

CAIRNGORMS NATIONAL PARK AUTHORITY AUDIT AND RISK COMMITTEE

FOR DISCUSSION

Title: SCOTTISH INFORMATION COMMISSIONER
DECISION ON HANDLING OF INFORMATION
REQUEST

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SERVICES

Purpose of Paper

1. This paper presents a review of the Authority's handling of the information request which has led the Scottish Information Commissioner to issue a decision that the Authority had "partially breached" Environmental Information Regulations. While the Commissioner's decision is that no further action is required by the Authority, it is appropriate in light of this decision to consider the Authority's processes and consider whether any lessons can be learned from this case. The paper is intended to support discussion by Committee members as to whether there is any perceived weaknesses in underpinning controls around the Authority's handling of information requests.

Decision Required

2. **The Committee is invited to consider the information set out in this paper and determine whether there are any additional controls or actions associated with the Authority's handling of information requests warranted in light of lessons learned from this case.**

Context

3. This case represents the first referral of the Authority's information handling to the Scottish Information Commissioner since 2015. The Authority deals with around 60 to 80 information requests each year under the Freedom of Information (Scotland) Act 2002 (FOISA). Some of these information request, as with the case now under consideration, are determined under the Environmental Information (Scotland) Regulations 2004 (EIRs), which set out separate provisions for handling requests for information which are in some way linked to the environment.
4. The information request in this case was:
(i) All agendas, minutes (or if not minuted then notes taken) for ALL meetings held by Carrbridge Capercaillie Working Group (CCWG) as mentioned on your website page <https://cairngorms.co.uk/caring-future/cairngorms-nature-2/capercaillie/latest-actions/>

(ii) All agendas, minutes for ALL meetings held by Cairngorm Capercaillie Project Board (CCPB) as mentioned on your website page <https://cairngorms.co.uk/caring-future/cairngorms-nature-2/capercaillie/latest-actions/>

Or if these records are available for me to view online, please direct me to where I may do so as I have been unable to find them, hence this request.

5. A summary of the case is presented at the Scottish Information Commission website regarding decision 161/2019:
<http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2019/201900570.aspx>
As such, the summary of the case is not repeated in this paper.

Commissioner's Decision and Lessons Learned

Information Provision

6. The Scottish Information Commissioner's decision is that the Authority "partially breached" Environmental Information Regulations as we failed to provide, at the outset of the information request process, all the information which fell within the scope of the request. The Commissioner highlights that, by the end of the investigation period, the Authority had identified all information falling within the scope of the information request and had voluntarily provided that information to the applicant. However, as the Authority had not identified this information within our original response and appeal processes, the Authority is deemed to have only partially complied with the EIRs.
7. The following factors are assessed to have interacted in this case which resulted in the Authority not meeting its usual high standards in responding to information requests:
- a) The information request on the face of it was straightforward – there were no expectations of sensitivities, nor any apparent reason to seek clarification. However, as the process continued it became apparent that staff were operating under an assumption of information relating to the groups which had commenced with effect from the formal start date of the funded project, whereas the applicant also wished to receive information which pre-dated this official start date.
 - b) As the request relates to a community led project, the Authority was operating two parallel information storage systems: our own network together with a web based 'Basecamp' information network which allows community access. One record falling in the scope of the information request had not been transferred into Basecamp.
 - c) The Basecamp system had been used by staff as the primary records search, whereas a full search of the Authority's own network ought to have also been undertaken.
8. The Authority apologised to the applicant during the course of this process for its omissions in information provision. The Commissioner also notes (para 41) that there is no evidence that the Authority deliberately sought to withhold or delay disclosure of information.

Provision of Advice and Assistance to the Applicant

9. The Commissioner's view was that it ought to have been clear to the Authority from the applicant's information request which information fell within the scope of the request (para 49). If it was not clear, then there is an obligation on a public body to seek clarification from an applicant on their information requirements.
10. The underlying issue here is that, on review during the course of the Commissioner's investigation, it became apparent that officers did believe the request was clear and without need for clarification while the applicants themselves were looking for a wider set of information. Until correspondence between the applicant and the Commissioner's office clarified this misunderstanding, it was not at all apparent to officers that there was a mismatch between the intended scope of the request and the subject and time period scope on which records searches were being undertaken. As such, it was not at all apparent to officers in this case that any help or advice was required by the applicant.

Lessons Learned

11. It appears that the key learning point from this case is to seek to improve controls which aim to avoid any future misunderstandings about the scope of a request. We will amend the standard letter template for future FOISA responses to include a section where responding officers will set out any assumptions or key search criteria and dates used in identifying information held in the scope of a request. This will allow an applicant to raise any concerns or points of clarification more fully and clearly in any appeal made to the Authority should they believe for any reason their request has not been dealt with adequately. This additional control measure should significantly reduce the likelihood of such a scenario arising in handling future FOISA requests.

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21 November 2019
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