



The Law Society

## **Adjudication in a matter raised by Michael Jones**

### **Law Society Freedom of Information Code**

September 2010

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## **1 The Issue**

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code (“the Code”) when it refused to give Michael Andrew Jones, a solicitor, the information contained in two files held by the Legal Complaints Service (LCS) in relation to complaints against him by two individuals.

## **2 The Background**

Mr Jones is a solicitor against whom two individuals, known here simply as Mrs C and Mr E, have made complaints which have been investigated by the LCS. On 12 July 2010 Mr Jones wrote two letters to the Law Society, one in respect of each complainant. In each case he made a request under the Data Protection Act 1998 (DPA) for information held by the Law Society about him. In each case he made a second request, citing the Freedom of Information Act (FoIA), for the disclosure of all information relating to the files held by the LCS in connection with the two complaints. Mr Jones followed up this request on 20 July by asking for copies of all statements made by third party witnesses in relation to the complaint by Mrs C.

On 5 August the Law Society’s Information Compliance Manager, Mr Bob Stanley, replied, saying that the Society had decided to withhold the information under section 16 of the Code (which says that, because of the DPA, information of a personal nature about a third party must not be disclosed). Mr Stanley said that the LCS files relating to the two complaints were structured by reference to the complainants in such a way that it was apparent at the outset of his search that they contained specific information capable of amounting to personal data about them. He said that it was typical for LCS files to be structured by reference to the complainant and that they were therefore likely to form part of a “relevant filing system” for the purposes of the DPA.

Mr Stanley said that Mr Jones had the right, under the Code, to ask for the matter to be referred to the adjudicator. On 11 August Mr Jones confirmed that he would like the Law Society’s decision referred.

## **3 Submission by Michael Jones**

On 21 September Mr Jones made a submission. He said that s. 16 of the Code cross referred to the provisions in the DPA but had been misapplied by the Law Society. Though one data subject could not request information relating to another, Mr Jones said that a data subject was entitled to secure the release of information on himself pursuant to the DPA. He referred to the Subject Access Provisions within the Act. Mr Jones said that, accordingly, by misapplying the Code, the Law Society had denied him access to information relating to himself. He recalled that his communications with the Law Society had been predicated on the basis that he was requesting information both under FoI and as a data subject under the DPA, and that the Law Society had accepted his fee, paid under the DPA, so their subsequent conduct in failing to comply with the subject access request was unlawful.

Mr Jones said that, if the Law Society was concerned that personal details of a third party might be disclosed in complying with his request they could simply redact the material which they considered not disclosable. He said that the fact the Law Society had failed to consider this point was evidence of maladministration.

Mr Jones believed that the wording of s.16 of the Code had failed to encapsulate the legal position correctly.

Turning to the facts relating to his request, Mr Jones pointed out that he was already fully aware of most of the background information relating to the third party whose information the Law Society were, in his words, purporting to protect. She was formerly a client of his firm, and Mr Jones believed it was unlikely there would be anything on the files held by the Law Society relating to her that he did not already know. He said that the point was that he was quite properly seeking information other than direct personal information about the third party. What he found surprising and suspicious was that the Law Society was seeking to protect from disclosure information other than that relating to the third party. Accordingly, he believed, s.16 had been misapplied, allegedly for an ulterior purpose.

Mr Jones concluded by saying that the information he was seeking could be extracted from the Law Society through a Court Order, and the obstacles artificially erected by the Society would eventually be of no avail. Accordingly, he believed that no purpose would be served by the Society pursuing the current course of action.

## **4 Submission by the Law Society**

On 27 August the Law Society made its submission to the adjudicator, explaining the basis upon which it had withheld the information under s.16 of the Code.

The Society said that each file was structured by reference to the complainants in such a way that it was apparent at the outset of the search that there was specific information capable of amounting to personal data about them on the files which would be readily accessible.

The Society said that LCS files were typically structured by reference to the complainant and were therefore likely to form part of a 'relevant filing system' as set out in the Data Protection Act when the individual making a request was the complainant rather than the solicitors' firm which was the subject of the complaint. This was the case in respect of both of the files requested by Mr Jones. The Society said that to locate any personal information relating to Mr Jones that might be on the files would involve a thorough search of all correspondence and other documents on the files, whereas the information relating to the respective complainants was readily accessible.

## **5 Further enquiries**

To help in consideration of the issues I attended the Law Society's offices at Chancery Lane in order to view the material in question. I examined both files, each of which contained substantial numbers of documents.

## 6 Adjudication

I agree with Mr Jones that Section 16 of the Code fails to reflect adequately the Law Society's legal obligations in relation to the release of personal data. It does reflect the legal duty upon the Law Society not to disclose personal information about "someone else" (other than the person making the request), but it fails to make clear that personal data about the applicant himself is also exempt from release under Fol. Releasing it would constitute publication (in other words, anything released to Mr Jones under Fol would be equally available to anyone else who asked for it) and that would breach his own rights under the DPA. The FoIA, which the Code is intended to mirror, is explicit on this point: "*Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject*" (FoIA section 41 (i)). The Code could, and should, be clarified in this respect. However, I am satisfied that, in order to comply with the provisions of the DPA, as well as fully reflect the provisions of the FoIA, personal information, whether about a third party or about the applicant, is exempt from release by the Law Society under freedom of information.

At the start of my consideration of this case I drew to Mr Jones' attention a number of recent adjudications in which I have felt unable to make a determination in respect of the Law Society's reliance upon s. 16. This is because, even were I to find against the Society in any particular case, it could not be expected to release information in accordance with an adjudication if it believed that doing so would put it in breach of the DPA, which might constitute a criminal offence. I have repeatedly asked the Law Society to remove s.16 from the remit of the Adjudicator, and I now do so again.

In keeping with previous adjudications I must therefore decline to rule in this case. However, it might be helpful for Mr Jones to know that, having examined the files in question, it appears to me that, as the Society had claimed, each file was structured by reference to the complainant in each case, and each contained information which, in my opinion, is likely to be regarded as personal data concerning those complainants. It would appear to me that the Data Protection Act would prevent the release of this information to a third party such as Mr Jones.

Insofar as the files might contain personal data about Mr Jones himself, I have already made clear that this information is exempt from publication under Fol. However, Mr Jones may well have an entitlement to receive it as data subject under the DPA. Hence his twin-track approach of asking the Society to release it both under the Code and under the subject access provisions of the DPA. I have no locus in matters relating to the DPA, and if Mr Jones is dissatisfied with the Law Society's response to his subject access request his appeal lies direct to the ICO (the office of the Information Commissioner).

**Richard Ayre**

Freedom of Information Adjudicator

22 September 2010