



The Law Society

# Determination of an appeal by Mrs La Rearrett C Williams

Law Society Freedom of Information Code  
January 2008

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## **The issue**

Whether the Law Society acted in accordance with its Freedom of Information Code (“the Code”) in refusing to release to Mrs Williams information it holds relating to her dispute with her former solicitor.

## **The background**

On 17 September 2007 Mrs Williams wrote to the Society enclosing a series of documents dating back to 1992 relating to a grievance she has about the conduct of her former solicitor. Citing the Freedom of Information Act (“the Act”) she asked that the solicitor in question should return to her all the case papers he holds, and she asked the Society to give her “any information held by your organisation regarding my request”.

On 28 September the Law Society’s Information Compliance Manager, Joshua McKim, replied pointing out that the Society was not yet governed by the Act but by its own Code. Ten days later he wrote again saying that Mrs Williams’ request appeared to relate to a complaint she had made to the Legal Complaints Service and that he was unable to give her the information because it was about a regulatory investigation and was covered by s.14.5 of the Code. Mr McKim said that the Society had considered whether the public interest favoured disclosure but it considered that disclosing information about a specific regulatory investigation to the public at large would be detrimental to that investigation. He added that assuring the confidentiality of the information collected had been a factor in what he called the success of this investigation.

On 4 December Mrs Williams wrote to ask for adjudication under the Code. On 13 December I wrote to Mrs Williams to seek clarification of some aspects of her request. In particular I pointed out that the Adjudicator has no remit over the conduct of individual solicitors and that I could not therefore adjudicate upon the refusal of a particular solicitor to return papers to her.

Having received her reply I wrote to her on 31 December saying that I regarded her original request for information to have been for all information held by the Society in relation to her dispute with her former solicitor, and that I would adjudicate on that basis. I asked the Law Society to make a submission as to why it believed its refusal to release that information had been appropriate.

## **Submission from the Law Society**

On 10 January the Law Society made its submission. It pointed out that the complaint made by Mrs Williams about her former solicitor had been investigated by the Legal Complaints Service (“LCS”), which was a part of the Society but which conducted its investigations independently.

The information Mrs Williams had requested was concerned with a specific regulatory investigation and the exemption in s.14.5 of the Code therefore applied. The Society argued that s.14.5 was a class-based exemption and that it was therefore “not necessary to consider any particular prejudice” before withholding the information.

However, the Society accepted that s.14.5 was “closely in line” with s.30 of the Freedom of the Act, which is a qualified exemption where a public interest test is required. The Society also recognised that, under s.18 of the Code, the Adjudicator must consider in the case of regulatory information whether the public interest requires disclosure. The Society therefore went on to address the public interest test.

The Society noted that disclosure under the Code is disclosure to the public at large, not just to a particular individual, so it believed that the public interest test must be considered from the viewpoint of a third party.

The Society detailed the role of the LCS as being to serve the public by seeking swift and amicable resolution of complaints to the satisfaction of both parties. It said an LCS file might normally contain details of the complaint and of the responses of the solicitor concerned, together with other information collected or created during the investigation.

The Society believed that if the parties to a complaint believed that specific details of the complaint or its resolution would be released to the public at large, what it called “simple matters” would become more contentious and acrimonious. It feared that harm would be caused to an investigation if either a complainant or a solicitor felt unable to be candid with the LCS for fear that information might be released to the public. The Society pointed out that LCS investigations were subject to procedures, guidelines and protocols which had been communicated to Mrs Williams, and that decisions made by the LCS had also been communicated to her in detail. It pointed out that members of the public had the right of appeal to the Legal Services Ombudsman who could review the integrity of the process, the investigation, and any decisions made by the LCS.

In addition to its view of the public interest test, the Society added that there was a possibility that the disclosure of information would identify a living individual and that this would contravene the Data Protection Act.

Finally, the Law Society wished to point to its submissions, and to the adjudications, in two other FoI cases (*Nenadich* – April 2007; *Gomez [2]* – May 2007) which it believed had been similar in nature.

## Adjudication

As the Law Society points out in its submission, several recent cases for adjudication have centred on the application of the public interest test to the exemption specified in s.14.5 of the Code. The Society has moved a long way from the position it originally took in the case of *Gomez [1]* – September 2006. Its submission in *Gomez [2]* – May 2007 established the Society’s readiness to consider on a case-by-case basis where the public interest lay in releasing specific items of information concerning regulatory investigations. However, it continues to believe that the public interest is not well served by general publication of the contents of complaints files.

Mrs Williams wants to see the entire contents of her LCS file, and from her point of view that must seem a wholly reasonable request. But it may not serve the wider public interest, and in finding for the Society in this instance I cannot do better than to repeat the reasoning in *Gomez [2]* – May 2007:

I find the Society’s assessment of the public interest in this instance persuasive. There may be cases where the public interest favours disclosure

of particular items of information about an investigation, but Mrs Williams' request in this instance was broad and I am satisfied that to grant it would have undermined the necessary framework of confidentiality with which both informants and solicitors should feel able to contribute to an investigation.

If there were no other route for seeking assurance about the integrity of an LCS enquiry the balance of public interest might be different, but I note that the independent Legal Services Ombudsman offered a channel for Mrs Williams to satisfy her concerns about the thoroughness of the investigation. From documents submitted by Mrs Williams it appears that she has already pursued this route but that the Ombudsman upheld the Society's position.

**Richard Ayre**

**Freedom of Information Adjudicator**

*January 2008*