



EIR Ref:2020/003

17 April 2020

## **REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004**

We refer to your request for information, received by email on 6<sup>th</sup> March 2020. 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.

As advised in our update email of 3 April 2020, it was necessary to extend the deadline for the completion of this response due to the volume and complexity of your request. We appreciate your patience with this delay. Your specific request and the response from the National Park Authority are provided below:

**“Please provide a copy of all correspondence from 1 January 2019 to the present date, between Loch Lomond & the Trossachs National Park Planning Department and Flamingo Land Ltd., Scottish Enterprise and other correspondents, in relation to Lomond Banks”**

As advised in our letter of 20 March 2020, the National Park Authority processed a similar request for correspondence in relation to the West Riverside Planning application in 2019. The request and response to this request can be found on our website at: <https://www.lochlomond-trossachs.org/park-authority/freedom-of-information/information-responses/>

The response is located under 2019, indexed as June – West Riverside correspondence (response letter) and correspondence

### **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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Page 1 of 4

We can therefore advise under R6(1)(b) of the EIRs that this information is already publically available and easily accessible. Additional correspondence received while the West Riverside planning application was live, including responses from statutory consultees and objections to the planning development, were accessible via our online planning portal. This information can be made live again if this would be helpful.

Additional searches have been undertaken to identify additional information which would fall within the scope of your request: This information is attached as follows:

- Appendix A1 – Planning Officer emails
- Appendix A2 - Planning Officer index of email attachments, these documents are also attached
- Appendix B1 – Director of Planning emails
- Appendix B2 – Director of Planning email attachments, these documents are also attached

Some third party personal data has been redacted from the email correspondence under Regulation 11(2) of the EIRs. Regulation 11(2) contains an absolute exception, with no requirement to apply the public interest test in order to claim that Exception. Some additional information has been withheld, specifically financial information under Regulation 10(5)(f) of the EIRs. 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 protection principles in the GDPR at this stage.

#### Regulation 10(5)(f)

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An email attachment from the agent to the Park Authority with financial appraisal information has been withheld from release under Regulation 10(5)(f). The disclosure of this information would, or would be likely to, prejudice substantially the interests of the third parties who supplied 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.

#### 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.

#### Public interest against disclosure of withheld information

In relation to the withheld financial appraisal information, 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.

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 and 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 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

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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](mailto: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](http://www.itspublicknowledge.info)  
E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Online appeal portal: [www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal)

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