

Decision Notice



Decision 200/2010 Visible Means Ltd and Fife Council

Information relating to the Dunfermline City Centre Management company

Reference No: 201001033

Decision Date: 3 December 2010

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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Doubledykes Road
St Andrews KY16 9DS
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Summary

Visible Means Ltd (Visible Means) requested from Fife Council (the Council) a range of information concerning the Dunfermline City Centre Management Company (DCCM) and an event that it organised. The Council responded by providing some information, but advising that, beyond this, it did not hold the information requested. Following a review, Visible Means remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Visible Means' requests for information in accordance with Part 1 of FOISA, by finding the Council did not hold the information which would satisfy Visible Means' requests. The Commissioner found that the other bodies referred to in the requests did not hold information on behalf of the Council. He did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 3(2)(b)(Scottish public authorities) and 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. In a course of correspondence between Visible Means and the Council, Visible Means made a number of requests for information to the Council contained in two letters both dated 18 January and also in a further letter dated 3 March 2010.
2. These requests sought a range of information relating to the DCCM, including information about the May Ball organised by DCCM on 4 May 2007 and a variety of financial and other information.
3. In its correspondence, however, Visible Means did not request a review by the Council of, nor include within its subsequent application to the Commissioner, every item of the originally-requested information.



4. This decision therefore addresses only the requests which were the subject of a request for review and were included within Visible Means' application to the Commissioner. The remaining requests were not investigated and do not form part of this decision.
5. The requests which were investigated are set out below.

First request – 18 January 2010

6. On 18 January 2010, Visible Means wrote to the Council requesting a range of information, including:
 - (i) evidence of donations made by Visible Means and other guests at the May Ball (Visible Means indicated that the names of the other guests could be blanked out) being recorded, accounted for, and evidence of this total sum being banked (excluding account numbers and other details); and an explanation of what exact purpose this total sum of money was used for by DCCM;
 - (ii) the full final accounts of DCCM for the year April 2007 to April 2008, as well as giving a breakdown of what outside donations were received by DCCM in each of the months in the accounts;
 - (iii) the legal basis for the Council's views (expressed in previous correspondence) on its lack of liability for the acts and omissions of DCCM;
 - (iv) evidence that a named official had the written authority of the copyright holder, or anyone else, to use a specified logo in 2007.
7. The Council responded on 4 February 2010 and provided information to Visible Means, some of which related to the requests (i) to (iv) above. Some of the information provided with this letter also related to other requests which are not under consideration in this decision.
8. The information provided by the Council to Visible Means also included, in response to request (ii), a set of unaudited accounts for the year to 31 March 2008 for DCCM. The Council indicated that the information provided included all information that it held which fell within the scope of Visible Means' requests (i) and (ii).
9. In relation to request (iii), the Council maintained its stance that it had no legal liability for the acts or omissions of DCCM, but it provided no recorded information in support of this position. In relation to request (iv), the Council again referred to previous correspondence and advised that it maintained its stance in relation to that matter. The Council did not provide any recorded information in response to request (iv).



10. On 23 March 2010, Visible Means wrote to the Council requesting a review of its decision in relation to these four requests. In particular, Visible Means maintained that, as Company Secretary for DCCM, the Council ought to ensure that the requested information was recorded and available for public scrutiny, and that proper administration of DCCM was undertaken, particularly where cash donations were concerned. With respect to request (ii), Visible Means argued that the Council had provided unaudited accounts which appeared incomplete and did not correspond with other financial information. In relation to request (iii) and (iv), Visible Means argued that the Council had provided comments or opinions rather than the information requested.
11. The Council notified Visible Means of the outcome of its review in its first letter to Visible Means dated 21 April 2010. The Council advised that, in relation to the four points raised by Visible Means in its request for review, no further information was held beyond that which had already been provided to Visible Means by the Council.

Second request – 3 March 2010

12. On 3 March 2010, Visible Means wrote to the Council, referring to previous correspondence and information provided to it, and requested a range of information on matters surrounding the May Ball in 2007.
13. With request to the detailed profit and loss accounts for the year ending 2008 that were previously supplied, it requested the following information:
 - 1(a) why the detailed profit and loss accounts gave ticket sales of £8,670 with overheads of £5,598, leaving a profit of £3,072. Why did the May Ball (in the breakdown relating to 4 May 2007) show a funding of £8340 with an expenditure of £7,290.80, giving a different profit of £1,049.20?
 - 1(b) why the May Ball accounts showed additional funds raised of £4,799.20 on top of the £8,340 funding and also why this £4,799.20 does not appear anywhere on the detailed profit and loss accounts that the Council previously supplied to Visible Means.
 - 1(c) The May Ball (4 May 2007 breakdown) accounts appear to show funding of £13,138.20 and therefore a profit of £5,848.40. Visible Means asked the Council to explain where this money was reflected in the detailed profit and loss accounts.
14. In relation to the May Ball in 2007, Visible Means requested the Council to provide the following:
 - 2(a) the number of persons who attended the Ball;
 - 2(b) the number of persons who bought tickets for the Ball and at what price these tickets were purchased by each person;
 - 2(c) to whom the £1,500 management fee was paid and a breakdown of the work involved in management.



15. With respect to a company called “Ballyhoo Events” which was involved in ticket sales and provision of information about the May Ball, Visible Means requested the following:
 - 3(a) copies of all invoices, receipts and correspondence sent or received by DCCM for Ballyhoo Events’ role in arranging this event;
 - 3(b) explanation of what connection, if any, Ballyhoo Events had with DCCM and now with Dunfermline Delivers?
16. The Council responded on 29 March 2010. It provided explanations in response to the financial queries made in requests 1(a) and 1(b), and advised that the Council was not in a position to answer the query in request 1(c). In relation to request 2(a), the Council responded that it did not hold the information. The Council advised Visible Means of the ticket price in response to Visible Means’ request 2(b), but advised that it held no information as to how many tickets were purchased at this price. For request 2(c), the Council advised that the management fee had been paid to the company Ballyhoo Events, but that the Council did not hold a breakdown of the work involved. For request 3(a), the Council advised that it did not hold any invoices, receipts or correspondence. In respect of request 3(b), the Council advised that a named individual ran Ballyhoo Events, and was subsequently employed by Dunfermline Delivers.
17. On 6 April 2010, Visible Means wrote to the Council requesting a review of its decision in relation to the requests detailed in paragraphs 13-15 above. In particular, Visible Means indicated that the responses to these requests were unsatisfactory, and indicated that further information should have been provided. Visible Means asserted that the Council ought to be able to provide the information because it was Company Secretary for DCCM,
18. The Council notified Visible Means of the outcome of its review in its second letter to Visible Means dated 21 April 2010. The Council stated that it did not hold records relevant to the matters raised by Visible Means’ requests, and indicated in most instances that the relevant records would be held by DCCM.

First and second requests

19. On 14 May 2010, Visible Means wrote to the Commissioner, expressing dissatisfaction with the outcome of the Council’s reviews as noted above and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Visible Means expressed its reasons for dissatisfaction, including, particularly, the Council’s failure to provide the specific information requested.
20. The application was validated by establishing that Visible Means had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.



Investigation

21. On 25 June 2010, the Council was notified in writing that an application had been received from Visible Means, and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA which it considered applicable to the information requested. The Council provided its submissions on 4 August 2010.

Commissioner's analysis and findings

22. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Visible Means and the Council and is satisfied that no matter of relevance has been overlooked.
23. The issue to be addressed in this case is whether the Council holds information beyond that already supplied, which would satisfy the terms of Visible Means' requests. In each case, the Council has indicated that it does not hold the relevant information, or it holds nothing beyond that already supplied.
24. Visible Means has argued that Fife Council, as company secretary to DCCM, should hold the relevant information. It has also argued that, if the Council does not hold this information directly, then DCCM should be considered to be holding the information on the Council's behalf.
25. In the light of these comments, the Commissioner has first of all considered whether information held by DCCM that might satisfy the terms of Visible Means' requests is held by the Council in terms of section 3(2)(b) of FOISA.

Section 3(2)(b) - Information held on behalf of an authority

26. Section 3(2)(b) of FOISA specifies that information is held by a Scottish public authority for the purposes of FOISA if it is held by another person on behalf of that authority.
27. Visible Means has argued that, as the Council and DCCM worked in partnership, and the Council also acted as Company Secretary for DCCM, the requested information should be held by DCCM on behalf of the Council. Visible Means considered that the information should therefore be accessible to it under FOISA.



28. The Commissioner observes that DCCM is not a Scottish public authority or a publicly-owned company, and so it is not covered by FOISA in its own right. However, he fully accepts that there is nothing to stop a separate organisation (such as DCCM) holding information on behalf of a public authority and, where it does so, section 3(2)(b) of FOISA means that such information will be considered to be held by the authority for the purposes of FOISA. If held on behalf of a public authority, such information will, in principle, be accessible under FOISA, subject to any provision contained in FOISA.
29. The Council provided detailed submissions about DCCM and its relationship with the Council. It explained that DCCM is a company limited by guarantee, which was established in 1999. The founding members of this company were Fife Council and the Dunfermline Town Centre Traders' Association, and its board comprises of both public and private sector representatives (with the private sector representatives forming the majority). The DCCM's funding comes from both the private and public sector. Since 2005, the Council's main contribution to DCCM's costs had been provided by it taking on DCCM's employment costs and responsibilities. The Council's submissions covered the structure, funding, governance, accounting and role of DCCM in relation to the Council.
30. The Council confirmed that it had acted as company secretary for DCCM, and advised of the duties applicable in this role, explaining that, in practice, its officers had a very limited role as company secretary of DCCM. The Council emphasised in its submissions that DCCM was an arm's-length organisation which was not within the Council's control, and which carried out activities which are distinct from the Council's functions.
31. The Council advised the Commissioner that DCCM ceased trading on 18 June 2009, and (at the time of making submissions to the Commissioner) was in the process of being wound up. It was explained that DCCM's activities had been transferred to another company, Dunfermline Delivers. The Council submitted that DCCM (and equally Dunfermline Delivers) did not hold information on behalf of the Council and that section 3(2)(b) of FOISA did not apply.
32. While the Council has clearly worked in partnership with DCCM, and has acted as company secretary, the Commissioner accepts that DCCM is an entirely separate legal entity from the Council.
33. Having had regard to all the comments made by Visible Means and the Council, the Commissioner has concluded that information held by DCCM is not held by it on behalf of the Council for the purposes of section 3(2)(b) of FOISA, and so it is not held by the Council for the purposes of FOISA. As noted above, DCCM is an entirely separate legal entity from the Council and has only very limited role in relation to DCCM. The Commissioner is also satisfied that, to the extent that any of the information requested by Visible Means is held by Dunfermline Delivers, this is also not held on behalf of the Council.
34. Therefore, the Commissioner is satisfied that the Council acted in accordance with Part 1 of FOISA by responding to Visible Means' requests for information by reference only to information that it held directly. It was under no obligation to consider information that was held by DCCM (or Dunfermline Delivers), as the Council did not hold this information for the purposes of FOISA.



35. The Commissioner will now go on to consider whether the Council held any further information in its own right, which would fall within the scope of the requests, beyond what it has already disclosed to Visible Means.

Section 17 - Notice that information is not held

36. Where a Scottish public authority receives a request for information that it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.
37. The Council has given such notice with respect to the various pieces of information sought by Visible Means which were not supplied in response to its requests.
38. The Council provided submissions to the investigating officer in response to questions on the searches which it had carried out to establish whether or not the information requested was held. These included checking paper and electronic files, and asking several staff members who might have known of information which was held, who were also involved in the searches. The Council confirmed that the member of staff who was believed to be carrying out the company secretarial role for DCCM was consulted and confirmed that they did not hold any information in respect of DCCM.
39. The Council provided details of the search terms used, and it provided a copy of the guidance which it issued to staff about collating information in response to freedom of information requests. It advised that searches included files related to DCCM, both physical and electronic. The Council noted which officials had dealt with DCCM and therefore were the only sources of information available, and confirmed what consultations had been made to try to locate information. Overall, the Council advised that, as a result of its searches, no further information was discovered in relation to any of the requests under consideration beyond that already provided to Visible Means.
40. The Commissioner notes that, in view of the separate identities and roles of the Council and the other bodies mentioned in the requests, and the Council's limited role in relation to them, that he would not expect the Council to hold information to the extent or at the level of detail sought by Visible Means' requests.
41. The Commissioner has concluded that the Council's searches for information were sufficient, and he is satisfied that no further relevant information was held by the Council at the time when it received Visible Means's request. He is therefore satisfied that the Council was correct to have advised Visible Means that no further information was held, as required by section 17(1) of FOISA.
42. Overall, the Commissioner has therefore concluded that the Council has complied with Part 1 of FOISA in responding to Visible Means' information requests.



DECISION

The Commissioner finds that Fife Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Visible Means Ltd

Appeal

Should either Visible Means Ltd or Fife Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
3 December 2010



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
...

3 Scottish public authorities

- (2) For the purposes of this Act [subject to an exception which is not relevant] information is held by an authority if it is held-
...
 - (b) by a person other than the authority, on behalf of the authority.
...

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information,



it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.