

Decision Notice



Decision 049/2011 Visible Means Limited and the Board of Management of Carnegie College

Festival Logo

Reference No: 201002334
Decision Date: 11 March 2011

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

Visible Means Limited (Visible Means) requested from the Board of Management of Carnegie College (the College) specified information relating to a logo it had designed. The College responded by advising that it did not hold the information in question. Following a review, Visible Means remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the College had dealt with Visible Means' request for information in accordance with Part 1 of FOISA, by advising Visible Means that it did not hold the requested information.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) 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. It may be helpful to explain that Visible Means designed a logo for the 2008 Carnegie Festival (the Festival), which took place in Dunfermline and celebrated aspects of the life and legacy of the philanthropist Andrew Carnegie. Visible Means is in dispute with the College regarding the use made of this logo. The College's involvement in this matter will be considered further below, but only to the extent necessary for the Commissioner to reach a decision in this case.
2. On 31 August 2010, Visible Means wrote to the College, referring to a previous request it had made to the College concerning companies it believed to have been making use of the Festival logo. Visible Means also requested the following information:
the names of the companies who made use of our design and how much each company was paid.



3. The College responded on 16 September 2010, confirming that it held no recorded information about companies who had made use of the design in question nor did it hold any records detailing payments made for such services. It suggested that the matter related to the Carnegie Festival Company Limited (CFC), which it stated was a separate legal entity from the College itself, and accordingly that Visible Means might wish to contact CFC directly.
4. On 11 October 2010, Visible Means wrote to the College requesting a review of its decision, stating that as a registered charity it should hold the requested information.
5. The College notified Visible Means of the outcome of its review on 22 October 2010, upholding its original decision that it held no information falling within the scope of Visible Means' request. It explained further why it did not consider itself (as opposed to CFC) to have any responsibility for the matters referred to in the request.
6. On 20 December 2010 Visible Means wrote to the Commissioner, stating that it was dissatisfied with the outcome of the College's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
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

8. On 10 January 2010, the investigating officer contacted the College, giving it 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 College was asked to explain in detail the steps it had taken to verify that the information Visible Means sought was not held.
9. The College provided its submissions on 28 January 2011, followed by a response to further questions on 21 February 2011. All comments received from both the College and Visible Means, insofar as relevant, will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Visible Means and the College and is satisfied that no matter of relevance has been overlooked.



Section 17 - Notice that information is not held

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is that held at the time the request is received. 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.
12. The College described the temporary financial arrangements it had put in place to allow the Festival to function, which had ceased once CFC had been incorporated and was fully functioning. It also described the searches it had undertaken to ascertain whether it held any information falling within the scope of Visible Means' request. Finally, it noted that its Principal had been a director of CFC, but in a personal capacity rather than on behalf of the College, referring to evidence from which it understood this position should have been clear.
13. The Commissioner is satisfied that the College took adequate steps in the circumstances of this particular case to identify and locate any information it held which fell within the scope of Visible Means' request. Having considered all of the submissions he has received, on balance he is satisfied that the College did not hold the information requested by Visible Means at the time it received Visible Means's request. He is therefore satisfied that the College was correct to give Visible Means that it did not hold the information, as required by section 17(1) of FOISA.
14. Consequently the Commissioner has concluded that the Council complied with Part 1 of FOISA in responding to Visible Means' information requests.

DECISION

The Commissioner finds that the Board of Management of Carnegie College complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Visible Means Limited.



Appeal

Should either Visible Means Limited or the Board of Management of Carnegie College 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
11 March 2011



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.
- ...

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.
- ...