

# Decision Notice



Decision 126/2010 Visible Means Ltd and Fife Council

Records of a fund-raising collection

Reference No: 201000413  
Decision Date: 15 July 2010

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**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
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## Summary

Visible Means Ltd (Visible Means) requested from Fife Council (the Council) information about a collection at a fund-raising event. The Council responded by providing some information about the event, but not the specific information requested by Visible Means. Following a review, Visible Means remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council did not hold information that would satisfy Visible Means' request. In the circumstances, the Commissioner found that the Council had failed to deal with Visible Means' request for information in accordance with Part 1 of FOISA, by failing to provide a notice that requested information was not held in compliance with section 17(1) of FOISA, and by failing to respond to Visible Means's information request within the 20 working day period allowed by section 10(1) of FOISA.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance) 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

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1. As part of continuing correspondence between Visible Means and the Council, on 30 November 2009, Visible Means wrote to the Council and requested information pertaining to a collection at a fund raising event [the event] organised by the Dunfermline City Centre Management Company [DCCM] in May 2007.
2. In particular, Visible Means requested all the information regarding this collection, including the total amount received, how the monies were collected as per each named guest envelope, evidence of banking it to a relevant account and to account for how it was spent by DCCM.
3. The Council responded by letter on 6 January 2010, apologising for the delay in doing so. It explained that the event was held to raise funds for DCCM and enclosed a final costings sheet relating to the event.



4. On 18 January 2010, Visible Means wrote to the Council requesting a review of its decision. In particular, Visible Means complained that the information provided did not include the information requested. Visible Means also complained that the Council's reply was issued outwith the time limit allowed by FOISA and asked for an explanation of this.
5. The Council notified Visible Means of the outcome of its review on 4 February 2010. The Council provided further information in relation to the event, and also explained that the reason for the delay in responding to the request was because of annual leave and office closures over Christmas and New Year.
6. On 25 February 2010, Visible Means wrote to the Commissioner, stating that it was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Visible Means expressed dissatisfaction with the Council's failure to provide the specific information requested. It also maintained that the reply to its initial request had been late and that the reason provided for this by the Council was, in Visible Means's view, unacceptable.
7. The application was validated by establishing that Visible Means had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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8. On 7 April 2010, the Council was notified in writing that an application had been received from Visible Means. The Council was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and was asked to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested. The Council responded with its submissions on 26 April 2010.
9. The Council's submissions indicated that its response to Visible Means' information request of 30 November should have given notice in terms of section 17 of FOISA that it did not hold the information sought therein.
10. The investigating officer entered into further correspondence with both parties, and, where relevant, their comments are summarised below.



## Commissioner's analysis and findings

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11. 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.
12. In this case, the Council has provided some information to Visible Means regarding the event referred to in its request of 30 November 2009 (which formed part of a wider exchange of correspondence and information requests on this subject), but none which would satisfy the particular terms of this request.
13. The request under consideration sought all information relating to a collection at a fundraising event, including the total amount raised, the specific amounts received in each envelope, information about the banking of this information and how it was spent by DCCM.
14. As noted above, the Council maintained during the investigation that it did not hold this information.

### Section 17 - Notice that information is not held

15. 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, give the applicant notice in writing that it does not hold the information. The Commissioner must therefore consider whether, at the time it received Visible Means's request, the Council held any information which would fall within the scope of the request.
16. The Commissioner first of all considered the information which was supplied to Visible Means with the Council's response to its request and subsequent request for review. The Commissioner does not consider this information to fall within the scope of the particular request under consideration.
17. The Council maintained in its submissions that it had disclosed to Visible Means all the information which it did hold on the event in question. It explained that the information it held was limited because the event had not been organised by the Council but by DCCM, and the money was not collected either by or on behalf of the Council.
18. The Council provided submissions to the investigating officer on the searches which it had carried out to establish whether the information requested was held. This included checking paper and electronic files, and contacting staff members who had dealings with DCCM.
19. In correspondence with the investigating officer, Visible Means has indicated that it considers that the information about this event held by DCCM should also be considered to be held by the Council. To address this point, the Commissioner has considered whether DCCM should be considered to be holding the requested information on the Council's behalf.



20. 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). DCCM's funding comes from both the private and public sector. Since 2005, the Council's main contribution to DCCM's costs has been provided by it taking on DCCM's employment costs and responsibilities. The staff member concerned is assigned to work for the DCCM Board, which could refer any personnel issues to the Council.
21. Taking into consideration all of the above, the Commissioner can only conclude that DCCM is an entirely separate legal person from the Council, which is not itself a public authority or publicly owned company for the purposes of FOISA.
22. While the Council clearly works in partnership with DCCM, and that means that it will hold some information about its activities, the Commissioner does not consider that information held by DCCM is being held by DCCM on behalf of the Council for the purposes of FOISA.
23. Accordingly, in all the circumstances, the Commissioner is satisfied that any searches for relevant information in this case were properly restricted to information held directly by the Council. Since the event in question was organised by DCCM rather than the Council, the Commissioner also accepts that the Council would not be expected to hold information of the type requested by Visible Means in this case.
24. The Commissioner has concluded that the Council's searches for information were sufficient, and he is satisfied that no relevant information was held by the Council at the time when it received Visible Means's request.
25. However, the Commissioner notes that section 17(1) requires that, in these circumstances, an authority must give notice to the applicant that it does not hold the requested information. The Commissioner observes that no such notice was provided to Visible Means in response to its request or its subsequent request for review. The Council acknowledged in its submissions that it erred in this respect.
26. The Commissioner has therefore concluded that the Council failed to act in accordance section 17(1) of FOISA in this case.

**Technical breach of FOISA: section 10**

27. In its application to the Commissioner, Visible Means stated that it was dissatisfied with the Council's failure to respond to its information request within the timescale specified in FOISA.
28. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.



29. "Working day", in terms of section 73 of FOISA, means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland. The response by Fife Council was therefore two days late.
30. The Commissioner has therefore found that the Council failed to respond to Visible Means's request for information within the 20 working days allowed under section 10(1) of FOISA. In failing to comply with this timescale, the Council failed to comply with Part 1 of FOISA.

## DECISION

Although the Commissioner found that Fife Council (the Council) did not hold the information requested by Visible Means Ltd (Visible Means), he finds that the Council failed to comply with Part 1 of FOISA by not providing Visible Means with a notice under section 17(1) of FOISA in respect of its request.

The Commissioner also finds that the Council failed to comply with section 10(1) of FOISA in relation to Visible Means's request.

In the circumstances, the Commissioner does not require the Council to take any action in respect of these particular breaches in response to Visible Means's request.

## Appeal

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Should either Visible Means or the 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**  
**15 July 2010**



## Appendix

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### 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.

...

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...



**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.

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