

29<sup>th</sup> August 2007



Dr Hugh Insley  
Chief Executive, Forestry Commission  
By e mail: hugh.insley@forestry.gsi.gov.uk

Dear Mr Insley

Thank you for your letter dated 24<sup>th</sup> August.

Let me be clear, I have no desire to embarrass yourself or your Board and I am certainly not intent on what you subjectively term “vexatious requests” or on wasting FCS time or money. On the contrary, your inference is cruelly ironic given the substantial amount of personal time and cash both myself and various members of my Group have committed to the Carron Valley project over the last 3 years - a contribution I would describe as being of great value to recreation on the National Forest Estate and a contribution clearly recognised by the other members of the Carron Valley Partnership. So, in the first instance I do find your inferences offensive.

As you state, I am the Chair of Carron Valley Development Group, a recognised charity and a founder member of the Carron Valley Partnership. Forestry Commission is a signatory to this Partnership and whilst the “Partnership” has stated physical aims and objectives it has recorded zero measurable outputs in some 14 months of operation. In short, Forestry Commissions governance of the Partnership has failed and the Partnership has both physically and metaphorically stalled. The Partnership has become a mere talking shop under FC tutelage so, my request for further information contains 4 points: all of which are in the public interest because they relate directly to Carron Valley Partnership business and the need to make the Partnership function. I refer to the Partnership minutes 25<sup>th</sup> July 2007 written by Forestry Commission employee and representative on the Partnership (Jeremy Thompson)

*“JT asked for comments on the PID, particularly any points to help get the project as a whole accepted.”*

As Forestry Commission does not freely publish any of the information which might reasonably inform CVDG and the remaining Partners contribution to Mr Thompsons request, as there are a significant number of inaccuracies and inferences within the PID document which the Partnership “including the two Councils” are quite adamant must be addressed, these are the principal reasons for my information request.

Given also that Forestry Commission has since, and on record, repulsed all attempts by various members of the Partnership, including four public bodies to communicate its position, it is very much in the public interest – in fact it is essential - these documents are made available to myself and in turn The Partnership. Whilst Forestry Commission appears predisposed to issue a Refusal Notice, this in no way justifies such action so I ask Forestry Commission to consider its position very carefully. As you see fit to quote various sections of the Act to me, I also now quote to you from the Acts guidelines:

## **16 Duty to provide advice and assistance**

*(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*

*A number of requests under the Act are very broad requests for information and they may not describe the information that is sought sufficiently precisely to enable you to identify and locate the information. If the request is too broad or general in nature (eg. seeks all information on a topic over many years) you have a duty to provide advice and assistance to the applicant in order to focus the request*

*A **vexatious** request is determined by the information requested, **not** the person making the request. An individual cannot be classified as a vexatious requestor. An individual can make as many requests for information as he/she wishes, and cannot be labelled as vexatious - each of their requests must be determined on a case-by-case basis - but the provisions on aggregating the costs of these requests may be relevant. Vexatiousness needs to be assessed in all the circumstances of an individual case, but if a request is not a genuine endeavour to access information for its own sake, but is aimed at disrupting the work of an authority, or harassing individuals in it, then it may well be vexatious. There are a number of ways in which it may be possible to identify individual requests as being vexatious. The following list is not designed to be exhaustive, but rather to illustrate a general approach:*

- **The applicant makes clear his or her intention:** *If an applicant explicitly states that it is his or her intention to cause a public authority the maximum inconvenience through a request, it will almost certainly make that request vexatious.*
- **The authority has independent knowledge of the intention of the applicant:** *Similarly, if an applicant (or an organisation to which the applicant belongs, such as a campaign group) has previously indicated an intention to cause a public authority the maximum inconvenience through making requests, it will usually be possible to regard that request as being vexatious.*
- **The request clearly does not have any serious purpose or value.** *It will usually be easier to recognise such cases than define them. Although the Act does not require the person making a request to disclose any reason or motivation, there may be cases which are so lacking in serious purpose or value that they can only be fairly treated as "vexatious" - for instance a request for the number of unmarried employees an organisation may have, may be able to be classified justifiably as a vexatious request. Such cases are especially likely to arise where there has been a series of requests. Before reaching such a conclusion, however, a public authority should be careful to consider any explanation which the applicant gives as to the value in disclosing the information which may be made in the course of an appeal against refusal (see below).*
- **The request can fairly be characterised as obsessive or manifestly unreasonable.** *It will usually be easier to recognise such cases than define them. They will be exceptional - public authorities must have valid reasons for making such a judgement. An apparently tedious request, which in fact relates to a genuine concern, must not be dismissed.*

Despite the fact I am not obliged to justify my reasons to you, I have now explained my position and I do so freely to help you to resolve the matter. I believe I am on clear ground here and I also believe there are very good reasons why you would not wish to pursue this course of action so I therefore ask Forestry Commission to desist from further conjecture, assumption, innuendo and inference and also that Forestry Commission be mindful of its position under the Data Protection Act as I can see major issues with the cavalier manner in which Forestry Commission appear to be discussing and distributing personal information.

As regards the sundry matters you raise with alleged previous FOI requests, complaints etc, these are leading statements and it appears to me there is an attempt to establish the fact. I cannot agree the link you appear to be making and I cannot comment on other peoples alleged FOI requests and neither, I suggest, should you. If you have a problem, then I suggest you take up the matter with the individuals concerned. I am also very surprised you raise the matter of alleged FOI requests in respect of two other Scottish Executive Departments. These departments, whoever they are, will be governed by the Freedom of Information (Scotland) Act 2002 - quite different from Freedom of Information Act 2000 which you quote and are indeed governed by. I do not believe these departments should be supplying you with details relating to any FOI requests, specifically personal information and I do not believe it is within the remit of Chief Executive of Forestry Commission to pass comment on any such matters to me.

Having said all that, your closing remarks are indeed helpful and I do of course welcome your invitation to meet with you. We both need to be in possession of all the facts and there has to be a resolution to all issues. Given the catastrophic failure of the CVP last week (and it needs to be stated this situation was precipitated by the deliberate inaction of your District staff and your Tourism and Recreation Manager.) Given also my groups desire to salvage the considerable damage to our credibility the funding position Forestry Commissions refusal to engage has inflicted upon us, there is now a pressing need to meet as quickly as possible. You will be aware there is a massive credibility issue which only further damages FESMB. Furthermore, there are bridges to be built so I'm sure you will welcome my frank comments and that you will also welcome input on how we can work together to resolve this for the benefit of the Partnership and the restoration of FCS credibility.

To this end, there is a meeting scheduled between Forestry Commission and CVDG at The Scottish Parliament @ 15:00 on 12<sup>th</sup> September. The meeting is to be chaired By Michael Mathieson MSP and your offer to meet is therefore timely as the Officers named above are now compromised by recent events.

I hope that you will accommodate this request and I look forward to hearing from you at your earliest convenience

Yours sincerely

Niall Thomson  
Chairman  
CVDG