relation to a limited amount of information are set out below, together with a consideration of the public interest test, where required.

Regulation 11(2)

Some personal data has been redacted, specifically the personal details, names, emails and telephone numbers of external third parties, the names and contact details of Park Authority staff below manager grade, as well as some personal data contained within the body of emails. This information has been withheld under Regulation 11(2) of the EIR’s. Because this information constitutes the personal data of third parties, as a data controller, we must process it in accordance with data protection law. This legal duty is recognised in Regulation 11(2), read together with Regulation 11(3a)(a), which provides that information which is third party personal data and in respect of which disclosure would be likely to breach one or more of the Data Protection Principles, is absolutely exempt from the duty to make it available under Regulation 5(1).

In our assessment, we consider that the disclosure of the personal data that we have redacted, into the public domain which is the effect of a disclosure under the EIRs, would breach the first Data Protection Principle set out in Article 5(1)(a) of the EU General Data Protection Regulation (GDPR) . Article 5(1)(a) requires personal data to be processed lawfully, fairly and in a transparent manner. We consider that disclosure of the withheld personal data would be unfair to those individuals who are identified or identifiable, taking into account all the circumstances of this case. Because such a disclosure would be unfair, it would thereby be unlawful, under data protection law, so we have not proceeded to consider whether disclosure would breach any other data

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protection principles in the GDPR at this stage.

Regulation 10(5)(f)

The information that has been withheld from release under Regulation 10(5)(f) of the EIRs is information whose disclosure would, or would be likely to, prejudice substantially the interests of the third parties supplying it to us on a voluntary basis. We can confirm that the withheld information was provided by third parties, namely the applicants and agent acting on their behalf in connection with planning application Ref 2018/0133. They were not under, and could not have been put under, any legal obligation to supply the information. The information was not provided in circumstances such that it could, apart from these Regulations, be made available. They have not consented to its disclosure into the public domain under the EIRs.

Substantial prejudice

The correspondence between the Park Authority and the applicants and their agent was not required for a regulatory purpose. While correspondence was generated in relation to a request from the Park Authority to the applicant for further information in relation to their planning application, they were not under and could not have been put under, any legal obligation to supply the information in the requested emails. If the information withheld under Regulation 10(5)(f) is placed in the public domain, this would in our view be likely to have the effect of constraining the flow of information between these specific applicants/agents and the Park Authority, which would inhibit open and constructive discussions between parties and cause substantial prejudice to the ability of the applicants/agents to engage effectively in discussions relating to decisions which will directly affect their interests. The subject matter of this request is an ongoing matter and so the prejudice at this time to their ability to fully and openly engage with the Park Authority will be substantial and significant for them.

Application of public interest test

In respect of the withheld information under Regulation 10(5)(f), we have considered the public interest test, i.e. the public interest in favour of disclosure balanced against the public interest in maintaining the exemption. In considering the public interest, we have given careful consideration to the content of the information, the current context and the effect of disclosure, not only for the applicants and their agent, but also for the Park Authority's ability to perform its functions effectively and for the wider general public.

In considering the public interest, we have considered matters that are of serious concern or benefit to the public and not merely someone's individual interest.

Public interest in disclosure

We recognise that there is a public interest in relation to transparency of decision-making procedures on matters such as the one to which this information request relates. There is a public interest in individuals being able to exercise their rights under the EIRs in order to enhance their understanding of the work of a public authority and ensure openness and accountability in relation to the planning process.

Significant information already publically available

Considering the request and the public interest in context, we note that a significant amount of information in relation to the West Riverside development has already been made publically available.

Live planning applications are made public on the Park Authority's online planning portal accessed via its website, in compliance with planning law. This allows the public access to details of a live planning application and permits anyone seeking to make an objection to a planning application to have their objection recorded. Such objections are then put online as part of the **LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY**

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planning case and objections are taken into account by the planning officer.

In this case, the West Riverside development is a major planning proposal to develop land within Loch Lomond and the Trossachs National Park. The Park Authority recognises the level of public interest in this development and, for that reason, has created a blog on its website to provide updates on the planning process for the benefit of the public. The applicant has also engaged with the public and provided information to the media.

The development of the site within the National Park has attracted considerable media and public attention, both positive and negative. The Park Authority ensured that the developer fulfilled the requirement to hold a local public consultation for the application.

Scottish Enterprise appointed Flamingo Land Limited as the preferred developer of their 20 hectare site at West Riverside, Balloch, within Loch Lomond and the Trossachs National Park. The developer created a 'masterplan' for the site and has held a local consultation, a requirement for any application of this scale.

The site being considered for development was identified in the Park Authority's Local Development Plan, which was put in place after extensive consultation with people from local communities, businesses, landowners and partner organisations, who were invited to participate in a series of events, workshops and three formal consultations to help inform the Plan since 2011.

The Park Authority has proactively worked to keep the public informed of the progress of the current planning application, and will continue to do so.

Public interest against disclosure of withheld information

In terms of the specific communications information being withheld by the Park Authority, in addition to noting that there was no legal requirement for the applicant to provide details to the Park Authority of its public communications plans, it also has no direct bearing on the ongoing process in relation to consideration of the planning application.

In relation to the withheld financial appraisal information, this was provided to the Authority in the context of communications around an indicative planning proposal which is in its early stages. The current application is for planning approval in principle, Should this be granted, the applicant will be required to submit a detailed planning application. The Park Authority considers that the release of the financial appraisal information could provide a competitive benefit to other developers operating in the same market environment, and adversely impact on the success of future applications by the developer, bidding to develop other sites.

The withheld information regarding the developer's communication plans was not provided to the Park Authority in circumstances that it would, other than under the EIRs be made available, and given the level of public and media attention the application is attracting, the release of information about the developer's proposed handling of this attention would adversely impact on the ability of the developer to deliver its messages on the benefits of the proposed development.

Whilst acknowledging the public benefit in encouraging debate about environmental matters, the Park Authority does not consider there to be a public interest in affecting the ability of the developer to respond to media and public concerns about the proposed development, the developer being equally entitled to contribute to the ongoing public debate.

The Park Authority also considers that there is a strong public interest in being able to maintain a strong working relationship with the preferred bidder in considering the current indicative planning proposal. Disclosure of the withheld information may harm this relationship at the earliest stages, and may make the developer wary of providing information to the Park Authority in future, should the current application be approved, and the developer progresses towards the submission of a full detailed planning application.

Moreover, there is a strong public interest in the Park Authority working with the preferred bidder towards achieving the best possible development for the site, and maintaining open and effective

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communications with the agent and applicant are key to the achievement of this.

We consider it to be important, and of considerable public interest, to ensure a continued flow of information provided voluntarily, beyond legal requirements, between the Park Authority and the applicants and their agent. The provision of such additional information provides for better decision making. Public disclosure of the financial information and communication plans would be likely to inhibit open and constructive discussions in relation to a live issue, i.e. it could have a chilling effect.

Overall, the Park Authority has concluded that the public interest in maintaining the exception in Regulation 10(5) f) of the EIRS in relation to a limited amount of information in this case outweighs the public interest in disclosure of the withheld information.

Yours sincerely

Governance & Legal Team
Loch Lomond & 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 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

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