



EIR Ref:2019/013

8th July 2019

REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

We refer to your request for information, received by email on 21st June 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 request and the response from the National Park Authority are provided below.

“I would like to raise a Freedom of Information Request on any correspondence with regard the future development of the land as potential housing relation to the attached Location Plan, both the pink and blue areas.”

Our records show that we hold email correspondence between the Park Authority and the applicant, pre-application advice, and a planning application that is awaiting validation.

We have attached the pre-application advice issued by the Park Authority. Some of the advice has been redacted and has been withheld from release under Regulation 10(5)(f) of the EIRs, and we have also withheld email correspondence between the Park Authority and the applicant and a planning application that has not yet been validated.

This information has been withheld from release under Regulation 10(5)(f) of the EIRs as it 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. 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.

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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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 to the Park Authority from the applicant for advice in relation to a prospective 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.

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

Public interest against disclosure of withheld information

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 applicant in this case to seek advice from the Park Authority to enable them to submit a valid planning proposal. The purpose of the pre-planning advice service offered by the Park Authority is to ensure best use of public resources by assisting prospective planning applicants to submit valid planning proposals, which will comply with requirements of a range of matters including ecological considerations and the preservation of protected species and habitats.

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 a prospective planning applicant. The provision of such additional information at the pre application stage provides for better decision making. Public disclosure of the requested correspondence would be likely to inhibit open and constructive discussions in relation to a live issue, i.e. it could have a chilling effect.

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

We note your concerns regarding any development on this land due to its proximity to your property and can confirm that when the planning application has been validated it will be made publically available on our online planning portal. Residents living in close proximity to the proposed development will be formally notified by the Park Authority and invited to submit their views on the planning proposal. Any issues regarding ecological impact and protected species will be taken into consideration as part of the planning process.

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:

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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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