

5th June 2009

The Permanent Secretary
St Andrews House
Regent Road
Edinburgh
EH1 3DG

Dear Mr Elvidge

Formal complaint: staff officers at Forestry Commission Scotland & Scottish Governments Sports Division

I refer to the enclosed letter and attachments sent to the Minister for the Environment - Roseanna Cunningham MSP and to her predecessor Michael Russell MSP.

Ms Cunningham has subsequently written to me advising that she considers the best of course of action would be for me to raise the matter with the SPSO. I have declined this thoughtful suggestion, preferring instead to raise the matter directly with the First Minister.

There are a number of issues which are very wrong here and your officers can never be above the law. As head of the civil service I therefore now write to you to lodge a formal complaint against the following members of your staff:

Forestry Commission / Forest Enterprise Scotland

Hugh Insley	Chief Executive
Alan Stevenson	Communities Tourism & Recreation Manager
Bruce Inglis	Secretariat
Michael Wall	Forest District Manager

These four members of staff were complicit in deliberately misleading the former Sports Minister Patricia Ferguson MSP in a series of written briefings issued by their team members Richard Broadhurst and Kenny Murray, also of Forest Enterprise Scotland, in March 2006. I understand this is a clear breach of the civil service code and a serious disciplinary matter.

This incident happened because those involved clearly thought they could pull it off without further recrimination and it has festered for all this time because they have subsequently exploited and manipulated the Freedom of Information legislation, review processes and appeals procedures to thwart the release of the information.

Regrettably it has taken the passage of two years, a considerable amount of time and money and five successful appeals to both the English and Scottish Information Commissioners to get to the bottom of this incident. Whilst subsequently seeking to subvert the release of the information and to 'limit the damage' FCS / FES and the Scottish Government have variously breached the Data Protection Act and a catalogue of FOI procedures. To put it simply, those involved have brought the civil service into disrepute.

It matters little what justification those involved thought they had because it is now clear that the information given to the Minister was variously fabricated and factually incorrect. The timing of the delivery of the briefing to the Minister was also carefully coordinated in a manner which could only compromise the Minister and thus ensure she would have little option but to pull out of an official launch engagement at the last minute.

You are likely aware that Ms Ferguson was 'extremely unhappy' about having to cancel this engagement and that she pressed the Forestry Commission on a number of occasions for a full explanation - most specifically why they chose to do this at the eleventh hour and without any reference or explanation given to the other parties co hosting the event. This was not a minor matter - those 'other parties' included both Stirling and North Lanarkshire Councils - whose Chief Executives were both personally supporting the project.

The former minister was not given a plausible explanation at the time, or subsequently, but chose 'not to get caught in the crossfire.' I also understand that Ms Ferguson has recently approached you to inquire if all available information has been released. Ms Ferguson may wish to remain neutral and that is a matter entirely for her however, this in no way diminishes the breach of trust placed in your officers nor alters the fact that wilfully misleading (lying to) a Minister is a flagrant breach of the civil service code. I therefore request that you investigate this shameful episode in full and hold those responsible to account.

At the precise snapshot in time this 'misinformation' was being fed to Ms Ferguson, Michael Walls team member Rena Tarwinska was calmly informing Carron Valley Development Group (CVDG) there were 'no problems' and everything was set for the launch engagement.

In summary, the staff named above wilfully and deliberately misled CVDG and the other members of the Carron Valley Partnership. CVDG, Stirling and North Lanarkshire Council, Scottish Water and two local MSP's are all on record registering a catalogue of complaints against FCS actions and inactions. It is clear now that senior FCS officials demonstrated a monumental abuse of position and that they squandered huge sums of time and money undermining a partnership process they were signed up to deliver. I request that you also investigate these allegations based on the enclosed evidence.

Scottish Government Sports Division

Jim Hyslop

I have already mentioned the Scottish Information Commissioners investigation. Mr Steele (a member of CVDG at the time) made a simple request of the Scottish Government in August 2007. He asked to see all the correspondence or information passed between the Scottish Government and FCS / FES in relation to the cancelled Ministerial launch of the Carron Valley Trails by Patricia Ferguson MSP in March 2006. This FOI enquiry was allocated to Mr Hyslop to process but he then saw fit to "conveniently re-direct" this to FCS (Bruce Inglis) who even more conveniently tagged the request as vexatious thus neatly rejecting it along with others made quite separately to FCS by other members of CVDG around that time.

Mr Hyslop and Mr Inglis are clearly highly experienced civil servants and FOI legislation has existed for many years now. Mr Inglis in particular has intimate knowledge of the application of the FOI Acts - it is part of his job.

I'm sure you are aware that any FOI directed to the Scottish Government must be dealt with under the Freedom of Information (Scotland) Act 2002 and any requests directed to Forestry Commission Scotland (which is treated as an executive arm of the UK Government) must be dealt with under the Freedom of Information Act 2000. If an applicant makes a request of the Scottish Government under FOISA and Forestry Commission attempts to refuse this request citing FOIA, then the applicant is being denied their rights to the information under FOISA - a clear breach of the Act.

I put it to you that redirecting this FOI request could not possibly have been a schoolboy error - this was in fact a calculated move to pervert the course of a FOI request and to prevent the truth from being revealed. The opportunity to include Mr Steele's request with the others from CVDG thus tying up any chance of the information being released clearly blinded both servants to the serious nature of their actions.

In this context, a breach of the FOI act is a breach of the law and the evidence is really quite clear - if your civil servants deliberately colluded to achieve this then it is a serious disciplinary matter. Additionally, and more seriously, I have been informed that the Scottish Information Commissioner has not been shown all of the relevant correspondence requested of the Scottish Governments Sports Division. Deliberately withholding information from the Scottish Information Commissioner in the course of a FOI investigation would, as I understand it, be a criminal matter.

I believe Messrs Inglis and Hyslop colluded to thwart a FOI request made of the Scottish Government and one or both organisations subsequently prevented the disclosure of the documentation highlighting the extent of this to the Scottish Information Commissioner. I request that you also investigate this allegation based on the enclosed evidence, that you locate the information which has been withheld and that you ensure this is passed to the Scottish Information Commissioner as soon as possible.

Finally, it is abundantly clear from the English Commissioners remarks regarding the FOI requests made of Forestry Commission Scotland that the subsequent review process undertaken by Forestry Commission England was a complete sham. The so-called "internal review" found virtually nothing wrong with FCS/FES reasons for refusing the requests whereas the English Commissioner managed to cite a string of breaches of the Act. Notwithstanding the serious disciplinary and potentially criminal acts alleged here, the Forestry Commissions so called review process is clearly in urgent need of review itself because what this reveals is a staggering level of cronyism within Forestry Commission GB

The Scottish Government reasons for preventing the release of information were equally untenable - and can only have been to protect all those named above.

I look forward to hearing from you at your earliest convenience.

Yours sincerely

David Russell
Chairman
CVDG