



Coimisean | Forestry
na Coilltearachd | Commission
Alba | Scotland

Mr Niall Thomson

Via e-mail: niall@ [REDACTED]

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Dr Hugh Insley
Àrd-Oifigear / Chief Executive

Dear Mr Thomson

I am writing to you in your role as the Chair of the Carron Valley Development Group (CVDG). As Chief Executive of Forest Enterprise Scotland I have operational responsibility for the national forest estate, and I understand from colleagues who deal with Freedom of Information (Fol) requests directed to Forestry Commission Scotland (FCS) and the Scottish Executive that we have received at least 13 such requests in the past 3 weeks or so from members (and associates) of the CVDG, including yourself.

Some of these requests are quite detailed – one of them includes 20 separate questions/requests – and some of them overlap or duplicate in certain areas. I also understand that a group member has submitted the same Fol question to at least two separate parts of the Scottish Executive.

Prior to these cases, we had already answered several Fol requests from one CVDG member, who also submitted three formal complaints against senior members of our staff, including our Director. As you can imagine, responding to these requests and complaints has taken up considerable time and effort on the part of our staff.

The latest tranche of Fol cases that the CVDG has submitted, or inspired, has left me with no option but to consider whether, under guidance issued by the Information Commissioner's Office (ICO) and the Department for Constitutional Affairs, we should treat these as "vexatious" and/or "persistent" requests within the Freedom of Information Act 2000.

Under Section 14 of the Act, public authorities are not obliged to comply with vexatious requests and the Information Commissioner takes a broad view of what constitutes a vexatious request. His general approach is that a request can be treated as vexatious where it:

- Clearly does not have any serious purpose or value
- Is designed to cause disruption or annoyance
- Has the effect of harassing the public authority; or
- Can otherwise fairly be characterised as obsessive or manifestly unreasonable.



The ICO guidance goes on to say that even though it may not have been the explicit intention of the applicant to cause inconvenience or expense, if a reasonable person would conclude that the main effect of the request would be disproportionate inconvenience or expense then it will be appropriate to treat the request as being vexatious. It is also interesting to note that the ICO points out that vexatious requests may well arise in connection with a past or current grievance or complaint with the authority. In addition, the ICO states that it is not unusual for those who believe they have been unfairly treated by a public authority to pursue their grievance through the Freedom of Information Act.

As far as "persistent requestors" are concerned, Section 12 of the Act makes it clear that public authorities are not obliged to deal with requests which exceed the appropriate cost limit for dealing with requests. This limit stands at £600, calculated at £25 per man hour. The guidance also points out that costs can be aggregated where more than one request has been made within 60 consecutive working days relating to the same or similar information, and the requests have been made by the same person or by persons who appear to be acting in concert or in pursuance of a campaign.

As you can gather, the Information Commissioner makes it very clear that it is not in the public interest for resources to be devoted to answering requests imposing disproportionate burdens on public authorities. Consequently, we consider that the recent batch of information requests from, or apparently inspired by, the Carron Valley Development Group falls squarely into this category. We are therefore now looking at further guidance on the preparation of a Refusal Notice within the terms of the Freedom of Information Act 2000. This would formally set out our reasons for not replying to these requests.

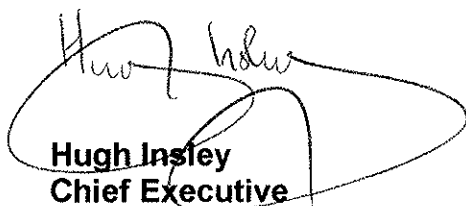
Having said all that, we do appreciate your concerns and we want to address them as best we can. So, before we take a final decision on how we conclude the Fol issues I suggest that the main issues the Group has raised should be discussed at a meeting with you as soon as possible.

I trust you would agree that this approach is a much more practical and effective way forward than persistently raising Fol requests, and I look forward to hearing your thoughts on this suggestion.

I am copying this letter to the other members of the Carron Valley Development Group, and also those who appear to be associated with Group members, who have recently submitted information requests.

I hope this is helpful.

Yours sincerely



Hugh Insley
Chief Executive