

3rd March 2008 1



Mrs V. T. Adams
Complaints Officer
Information Commissioners Office
Wycliffe House
Water Lane
Wilmslow,
Cheshire
SK9 5AF

Dear Mrs Adams

Case reference No: FS50187763 - Complaint against Forestry Commission Scotland (FCS)

Thank you for your letter dated 25th February in respect of the above. You raise a number of questions regarding the background to the complaint and I will answer these in the order you raise them.

Firstly, I wish to provide you with a brief overview of Carron Valley Development Group (CVDG) as background to the information requests.

- Formed in April 2003 and granted an informal trail building permission by FCS
- Constituted in June 2003 to promote and provide: free recreational facilities for the people of Central Scotland
- Granted a formal trail building permission by FCS in June 2004
- Singled out as “a model for community development” by Tourism Resources Consultants - “Towards a National Mountain Biking Strategy” in October 2005 (FCS lead consultants)
- Constitution revised as an unincorporated association and recognised by the Inland Revenue as a Charity No: SC036047 in November 2005
- Presented with the City of Stirling’s highest award for community achievement in November 2006
- **Entered into formal partnership (a “concordat”) with FCS, Stirling and North Lanarkshire Councils, Scottish Water and Clanranald in June 2006**
- Short listed for Scotland Finest Woodlands Awards (community woods) in January 2007

- Short listed for the Scottish Awards for Quality in Planning in August 2007
- Led fundraising for, designed and let civil engineering contracts circa £130k for the construction of a 10km mountain bike circuit within Carron Valley forest, opened March 2006. The trail is rated within the top 5 in Scotland by rider numbers.
- Maintains: an active website, trail user feedback program and long term electronic trail counter survey program.
- Managed three major events: trail launch day, Bike festival and as Demo Day.
- The current management committee comprise ten volunteer members who hold down senior day jobs. Our combined experience encompasses business management, project management, I.T, civil and environmental engineering and technical trades.

Moving to your questions:

“In its internal review, FCS concluded: there was sufficient justification for FCS to conclude that the group were acting in concert.....” I should be grateful if you would comment on the FCS views on this subject, expressed in the refusal and internal review.”

CVDG were, and still are, in partnership with FCS. Collectively, the Carron Valley Partnership or CVP is concerned with developing a multi-faceted recreational facility covering a huge swathe of public forest - which also encompasses Central Scotland's largest reservoir. Whilst FCS employs tiers of senior management and staff to represent its interests, CVDG has a handful of committee members who have to attend numerous meetings and undertake research to inform their various committee positions - all in their own free time. It is not possible to operate at this level without “spreading the load” amongst the committee and most of the committee actively participate at various CVP and sub group meetings. These meetings cover a range of issues, including: visitor numbers and profiles, contract and civil engineering, project planning and trail maintenance. I will be pleased to provide you with further documentary evidence to substantiate this.

As I have outlined, we are in a partnership and it is entirely reasonable, in fact it is expected, that all members of the CVP will openly share publicly available information. This fundamental principle is enshrined within the concordat agreement to which each partner is a signatory and it applies particularly to the lead partner (FCS.) However, it became increasingly apparent that key information was being withheld by FCS in the months leading up to final submission of the project for approval by FES Board. In some cases, information was refused outright or it was quoted from selectively. CVDG and the other partners could only inform their positions if they had access to the same relevant information which FCS made reference to or, in other words, a “level playing field” scenario.

It thus became necessary to formally request relevant information and in our individual efforts to obtain this information FCS chose to term this as “acting in concert” however, even if we assume this to be the case, this is hardly the point. Were CVDG and or its various committee members

requesting this information for justifiable reasons, were we acting maliciously to disrupt FCS or were we even doing so unwittingly? As all of these requests were germane to the business in hand I fail to see how they could be termed "vexatious" and particularly (given the partnership situation) how FCS should even be seeking to limit the level and volume of information it was prepared to make available.

"Please also clarify to me the background and origin of the requests listed in appendix 1 to the internal review document....."

I have already set out the context of the relationship between FCS and CVDG and how this sits within the framework of the Carron Valley Partnership. A complex and extended planning process for recreational development at Carron Valley (which all members of the CVP were instrumental in contributing to) was to culminate in the submission of a "Project Initiation Document" or PID to Forest Enterprise Scotland Management Board (FES.) For the purpose of this discussion FCS and FES are effectively the same organisation.

This PID was slated for submission at FES Board meeting March 2006 however, the process was delayed by FCS through April and May and was finally submitted in June 2006. During these delays, the PID document went from a known and approved position (by the CVP) to a position where the other partners were becoming suspicious that FCS were unilaterally changing it with no further reference to the CVP. This was in direct contravention of the terms of the Concordat.

Concurrent with this, two constituency MSP's were seeking clarification from FCS. FCS own Minister, Mr Michael Russell MSP, had also intervened in matters.

Various partner members, including both Councils, requested the attendance of both FCS Project Sponsor and Project Champion at CVP meetings and this was refused. Various members also requested sight of the latest PID and associated documents before the final PID submission and this was also refused. However, CVDG and only CVDG, were given sight of what we were told was the final PID document by FCS Project Manager immediately prior to final submission. I will be pleased to supply you with further documentary evidence to substantiate this.

"I should be grateful if you would also explain what instigated you to make your information request to FCS on 10th August?....."

The FES Board decided on the PID on June 11th 2006 however, despite repeated requests by various partners, FCS failed to communicate the detail of the decision (and as it subsequently transpired, had deliberately withheld it) to the CVP at the partnership meeting end of June and again at the CVP meeting 26th July. FCS stated on both occasions that they did not have a ratified Board decision to pass to the CVP. In fact they did but it took the CVDG representative present to produce the final PID (version 3) and the Board decision to the partners. The decision he had obtained via a FOI request.

The partnership process had been turned into an absurdity and once the "true PID" and associated documents were produced at that meeting, the game was effectively over: the CVP had documentary evidence the PID had been altered without its approval and also that both the PID and the accompanying documents were, in key critical areas, factually incorrect. In short: FCS had

misled the CVP, they had misrepresented the facts and they had deliberately prevaricated in handing down the decision. These are very serious issues and in CVDG view FCS actions and inactions fall far short of the standards the public expects from a public body - one which has a duty to behave with openness, honesty and transparency.

FES Board "decision" was complete fudged - in fact, FCS staff were asked by several partners both verbally and in writing to explain what the decision meant and they could not or would not do so. When coupled together with the events outlined above the CVP was left in total disarray. The upshot of this was the PID would have to be rewritten and resubmitted and the whole lengthy process started again from scratch. Given the scenario described above the only way CVDG members could inform their position was to formally request all of the information relevant to redrafting the PID. Incidentally the CVP are still in the process of preparing the revised PID some nine months down the line.

.....*"Had you been mandated to do so by CVDG members?"*

At that point in time, my position was firstly as Chairman of CVDG and secondly as CVDG key representative on the CVP. I was and I remain committed to CVDG, the project, the CVP and to a successful outcome with a revised PID however, I have since fulfilled my term as Chairman. This was ongoing business and I did not require any mandate from CVDG to initiate and pursue my information requests. Other CVDG members had a similar duty in terms of fulfilling their obligations to CVDG, to the project and to represent their areas of specialisation at the CVP. Clearly, they also chose to request information directly from FCS.

"Finally, please update me as to any further correspondence or contact between FCS and CVDG or yourself since 20 November."

I have enclosed documents which I consider may be relevant however, the general correspondence runs to thousands of pages. If there is any further information you think I should provide I would be pleased to cooperate.

"I am also interested in your response to the FCS offers on 6 September and again of 26th October to assist you in submitting a revised request."

Given the scenarios described above the short answer is trust. To expand on this, there is nothing about FCS previous actions which leads me to believe they would provide **all of the relevant information**. Also, there is a very strong inference in Mr Hugh Insleys "offer" that there is a £600 price tag on the amount of information FCS are prepared to release and they will be the final arbiter on what and how much information is released. I also question why FCS did not firstly ask the requesters if they would be prepared to pay for the so called additional information.

Furthermore, many of the "man hours" FCS has attributed under each request are, in my opinion, grossly inflated. There are also requests summarised which were not made to FCS and do not concern them, some requests which FCS tacitly admits to having "slipped through the net" and there is one request that I know of which has been ignored completely. Lastly, most of these requests are for information on standard reports and processes - the bulk of which are readily to hand. I simply do not consider FCS defence of their position to be credible.

In summary, this is not my understanding of how a public body should observe the principles upon which the Freedom of Information Act is founded. Whilst FCS can window dress their position as one of cooperation, they are in my view, trying to force the public to horse trade with them for half information. I therefore chose to place the evidence before the ICO.

Also, FCS has subsequently insisted the CVP now need to convert the former PID plans into a "Development Plan" and these too will have to be submitted via precisely the same PID process as before. To do this we need a business plan and this is particularly relevant because once again, the partners will need to know what has happened at other FCS locations. The irony here is we are talking about precisely the same information which FCS is currently withholding.

Finally, these requests were made by people who had and continue to have very specific reasons for asking for very specific information and FCS leave me with the very distinct impression they are hiding behind the system. If there is any "overlap" then it is tangential to the primary request. If the objective was to disrupt FCS, to be vexatious - either deliberately or otherwise then there must be any number of easier and less obvious ways to do so. FCS inference that CVDG made a collective decision to inundate them with time consuming requests as some kind of spoiling tactic is preposterous.

I hope this has helped clarify the situation however, if you require any further details please do hesitate to contact me on the number below.

Yours sincerely

Niall R Thomson

