

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 January 2008

Public Authority: Hertfordshire County Council
Address: County Hall
Hertford
SG13 8DE

Summary

The complainant requested a transcript of a reconvened inquest into the death of his son. The public authority told him that the official tapes of the inquest had not been transcribed but offered copies of the tapes to him. It agreed to waive the fee of £41 that would have applied. The complainant was unhappy with this outcome and complained to the Commissioner. Following an investigation, the Commissioner has determined that the tapes are held by the public authority solely on behalf of the Hertfordshire Coroner and not for its own purposes. Coroners are not designated as public authorities under the Freedom of Information Act 2000 and therefore their records are not subject to the information access regime of this Act. There is a separate information access regime for such records over which the Commissioner has no jurisdiction. However, the Commissioner has found that the public authority did not comply with its obligations under Section 1(1) of the Act because it did not formally deny that it held the information for its own purposes.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant's son was tragically killed in a traffic incident on the A1(M) in Hertfordshire that occurred in the early hours of 26 July 2003. An Inquest was held which began on 15 July 2004 and was adjourned because the Coroner required that further information should be collected from the neighbouring policing area, Bedfordshire. Specifically, he required that a particular individual who allegedly threatened the young man before he died should be interviewed about that allegation. The Inquest was reconvened on 2 February 2006 and a

narrative verdict was issued on the same day. A narrative verdict is a factual statement setting out the circumstances of the death.

3. The complainant had been in correspondence with the Commissioner regarding other information access requests made to other public authorities. In this correspondence with the Commissioner he referred to a request for information that he had made to the public authority and expressed dissatisfaction with the outcome of that request. The Commissioner asked the complainant to supply him with a copy of his initial request to the public authority. The complainant provided a copy of a letter dated 28 March 2006. It is apparent from that letter that the public authority and the complainant had already exchanged correspondence on the subject of access to information prior to this date. However, for the purposes of his investigation, the Commissioner has treated the letter of 28 March 2006 as the initial request for information.
4. On 28 March 2006 the complainant wrote to the Council and asked the addressee to *"pass my request for a transcript of the reconvened inquest to a senior colleague to enable me to properly respond to the coroner's seriously flawed narrative verdict"*.
5. The Council responded on 31 March 2006 stating the following,
"1. We do not hold or provide written transcripts of an Inquest;
2. We can supply you with a copy of the tapes of the Inquest. There is a charge of £25 for the first tape and £8 for subsequent tapes. There are four cassettes in total. As the fourth tape is very short we will only charge you for the three. You will need to send a cheque, made payable to Hertfordshire County Council, for £41 to the above address. Upon receipt of your cheque we will despatch the tapes".
6. The complainant reverted to the Council on 3 April 2006 to express his dissatisfaction with its refusal to supply the requested information. He requested that his request be passed to a senior member of staff for reconsideration.
7. On 11 April 2006 the County Secretary of the Council responded to the complainant. He explained that the Council could not bear the cost of providing the complainant with a transcript of the four tapes requested. However he indicated that he would be prepared to waive the £41 fee for supplying the tapes. He asked the complainant to contact him if he wanted copies of the tapes.

The Investigation

Scope of the case

8. As outlined above, the complainant has been in correspondence with the Commissioner regarding other complaints under Section 50 of the Act. He was advised that if he wished to pursue his complaint against the Council he would

need to provide the Commissioner with evidence of his request, together with a number of other documents.

9. On 7 August 2006 the complainant provided the Commissioner with the requisite correspondence he needed to begin considering his case. He requested that the Commissioner consider the way that the Council had handled his request. In particular, he highlighted that he was concerned that the Council had refused to supply the requested information in the form of a transcript.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The scope of the Commissioner's investigation has been to consider whether the request has been handled in accordance with the Act.

Chronology

11. In September 2006 the caseworker contacted the Council to discuss the complaint. In particular, she asked for clarification about whether the complainant's request had been recognised as an application made under the Act. It was not clear from the correspondence available to the caseworker that the Council had given specific consideration to whether the material requested by the complainant could be disclosed under the Act.
12. During the aforementioned conversation, the Council confirmed that it had taken into account the requirements of the Act when responding to the complainant. It asserted that the cost of transcribing audio tapes was significant and that, as the neither the Coroner, nor the Council required a transcript for their own purposes, it would be unreasonable to require it to create one only to fulfil the complainant's request.
13. On 23 September 2006 the caseworker wrote to the complainant to explain the obligations that are placed on public authorities under Part I of the Act. In particular, she drew the complainant's attention to section 11 of the Act, which states that applicants can express a preference for the means of communication a public authority uses to communicate information. The section also states that a public authority should give effect to a stated preference, as far as it would be reasonably practicable to do so. The caseworker explained that, the cost of supplying information via a specified means is one factor that public authorities can take into account when determining whether it would be reasonable to meet an applicant's demands. She highlighted that where the cost would be substantial it is likely that this would support the Council's decision to refuse to supply the information in paper format. She invited the complainant's comments.
14. The complainant reverted to the caseworker on 27 September 2006. He argued that it was vital that the Council provide the information in the form of a transcript to enable him to pursue justice for his son. He asserted that the costs involved were not the real reason for the Council's refusal but instead that it was simply trying to avoid criticism. He referred to the fact that a transcript had been created in relation to the first part of the Inquest and asked that this be taken into account when the Commissioner reached a decision on this case.

15. The caseworker wrote to the Council on 27 November 2006 to request further details about the way it had processed the complainant's request. The Council was asked to confirm that when it processed the request it had determined that it would be appropriate to release the information to any member of the public, rather than taking into account the identity of the applicant.
16. The Council provided a substantive reply to the aforementioned letter on 1 December 2006. It explained that, further consideration had been given to the request and that it had concluded that it did not in fact hold the information requested for the purposes of the Act.

Analysis

Procedural matters

What information is held?

17. The complainant has asked to be given a copy of the transcript of the reconvened Inquest into his son's death. The Commissioner understands that transcripts are not created as a matter of course but only where the Coroner orders that one be made for his or her own purposes. Where a transcript is ordered it will be used as a reference if the case takes time to reach a conclusion. He has also established that under rule 39 of the Coroners' Rules 1984, the Coroner is under a duty to take notes of the Inquest. The Council cited the case of *R v South London Coroner ex parte Thomson The Times July 9 1982* in relation to this point. In that case it was found that the obligation to take notes of the Inquest is satisfied by the tape recording of evidence.
18. In the case of interest to the complainant it appears that the Coroner ordered a transcript of the first part of the Inquest because he was aware that there could be some delay before he could reconvene. A transcript would therefore assist him in recalling detail when the inquest was reconvened. The Commissioner also understands that the complainant has a copy of the transcript of the first part of the Inquest which was disclosed to him outside of the Act.
19. In its letter dated 1 December 2006 the public authority confirmed that it does possess the tapes of the reconvened Inquest and that they have not been transcribed. This is because the Inquest was reconvened and concluded on 2 February 2006. The Coroner was able to sum up on the same day once the evidence was concluded. Therefore he had no need to order the creation of a transcript.

Is the information held for the purposes of the Act?

20. Section 3 of the Act states the following:
 - (1) In this Act "public authority" means –

(a) subject to section 4 (4), any body which, any other person who, or the holder of any office which –

- (i) is listed in Schedule 1, or
- (ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6.

(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”.

21. In its letter dated 1 December 2006, the Council explained that it does hold the requested information but in its view it does so solely on behalf of the Coroner. Therefore the Commissioner has considered what information is held by the Council and whether in fact the information is “held” for the purposes of the Act.
22. The concept of ‘holding information under the Act is not simply a question of whether or not material is in the physical possession of the public authority. There are a number of factors that are also likely to be relevant, such as the control that the public authority has over the information in question. When considering whether or not information is “held” for the purposes of the Act, the Commissioner has taken into account the decision of the Scottish Information Commissioner in the case of *Mr Shields and the Scottish Parliament (008/2005)* <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2005/200500463.asp>.
23. Paragraph 31 of the aforementioned decision states that *“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”*.
24. When reaching a decision in this matter the Commissionr has considered several factors including whether the public authority has any functions in relation to the information, the level of access and control it has over it and the degree to which it applies its own policies to the information.
25. The public authority has explained that it has no statutory function to fulfil which requires it to hold the requested information in any form. The Commissioner is not aware of any other reason why the public authority would hold the material requested in this case, such as it having obtained a copy as a legitimately interested party. The Commissioner is satisfied that coroners, themselves, are not public authorities in their own right and therefore not subject to the Act. Coroners are not listed in Schedule 1 of the Act nor have they been designated by order

under Section 5 of the Act. Section 5 allows the Secretary of State to designate any person as a public authority for the purposes of the Act where appropriate. However, the Commissioner needed to satisfy himself that the public authority did not also hold the information in its own right for its own purposes.

26. In considering the relationship between the Coroner and the public authority in relation to the holding of records, the Commissioner has considered the following information:
- Relevant pages from the Ministry of Justice's website (previously known as the Department of Constitutional Affairs)
<http://www.dca.gov.uk/corbur/coronfr.htm>
 - The website of the Coroners' Society www.coronersociety.org.uk
 - Hertfordshire Council's document "Hertfordshire Coroner Service Charter"
<http://www.hertsdirect.org/infobase/docs/pdfstore/corchart.pdf>
 - Coroners Act 1988
 - Coroners Rules 1984 as amended in 2005

27. The Ministry of Justice's (MoJ) website explains the coroner's relationship with local councils as follows:

"The coroner is an independent judicial officer presiding over a Court of Record within the English Judicial system and discharges his or her duties in accordance with the Coroners Act 1988, the Coroners Rules 1984 (as amended in 2005), and other relevant legislation. Although appointed and paid by local councils, the coroner is not a local government officer but holds office under the Crown."

It would appear to the Commissioner to be common practice for a local authority to act as a repository for coroner records and to provide administrative support. He recognises that certain information relating to coroners may be held by the public authority in their own right. For example, information about the costs associated with the coroner service may be held by the public authority in its own right as a result of its responsibility for paying coroners.

28. However, it is clear to the Commissioner that in relation to records such as the transcripts of coroners' cases, there is a separate access regime under the Coroners Rules. Rule 56 of the Coroners Rules 1984 (as amended) requires that inquest documents (other than exhibits) "*be retained by the coroner for at least fifteen years*". This rule also allows 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*". This rule is entitled "*Retention and delivery of documents*". It is clear to the Commissioner this rule determines that the coroner remains the "owner" of inquest documents. It is clear to the Commissioner that the coroner remains the "owner" of inquest documents. The Commissioner is also satisfied that the phrase "*to deliver any such documents*" does not mean 'to supply' the documents via an information access regime.
29. The supply of inquest documents is, in fact, dealt with in Rule 57 which is entitled "Inspection of, or supply of copies of, documents etc". In the Commissioner's view, this Rule establishes the access regime for such documents. It makes clear

that supply of copy documents is at the discretion of the coroner in that documents are supplied to “*any person, who in the opinion of the coroner, is a properly interested person*”.

30. Points 17, 21 and 22 of the Hertfordshire Coroner Service Charter (the “Charter”) reflect Rule 57 of the Coroners Rules 1994 (as amended). In the Commissioner’s view, these points make clear that any disclosure of information is at the discretion of the coroner and would normally only be made to persons that the coroner considers to be an interested person.

Is the information held by the public authority? - Conclusion

31. In the light of all the above, the Commissioner is satisfied that the public authority does not hold the information for its own purposes. It holds the information on behalf of another person and that other person, the Hertfordshire Coroner, is not a public authority as defined in the Act. It follows, therefore, that such information is not accessible to the public under the information access provisions of the Act.

Did the public authority comply with its obligations under the Act?

32. Given that the public authority does not hold the information for the purposes of the Act, the Commissioner considered the extent of its obligations to the complainant under the Act.
33. The copy correspondence submitted by the complainant shows that the public authority dealt with his request as “normal course of business”, i.e., as the administrative service of the Coroner corresponding with a relative of the deceased. The focus of the complainant’s concern in that correspondence appears to rest on the fact that the administrative service was unwilling to transcribe the tape recording of the reconvened inquest. As outlined in paragraphs 5 - 7 above, it offered him copies of those tapes for £41. In subsequent correspondence, it reiterated a point it had made earlier in terms of the significant costs that would be incurred to transcribe the tapes. It also offered to waive the fee of £41 that it had previously offered.
34. Given that the tapes are not held by the public authority for their own purposes, the Commissioner has no role to play in determining whether or not the administrative service was operating in accordance with the Hertfordshire Coroner’s Charter. The offer of a fee waiver would appear, in general terms, to be a sign of helpfulness but the Commissioner notes that the appropriate complaint mechanism in such cases is given in the Charter as being the Coroners’ Division of the Department of Constitutional Affairs (now the MoJ) where the local complaints handling mechanism has been exhausted.
35. However, the Commissioner notes the public authority’s statement (see paragraph 12 above) where it confirms that it took the requirements of the Act into account in its correspondence with the complainant.
36. Section 1(1) of the Act states the following:

*“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”.*

37. By failing to deny formally that it held the information for its own purposes, the Commissioner considers that the public authority contravened the requirements of Section 1(1)(a).

The Decision

38. The Commissioner’s decision is that the public authority did not deal with the following elements of the request in accordance with the requirements of the Act:

It failed to confirm or deny under Section 1(1)(a) whether it held the requested information.

Steps Required

39. The Commissioner requires no steps to be taken.

Other matters

40. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
41. The Commissioner recognises that it is not always clear to individuals who engage with public authorities that an access regime other than that provided by the Act can apply to their request for information. An obvious example would be the access regime under the Data Protection Act 1998. The public authority may wish to reflect on the different access regimes that may apply to information that is physically in its possession and consider how best to explain to requesters which information access regime applies. It should also consider providing information about any complaint mechanisms that apply under those regimes. This will ensure that individuals who are unhappy with the outcome of their attempts to access information are directed to the appropriate body. In this case, it would have been helpful if the complainant had been expressly directed to the MoJ.

Right of Appeal

40. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 28th day of January 2008

Signed

**Steve Wood
Assistant Commissioner**

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SK9 5AF**