



Loch Lomond & The Trossachs National Park Authority
Carrochan
Carrochan Road
Balloch
G83 8EG

FOI Ref: FOI 2022-027
14th November 2022

REQUEST UNDER FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)

We refer to your request for information, received by email on 18th October 2022. Your specific requests and the National Park Authority's response are provided below.

'In order to understand the decision making process for Luss Visitor centre I would request under FOI any papers presented to the confidential session on 14th June 2021 and the continuation of that meeting on 28th June 2021 along with any minutes that were produced.'

The following papers were discussed at the National Park Authority Board meeting on 14th June 2021 in relation to Luss Visitor Centre:

1. Paper for decision
2. Invitation to Bid
3. Bids received
4. Property brochure

(Papers available on request)

The following papers were discussed at the National Park Authority Board meeting on 28th June 2021 in relation to Luss Visitor Centre:

1. Paper for decision
2. Bids received

(Papers available on request)

The same Invitation to Bid and Property Brochure documents from the meeting on 14th June were also considered at the meeting on 28th June. The minutes from both meetings are also attached.

The Property Brochure has previously been released under FOI 2022-022. Therefore, although the National Park Authority does hold the information that you have requested, the information is exempt under section 25 of the Freedom of Information (Scotland) Act 2002, as it is otherwise accessible. Accordingly, we can advise that this information is exempt under section 25 of the Freedom of Information (Scotland) Act 2002, as it is otherwise accessible.

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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Third party personal data, names, and contact details have been redacted from the Papers from Decision and the Bids Received documents. This information is exempt from release under Sections 38(1)(b) and 38(2) of the Freedom of Information (Scotland) Act 2002.

This exemption is an absolute exemption under the Freedom of Information (Scotland) Act 2002, which means we do not need to consider the public interest in the disclosure of this information, it is completely exempt from release.

The information provided to the Board in the 'Bids Received' papers included information about the business activities of the applicants. Some of this information has been withheld from release under Section 33(1)(b) of FOISA as it is considered that its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of the third parties who submitted tender bids.

Application of public interest test

In respect of the withheld information under Section 33(1)(b) of FOISA, 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 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 FOISA in order to enhance their understanding of the work of a public authority and ensure openness and accountability in relation to the management of public assets.

Public interest against disclosure of withheld information

The National Park Authority considers that the information in the rental bids for Luss Visitor centre, if disclosed, could provide a competitive benefit to other businesses operating in the same market environment, and adversely impact on the success of future applications by the same businesses, who may choose to submit bids for similar sites.

The National Park Authority provided summarised information about each bid to assist the Board in making an informed decision on the use or disposal of Luss Visitor Centre. Members were asked to note that "as far as possible, effort has been made to retain anonymity, though Members may recognise companies from the profile and prior knowledge of product offer".

While recognising that the future of Luss Visitor Centre is still a live issue which is of public interest, it has been concluded that there is a continued requirement to respect the commercial interests of the businesses who expressed interest in the use of this property. Some information has been made available about each bid for this response, while redactions have been made, to protect the commercial interests of the business owners who submitted bids.

Some additional information has been withheld from the two Papers for Decision, under Section 36(1) of FOISA as it contains details of discussions with external legal advisers. As stated in the paper, the National Park Authority was keen to avoid the experience we had

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with a previous tenant, where significant staff time was lost to managing issues including through a court case in 2017 to successfully recover possession of the building. Information about the options for how to proceed and the legal opinion sought on the options and risks were included in this paper but have been withheld from release.

Section 36(1) is subject to the public interest test in FOISA. This means that, even if the exemption applies, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Legal professional privilege can be split into two main types – “legal advice privilege” and “litigation privilege”. Legal advice privilege covers communications between lawyers and their clients where legal advice is sought or given. The communications do not have to be connected with litigation (although they may be). Legal advice privilege will only apply to communications made for the purpose of seeking and giving legal advice.

For Section 36(1) to apply, the following points must be considered:

- *The information must relate to communications with a legal adviser* - in this case, the withheld information was shared with and commented on by external legal advisers working in private practice.
- *The legal adviser must be acting in their professional capacity and the communications must occur in the context of their professional relationship with their client* - in this case, the withheld information considers the rental bids received for Luss Visitor Centre. The external legal adviser was acting in their professional capacity to advise on the best options. The legal adviser was providing their legal professional opinion.
- The information must be confidential - in this case, the communications between the National Park Authority and its external legal adviser would not have been available to the legal adviser by any other route and was shared with the legal adviser and with the Board on a confidential basis.

The public interest arguments for the release of the withheld information under Section 36(1) are the same as those for the information withheld under Section 33(1)(b) as stated above.

While information about the disposal of Luss Visitor Centre is in the public domain, the future of the property is an ongoing live issue, and the details withheld from the Board papers continue to be confidential. It has therefore been concluded that there is a greater public interest in withholding the redacted information.

Yours sincerely

Information Management 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:

Information Manager
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