



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2014/0039
Appellant: Efifiom Edem
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. On 5 November 2012 Mr Edem attended a hearing at the Upper Tribunal. On 29 January 2013 Mr Edem asked for a copy of the recording of the hearing. This was supplied to him on CD following a direction by the Upper Tribunal Judge dated 27 February 2013. The copy of the recording was provided to Mr Edem only for the purposes of refreshing his memory of what was said in the course of the hearing and to use that information for the purpose of any legal challenge to the Upper Tribunal decision. He was warned not to use the copy in any other way and that a breach of the restrictions set out might be punishable by imprisonment, fine or other sanctions.
2. Mr Edem complained unsuccessfully to the Information Commissioner (ICO) that the CD should have been released under the Freedom of Information (FOIA) which means disclosure to the whole world. He now appeals to the Tribunal against the ICO decision. The ICO has asked for the appeal to be struck out on the ground that it has no reasonable prospect of success. The ICO submits that the CD is a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter and is therefore absolutely exempt from disclosure under Section 32(1)(c) FOIA.
3. Having reviewed all the material, in my judgement, the only rational argument open to Mr Edem on this appeal is whether the term “document” includes a CD. In the

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days of short hand note-taking both the note and its transcription would obviously have been “documents”. Any transcript of a tape recording or digital recording would undoubtedly be a “document”. I have no doubt that any Tribunal would construe Section 32 FOIA purposively and hold that, for the purpose of the Act, a “document” is not limited to something written down on paper but extends also to a digital recording on CD. The CD is therefore to be treated no differently from a written transcript of its contents.

4. I therefore conclude that this appeal has no reasonable prospect of success and, in the circumstances, it is proportionate to bring it to an end now by striking it out.

NJ Warren

Chamber President

Dated 17 April 2014