



**Tribunals Service**  
Information Tribunal

**Information Tribunal Appeal Number: EA/2008/0010**  
**Information Commissioner's Ref: FS50133288**

**Heard at Procession House, London, EC4**  
**On 3<sup>rd</sup> October 2008**

**Decision Promulgated**  
**16 October 2008**

**BEFORE**

**CHAIRWOMAN**

**Melanie Carter**

**and**

**LAY MEMBERS**

**Anne Chafer**  
**Jenni Thomson**

**Between**

**ALAN DIGBY-CAMERON**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**Subject matter:**

Whether information held s.1  
Summary disposal of appeals, Rule 10

**Cases:**

Tanner v Information Commissioner (EA/2007/0106)  
McBride v Information Commissioner (EA/2007/0105)

## **Decision**

The Tribunal summarily dismisses the appeal under rule 10 of the Information Tribunal (Enforcement Appeals) Rules 2005 and upholds the Decision Notice dated 25 January 2008.

## **Reasons for Decision**

### **Introduction**

1. The Appellant, Mr Digby-Cameron, has for a number of years now been trying to discover more about the extremely sad circumstances of his son's death in 2003. His son, Andrew James Digby-Cameron, was run over and killed by a lorry in the middle of the night on a motorway. At the inquest into his death in July 2004, the Hertfordshire Coroner adjourned to a later date and ordered that a transcript be made to assist at the reconvened hearing. At the reconvened hearing in February 2006 the Coroner concluded the inquest giving an oral decision there and then.

### **The request for information**

2. Mr Digby-Cameron wrote on 28 March 2006 to the Coroner's service in Hertfordshire, the administration of which is run by Hertfordshire County Council ("the Council"), to request that he be supplied with a transcript of the reconvened hearing (he already had the transcript for the first part of the proceedings). Initially, the Coroner's service responded solely within the terms of its coronial business explaining that no transcript had been ordered but that Mr Digby-Cameron could have a copy of the tapes of the hearing for a charge. The Council informed him that no transcript would be made. Subsequently the Council offered Mr Digby-Cameron a copy of the tapes for no charge. This offer was declined.

3. It was not until a letter from the Chief Executive of the Council to Mr Digby-Cameron dated 19 April 2006 in response to his complaints that the Freedom of Information Act 2000 ("FOIA") was mentioned. He did not receive a refusal in terms of FOIA but was informed that he could complain to the Information Commissioner ("IC") if he so wished.

#### The complaint to the Information Commissioner

4. Mr Digby-Cameron complained to the IC in August 2006. During the course of his investigation the Council, at the IC's suggestion, addressed the question whether in fact it held the information on behalf of the Coroner. The Council wrote back in a letter dated 1 December 2006 stating that in its view it did indeed hold the information on behalf of the Coroner. The IC's Decision Notice dated 25 January 2008 found that the Council had breached section 1(1) of FOIA insofar as the Council had failed to tell Mr Digby-Cameron that it did not hold the information in question for its own purposes and upheld the Council's assertion that it held this information solely on behalf of the Coroner.

#### The appeal to the Tribunal

5. Mr Digby-Cameron appealed to the Tribunal on 5 February 2008. His grounds of appeal were in essence that the Council should have been more reasonable and borne the cost of producing a transcript. He told the Tribunal that it was too painful for him to listen to the tapes and that this should have been taken into account by the Council. Mr Digby-Cameron further argued that the IC ought to have forced the Council to be more cooperative and ought not to have assisted the Council by suggesting that the information was held solely on behalf of the Coroner.
6. The IC submitted at an early stage that Mr Digby-Cameron's notice of appeal disclosed no grounds of appeal and that it should be struck out. The Deputy Chairwoman declined this application and ordered that the appeal should be decided at a summary hearing under rule 10 of the Information Tribunal (Enforcement Appeals) Rules 2005. Mr Digby-Cameron exercised his right to an oral hearing.

### The questions for the Tribunal

7. The Tribunal's jurisdiction in this case is to consider under section 58 of FOIA whether the IC's Decision Notice is in accordance with law. Thus, the narrow question before the Tribunal is whether the information contained in the tapes is held by the Council in its own right as a public authority or whether it is held solely on behalf of the Coroner. If so, it falls outside the FOIA regime.
  
8. Being a rule 10 summary hearing, the Tribunal had to decide whether the appeal had a realistic prospect of success or put differently the prospects were more than just "fanciful" (*Tanner v Information Commissioner EA/2007/0106*).

### The issues

9. Section 1 of FOIA provides:

*"Any person making a request for information to a public authority is entitled-*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request; and*

*(b) if that is the case to have that information communicated to him."*

10. Section 3 further provides:

*"(2) For the purposes of this Act, information is held by a public authority if-*

*(a) it is held by the authority, otherwise than on behalf of another person, or*

*(b) it is held by another person on behalf of the authority."*

11. The Council is a public authority designated as such under Schedule 1 of FOIA. The Coroner is not designated as a public authority and is not, therefore, subject to

the FOIA regime. This lies at the heart of this appeal.

12. The Coroner is subject to an entirely different legislative regime – the Coroner’s Act 1998 and the Coroner’s Rules 1984. Under this legislation, the Coroner is appointed and paid by the Council (both salary and expenses). In this case, and pursuant to the legislation, he occupies premises provided by the Council. The records are kept in Council accommodation and the normal administration of the Coroner’s office is carried out by Council staff. Given this, the Tribunal could entirely understand why Mr Digby-Cameron would be confused as to where the responsibility for coronial matters rested – with the Council or the Coroner.

13. The matter is not however to be judged solely on appearances. The Tribunal reminded itself by reference to a decision of the Scottish Information Commissioner (*Mr Shields and the Scottish Parliament (008/2005)*) that mere possession of the information would not be determinative of whether the information was held by the Council in its own right. The key issues were as described in that case:

*“31. If an authority holds information on behalf of another person or organisation, it will not control that information in the same way as it would with information held in its own right. The authority would not have power to delete or amend that information without the owner’s consent; it would not be able to apply its own policies or procedures to it. It may have restricted access to it”.*

14. The Tribunal also took into account its previous case of *McBride v Information Commissioner (EA/2007/0105)*. In that case, the Tribunal found that the Privy Council Office (PCO) held the information in its own right, and not as argued, on behalf of the University Visitor. Critical to this were the following findings:

*“This is not a situation where the information was simply on the PCO’s premises because, for example, the Visitor had left it there. The PCO managed and controlled the information, and in fact the PCO itself produced much of the information contained in the Visitor files. The PCO could edit or delete the*

*information, and it could decide whom to send it to or whom to withhold it from. Indeed, in response to the Appellant's requests, it could have provided the information to the Appellant, and in fact, did provide some information."*

15. Thus the Tribunal considered first whether the Council could in fact be said to control the information. As part of this deliberation, it asked itself whether the Council had the right to amend or delete the information. The Tribunal had regard to the entirely separate information regime that is set out in the Coroner's Rules 1984. The Tribunal noted first that it is the Coroner's statutory duty under rule 56 to retain inquest documents for at least fifteen years. It is for the Coroner to decide, under rule 56 who has access to information. Rule 56 provides power for the Coroner to *"deliver any such document to any person who in the opinion of the coroner is a proper person to have possession of it"*.

16. The Tribunal concluded that the decision whether or not to disclose information was for the Coroner, not the Council. In fact, there was no question that Mr Digby-Cameron was a *"proper person"* for these purposes and this was reflected in the fact the Coroner had agreed to his being supplied the tapes. The Tribunal noted that the first response of the Coroner's service to Mr Digby-Cameron's request, in a letter dated 24 March 2006, had been that:

*"The Coroner is now away from the office until 3<sup>rd</sup> April, but has directed me to inform you that there is no written transcript of the Inquest, but it is possible to obtain a copy of the tape recording taken of the proceedings."*

17. Thus, the Tribunal concluded that the Coroner had in this case made the decision what was or was not to happen in relation to this information. This was consistent with the statutory regime under the Coroner's Rules and indicated that 'ownership' of and control over this information lay both in fact and law with the Coroner. That this should be the case was consistent with the fact that the Coroner is an independent judicial office holder, whose decisions are made independently of the Council.

18. The Tribunal noted Mr Digby-Cameron's submissions at the hearing that the Coroner had produced a transcript for the previous hearing days such that there was no good reason why this should not be done again. He also drew the attention of the Tribunal to a Council leaflet which offered help to members of the public by translation, interpretation etc. He argued that the Council should have been more cooperative and reasonable in its approach to his request.
19. The Tribunal was satisfied however that the Council held the information in the tapes solely on behalf of the Coroner, such that the information fell outside the jurisdiction of FOIA. This was not a question of reasonableness or degrees of cooperation – it was a narrow question to be judged on the facts of the matter and in the light of the different legislative regimes. The Tribunal was of the view that this appeal did not have a realistic prospect of success as Mr Digby-Cameron had not produced sufficient evidence or arguments to counter the clear statutory intent under the Coroner's legislation that the Coroner retained ownership and control of the information. The Council's leaflet referred to above, concerned the exercise of its own statutory functions, not those of the Coroner. The fact that the Coroner had ordered a transcript of the first hearing was not strictly relevant to the question before the Tribunal, although it noted in passing that given the lengthy delay between the first set of hearing days and the reconvened hearing, this would have been an appropriate use of coronial funds. The Tribunal could understand that there would not have been any need for a transcript of the reconvened hearing in terms of the proper conduct of the inquest itself because the inquest was concluded on the day it was reconvened.
20. As mentioned above, the Tribunal was sympathetic to Mr Digby-Cameron's position as without detailed knowledge of the law in this area, a member of the public could be forgiven for being confused as to the nature of the relationship between the Council and the Coroner. The letters to him from the Council all spoke in "we" terms and were in some cases on Council headed note paper. This was not helped by the fact that the Council did not, early on, signpost Mr Digby-Cameron in the direction of the then Ministry of Justice for the purposes of complaining about the

Coroner. It would have been helpful moreover had the Chief Executive of the Council, in her letter of 19 April 2006, explained that whilst Mr Digby-Cameron could complain to the IC and the Ombudsman, the most appropriate route was likely to be to the Ministry of Justice. The Ombudsman had not helped either by referring to the Council's decision not to make a transcript when in fact this was the Coroner's decision. The Tribunal concurred with the IC's comments in paragraph 41 of the Decision Notice in which he suggested that the Council should give some thought as to how best to explain to requesters the different information regimes that may apply.

21. Finally, the Tribunal did point out to Mr Digby-Cameron at the hearing, that even if it found that the Council held the information in its own right, it was not likely to be the case that he could reasonably require under FOIA that a transcript be made and provided to him. Section 11 of FOIA permits a public authority to take into account the costs of providing information in a particular format. The Tribunal was informed that the Council's estimate of making a transcript of the tapes was £1800, such that (bearing in mind the costs limit of £450 under section 12) it would be unlikely to be obliged to do this in any event.

#### Conclusion and remedy

22. The Tribunal upheld the Decision Notice and dismissed the appeal.

23. Our decision is unanimous.

Signed:

Deputy Chairwoman

Date 16 October 2008