



The Law Society

Adjudication in a matter raised by AH
Law Society Freedom of Information Code
June 2016



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1. The issue

1. Whether the Law Society (“the Society”)¹ acted appropriately and in accordance with its Freedom of Information Code of Practice (“the Code”) when, in response to a freedom of information request, it declined to release to AH (“the Applicant”), information relating to a Solicitor’s Regulation Authority (“SRA”) investigation into the late Coventry City Council deputy leader Philip Townshend who, at the time of his death in October 2015, was a practising solicitor.
2. The Society’s refusal of the Applicant’s request was based upon paragraphs 14.5 (information about specific investigations, disciplinary cases or applications) and paragraph 16 (third party personal data) of the Code.

2. Background

3. On 5 December 2015 the Applicant made an information request to the Society, citing the provisions of the Freedom of Information Act 2000 (“FOIA”). The Applicant asked for “*a schedule or list of all information*” held by the Society in relation to investigations concerning Mr Townshend.
4. The Society responded on 6 January 2016. It explained that it was not subject to FOIA but that it operated a voluntary Code. Under the Code it provided the Applicant with a schedule which listed all of the information it held and which fell within the scope of the Applicant’s request of 5 December 2015. Some of the information in that schedule was redacted by the Society. The redacted schedule set out the information held by the Society under four categories, headed Sections A, B, C and D. At this point, the Society stated it was withholding the redacted information in reliance on paragraphs 16 (personal data) and 14.8 (legal professional privilege) of the Code.

¹ By virtue of the current wording of the Code, in this adjudication, that term should also be taken to include the Solicitor’s Regulatory Authority, where applicable.

5. On 7 January 2016 the Applicant made a second request to the Society, in the following terms:

“Under “the Code”, could you please send me copies of the information you hold – in particular that described under “C” and “D”?”

6. It is this second information request, dated 7 January 2016, which is the subject of this adjudication.
7. The Society responded to the Applicant on 4 February 2016 as follows:

“The information you have requested is being withheld under paragraphs 14.5 and 16 of the Code.

Paragraph 14.5 states that the Society does not have to release information about specific investigations, disciplinary cases or applications arising from its regulatory role. In applying this exception the Society is further required to carry out a ‘public interest test’ in relation to the regulatory information requested. This is because 14.5 of the Code is a ‘qualified exception’ requiring the application of a public interest test in determining whether the information should be released.

Where we apply the public interest test to an exception, in this case to 14.5, the public interest factors in favour of publication must be outweighed by the interests protected by the exception.

In this case we believe that the public interest in withholding the requested information outweighs the public interest in disclosing it into the public domain.

Paragraph 16 of the Code says that we cannot disclose personal data under the Code where this would breach the Data Protection Act. This is because all information disclosed under the Code is deemed to be put into the public domain. Much of the information you have requested is personal data which we cannot put into the public domain.

All of the information you have requested is caught by one or both of the Code exceptions described above.”

8. Accordingly, no information was provided to the Applicant in response to this second request.
9. On 8 February 2016, the Applicant requested that the matter be referred for adjudication under the Code. Following that referral, I wrote to both the Applicant and the Society and I invited them to make any submissions they felt appropriate in support of their respective positions. Both parties duly did so, as outlined below.

3. The Applicant’s submissions

10. I do not repeat here each and every point raised by the Applicant in his submissions below. However, I have carefully read them and I have duly considered each of the points made. In summary, the Applicant told me that:

“I am asking for a review for the following reasons:

- The Data Protection Act does not cover deceased persons – I requested information about the late Coventry City Council deputy leader Phil Townshend only. Any information that could identify third parties could be redacted.

- I believe the public interest in disclosing the requested documents is significantly stronger than the public interest in withholding the information.

...I appreciate the society may not routinely release information about investigations, I believe this specific request and the merits of the public interest in the inquiry justify a different response.”

11. The Applicant said that reports in the local press in November 2015 said that Mr Townshend was *“being investigated over allegations of fraud, he owed creditors...hundreds of thousands of pounds and according to Private Eye had also been referred to the Solicitors Regulation Authority, at the time of his death.”*
12. He maintained that there was a public interest in seeing *“whether those press reports were true and also in finding out what investigation(s) have begun and what progress has been made, as word of mouth is spreading at the moment and*

therefore gaining credence that any investigation were only prompted by the Coventry Observer's report. I believe the documents requested would help shed light on any investigations and aid the search for the truth.

13. In support of the public interest in disclosure, the Applicant made the following points to me:

- *“The public interest argument is furthered by the fact that it was not in the public domain Mr Townshend was subject to any investigation until after his death. There is a legitimate public interest in establishing whether the public's democratically-elected representatives are properly investigated when allegations arise.*
- *“The public interest considerations become greater by virtue of a factor outside of the society's control, chiefly that it was announced the late Mr Townshend would receive a public civic funeral at taxpayers' expense due to his “significant contribution to Coventry” before any investigation was reported in the public domain nor any resolution or update on the progress of any investigation. Given Mr Townshend was a public figure and the public contributed to his funeral, there is a public interest in transparency and public knowledge of any investigations where he was their subject.*
- *“Given Mr Townshend has died, there is also no requirement for a safe space for the society to operate in and no situation where media pressure could present problems for a specific judicial process.*
- *“Given that this inquiry comes after Mr Townshend's death, I believe that the release of information about any investigation is justified.*
- *“The transparency of any further information about any investigation would encourage progress to be made which might otherwise halt due to Mr Townshend's death, as it might encourage the participation of others in any investigation they might not otherwise know about. The gathering of further information would aid in establishing the truth and the facts and in so doing would further the interests of justice.”*

4. The Society's submissions

14. In its submissions to me, the Society set out its history of the Applicant's requests and provided me with an unredacted copy of the schedule it had provided in redacted form to the Applicant on 6 January 2016.
15. The Society also provided me with a copy of the withheld information referred to under Sections C and D of the schedule it had provided to the Applicant, together with a representative sample of the information, including the most salient material, referred to under Section A. The Society did not provide copies of the client files referred to under Section B and for the reasons set out below, I did not consider it necessary to review those files.
16. The Society's submissions set out why it said the exemptions it claimed were engaged in this case, doing so by reference to the withheld information itself. Some of the arguments advanced by the Society were necessarily made on a "closed" basis and these were not provided to the Applicant because to do so would have revealed the contents of the withheld information.
17. Whilst I am unable, in this summary, to repeat the closed portions of the Society's submissions to me, I am able to say that they were limited to matters which genuinely needed to remain closed and they went to the substantive reasons for the Society refusing the Applicant's request.
18. In its open submissions, the Society told me that, in respect of the information at Section A, *"Forensic Investigations (FI) undertake fact based investigations by attending firms of solicitors and reviewing their books of account and other papers held, which include client files."* It also noted that *"Section B contains documents copied from various client files during the course of the investigation. The documents contain personal details of the clients in question."*
19. Under the heading *"Summary of matters concerning Mr Phillip Townshend"*, the Society said:

*"The SRA Supervision Unit commissioned the Forensic Investigation team (FI) to investigate...concerns on 16 March 2015 and the investigation commenced on 26 May 2015."*²

² This significantly predates Mr Townshend's death.

20. Under the heading “*Current stage of the investigation*” the Society stated that:

“The description of the papers obtained during the investigation was divided into the following categories: -

- A. Accounting information in respect of The Law Partnership Solicitors LLP.*
- B. Papers from the client files*
- C. Papers relating specifically to Mr Townshend; and*
- D. Other documentation”*

21. These were the same categories as the Society had set out in the schedule it had provided to the Applicant.

22. The Society’s open submissions in favour of withholding the requested information were as follows:

“Where the SRA receives complaints about firms or individuals and/or go on to investigate, the request engages 14.5 of the Code. In balancing the public interest factors we have to consider if the public has an interest in knowing about the information requested. There is, however, a difference between the public being ‘interested’ in the information and there being a wider public interest in favour of us releasing the information into the public domain. Any complaints received about firms or individuals and/or investigations we carry out against them does not represent a final outcome against a firm or individual. For this reason publication of any such information held is unfair to firms or individuals because it puts into the public domain unfounded allegations against a firm or individual. Indeed it may be harmful to the wider interests of society because it will present an incomplete picture. There are clear risks around incomplete and inaccurate information being placed in the public domain which may misrepresent those the SRA regulates and the general legal market.

“It is our view that the disclosure of any of the information being withheld under paragraph 14.5 in this case would not be in the public interest as it would have a detrimental effect to the following persons: [names redacted]

...

Therefore, until a decision has been made as to [name redacted] conduct either by a SRA Adjudicator or at the Solicitors Disciplinary Tribunal it would be inappropriate for any documentation which may alert the media to this to be disclosed as this may affect the ongoing investigation and outcome.”

5. Adjudication

Preliminary comments

23. The late Mr Townshend was an individual with considerable public and political profile in Coventry.
24. Press reports currently in the public domain make reference to alleged wrong-doing on the part of Mr Townshend prior to his death. Those allegations have included one of fraud on Mr Townshend's part and I understand that a police investigation had been commenced, but was not concluded, at the time of his death.
25. Press reports have also noted that Coventry City Council contributed or paid for the cost of Mr Townshend's funeral at Coventry Cathedral. It is understood that this was on the basis that he was a significant public figure in the life of the City. This is a fact unrelated to Mr Townshend's status as a solicitor.
26. It also appears to be a matter in the public domain that Mr Townshend's previous practice had encountered financial difficulties and it ceasing trading. Mr Townshend subsequently went into practice with others, forming a limited liability partnership ("LLP") known as The Law Partnership Solicitors LLP and that firm (or its successor practice) is still trading.
27. Mr Townshend died prior to the information request which is the subject of this adjudication. The Applicant is therefore correct to say that any information which relates to Mr Townshend personally is no longer "personal data" for the purposes of the Data Protection Act 1998 ("the DPA"). The DPA governs only personal information relating to living persons. As such, paragraph 16 of the Code will also not apply to any such information relating exclusively to Mr Townshend.
28. However, it must also be noted that information which is (or which was, prior to their death) the personal data of one individual may equally, and at the same time, also be the personal data of other individuals. In this regard, a number of the individuals

affected by Mr Townshend's actions are still alive, most notably the individual who was alleged to have been the victim of a fraud committed by Mr Townshend.

29. On the evidence before me it is clear that the SRA had commenced an investigation in relation to Mr Townshend's activities some months prior to his death and I make a finding of fact to that effect. If this fact was not a matter of public knowledge before the Society's open submissions were served, it is nevertheless a matter of public record now.
30. The Society, in its open submissions, whilst being careful to avoid disclosing withheld information, also made it clear that certain elements of the SRA investigation remained "*current*" and "*ongoing*", notwithstanding Mr Townshend's death. It stated that a decision by either an SRA Adjudicator or the Solicitor's Disciplinary Tribunal in relation to some of those issues was expected at some point in the future. I therefore also make a finding of fact that there was a live investigation at the time of the Applicant's information request.
31. In its closed submissions, the Society expanded upon the terms and scope of the ongoing SRA investigation to me. Although it is not possible to rehearse those submissions in an open adjudication, I record here that I was satisfied that they were sufficiently detailed so as to give me a suitably clear view of the current situation regarding that investigation and the matters which are still pending.
32. Having made these preliminary comments, I turn now to the specific information which is the subject of this adjudication. In doing so I use, for convenience, the Section headings provided by the Society in its schedule of 6 January 2016.

Section A

33. The Society described this information as "*accounting information in respect of The Law Partnership Solicitors LLP*". When providing its submissions, the Society provided me with a representative sample of the information in question, including the most salient material. Having carefully reviewed the information provided, together with the items listed in the schedule under Section A, I did not consider that an inspection of the remaining information was necessary in this case.
34. The Society said the majority of the information under Section A should not be disclosed as it was the personal information of clients of the firm and it therefore

engaged paragraph 16 of the Code. The Society did not specify which information it said fell under this description and which did not, but it was clear to me from my own inspection that it was indeed the case that much of the material – for example client account ledgers – contained the personal data of the firm’s clients.

35. Consequently, I find that paragraph 16 of the Code is engaged in relation to this information. Paragraph 16 of the Code is an absolute exemption to disclosure and does not require the application of a public interest balancing exercise; the Society is not required to disclose this information.
36. The Society also cited paragraph 14.5 of the Code³ in relation to the remaining elements of the information in Section A. Again it did not specify which elements of the information engaged that paragraph. However, I am satisfied, on the basis of my own inspection of the withheld information listed under Section A, that it did indeed engage paragraph 14.5 of the Code: it was information obtained and held by the Society because it related to a specific SRA investigation.
37. Therefore, the public interest balancing exercise falls to be considered in relation to this information.
38. Whilst the Applicant advanced a number of arguments to support his contention that the public interest favoured disclosure, those arguments appeared largely based on an assumption that any investigation must now be concluded, given that Mr Townshend had died. Accordingly, they did not take into account the possibility of any ongoing aspects of the SRA investigation.
39. There is a clear public interest in transparency and in reassuring the general public that the SRA undertakes its regulatory functions in a timely and appropriate fashion. Those interests could, to some extent, be served by disclosure in the present case.
40. However, considerations such as quelling what the Applicant believes is public “*word of mouth*” speculation following Mr Townshend’s death, generally carry little or no weight in the public interest balancing exercise. That is particularly so in the present case where, in any event, the Society has now confirmed the investigation was already ongoing and predated Mr Townshend’s death by several months.

³ In its submissions it actually referred to paragraph 14.4 of the Code, but this was clearly a typographical error on the part of the Society.

41. Against the public interest factors in favour of disclosure must be set the public interest in avoiding potential prejudice which may arise from disclosure.
42. Disclosure under the Code is disclosure to the world at large. Here, disclosure would result in the publication of currently confidential information (including commercially confidential information of The Law Partnership Solicitors LLP) to the wider public. That would potentially prejudice that firm's commercial interests, something which, in itself, would be likely to be contrary to the public interest.
43. There is also a live and ongoing SRA investigation. As such, disclosure may reveal confidential information about the investigation to those who might be the subjects of that ongoing investigation. That is clearly likely to prejudice the live investigation and the SRA's ability to satisfactorily conclude it; avoiding such a prejudice to the effective conduct and conclusion of investigations is clearly a matter which is very much in the public interest. It is also the case that disclosure of this information at this point in time could prove prejudicial to any parties currently subject to the ongoing investigation and who may ultimately be found to be blameless at the conclusion of that investigation.
44. I consider that these factors weigh strongly in the balance against disclosure in this case. Accordingly, I find that the public interest balancing exercise in relation to the information under Section A favours maintaining the exemption at paragraph 14.5 of the Code.

Section B

45. This was the material which the Society described as *"listed client files which had been reviewed during the course of the investigation"*.
46. A firm's client files are not the property of that firm; although potentially subject to a lien, they remain the property of the clients whose files they are. In the present case, all of the listed files are those of one or more named individuals who were clients of The Law Partnership Solicitors LLP. I am therefore satisfied that this information, taken as a whole, engages paragraph 16 of the Code. It is consequently exempt from disclosure under that paragraph and the Society was entitled to withhold it.

47. Even if this was not to be the case, and the information under Section B was not personal data, it would still engage paragraph 14.5 of the Code; it is information which is held by the Society solely because it relates to a specific investigation. In these circumstances, I can see no public interest in disclosure in this case which would be sufficient to outweigh the public interest in maintaining the exemption or justify the publication to the world at large of such private and confidential client files.

Section C

48. This is the information which the Society referred to as “*papers relating to Mr Townshend*”. As such, together with the material in Section D, it is one of the two categories of information which the Applicant told me was of particular interest to him.

49. The Society maintained that paragraphs 14.5 and 16 of the Code applied to this information and, where paragraph 14.5 applied, the public interest favoured maintaining the exemption. The Society provided an explanation of its position in its closed pleadings, which it did in the context of having provided me with a full copy of the information in question. Accordingly, I have carefully reviewed the points made by the Society and withheld information under Section C itself.

50. I preface my findings in relation to this aspect of matters by saying that in the context of an open adjudication ruling it is difficult, and sometimes impossible, to fully set out the reasons for reaching a conclusion in relation to closed material, where the conclusion is that such material should be withheld. However, in the present case, I consider that I am able, to some extent at least, to do so.

51. The information listed under Section C, although contained in “*papers relating to Mr Townshend*” and obviously relating to him personally (and which would have comprised, in large part, his own personal data, if he were still alive), is at the same time also mixed personal data – that is to say that it was not only Mr Townshend’s personal information, but it is in equal measure also the personal data of one or more other living individuals.

52. Indeed, whilst contained in “*papers relating to Mr Townshend*”, and being held by the Society by virtue of the investigation, the material under this Section relates intimately and inextricably to such other living individuals; large parts of the

information are exclusively third party personal data and sensitive third party personal data. The nature of this material is such that it would be damaging to those third parties for it to be disclosed to the world at large.

53. Having carefully reviewed the information listed under Section C, I am satisfied that it cannot be redacted in such a way as to withhold that third party personal data in order to satisfactorily protect the interests of the individuals concerned, whilst still disclosing any meaningful information about the investigation which falls within the scope of the Applicant's request.
54. In light of this, I have no difficulty in concluding that the Society was correct to withhold all of the information under Section C in reliance on paragraph 16 of the Code.
55. Having reached this conclusion, it is not necessary for me to consider the application of paragraph 14.5 of the Code to this element of the withheld information. Nevertheless, for completeness, I will briefly do so.
56. It is evident that the information falling within Section C is held by the Society because it is information provided to the SRA during the course of a specific investigation. Paragraph 14.5 of the Code is therefore engaged. Mindful that in an open adjudication it is not possible to fully set out reasoning without disclosing withheld information, I am restricted in this case to simply saying that the nature of the material falling within this Section is such that its disclosure to the world at large would, in my analysis, be highly prejudicial not only to the interests of innocent third parties but also to the ability of the SRA to properly conduct this, and potentially future, investigations.
57. Furthermore, whilst acknowledging the arguments in favour of disclosure advanced by the Applicant, I cannot identify any specific material in this information which, if it were disclosed, would further the public interest to any extent which would be sufficient to balance, much less outweigh, the public interest in avoiding the prejudice which would arise from that disclosure.
58. Accordingly, I find that both paragraph 14.5 and 16 of the Code are engaged by this information and the public interest balancing exercise favours maintaining the

exemption at paragraph 14.5 of the Code. The Society was entitled to withhold all of the information under Section C.

Section D

59. This is the information described by the Society as *“Listed other documentation obtained during the investigation which included correspondence between the Forensic Investigation Officer and the Law Partnership Solicitors LLP”*. The Society again argued that this information engaged paragraphs 14.5 and 16 of the Code.
60. On inspection, this information self-evidently engages paragraph 14.5 of the Code; it is information which is held by virtue of, and relating to, a specific SRA investigation. It is also clear from inspection that some of the information under Section D is third party personal data. Accordingly, I find that the Society was correct to withhold those elements of the information which engage the exemption at paragraph 16 of the Code.
61. I turn, therefore, to consider whether or not the public interest balancing exercise favours maintaining the exemption at paragraph 14.5 of the Code or whether it favours disclosing the information.
62. The Society noted in its submissions that *“there is a difference between the public being ‘interested’ in the information and there being a wider public interest in favour of us releasing the information...”* This is undoubtedly true. The question under the Code (and FOIA) is not whether there is any interest on the part of the public in seeing particular information; it is whether or not the balance of the public interest is best served by the disclosure or withholding of that information.
63. In this case, whilst identifying a number of matters which may be genuinely interesting for the public to know, beyond the general public interest which served by transparency and accountability (which should themselves not be underestimated), the Applicant did not identify any further compelling arguments why disclosure of this specific information would be in the public interest.
64. The Applicant argued that disclosure would assist in holding democratically elected politicians to account. However, achieving such accountability is not a matter which is within the remit of the Society, even where such elected officials are also practising solicitors. Rather, these are questions for the bodies to which such

individuals are elected. Furthermore, in the present case, it is clear that disclosure would be incapable of holding Mr Townshend to account, owing to his untimely death. As such, I do not consider that this is a consideration which carries much, if any weight in the public interest balancing exercise.

65. The Applicant also argued that a factor in favour of the public interest in disclosure was the decision by Coventry City Council to contribute to, or meet, the cost of, Mr Townshend's funeral. I do not consider that this is a factor which carries any weight in relation to an information request to the Society; such questions regarding the expenditure of the public purse are entirely outside the Society's influence and are matters for the public authority concerned; disclosure of this particular information will shed no light on that decision.
66. Set in the balance against the general public interest in transparency and accountability, the Society noted that elements of the investigation were ongoing at the time of the Applicant's request. It argued that disclosing information relating to such an ongoing investigation would be unfair, not least because it would risk placing potentially unfounded allegations about individuals or firms into the public domain. The Society maintained that disclosure would, in fact, be actively contrary to the public interest as it would present an incomplete picture to the world before the outcome of the investigation was finalised in this case. The Society further maintained that the particular information in this case would, if disclosed, be detrimental to a number of named living individuals.
67. Consequently, the public interest balancing exercise in this case is on the one hand weighing the public interest in transparency (a good in itself) and in ensuring accountability of, and public confidence in, the SRA's investigatory processes⁴ against the public interest in avoiding prejudicing the interests of private individuals (in this case that is individuals both within and outside the legal profession) and the public interest in avoiding prejudice to the SRA's ongoing investigation.
68. Having reviewed the information in question, I accept that there is very considerable weight in the Society's arguments on these points. I find that the prejudice the Society anticipates arising from disclosure would, in fact, be likely to arise in this case. This, in my view, is a compelling argument in favour of maintaining the exemption at paragraph 14.5 of the Code in this particular case.

⁴ Although the Applicant had argued that there was a stand-alone "*presumption in favour of disclosure*" under FOIA (and by implication, the Code) that is not actually correct; it is the Environmental Information Regulations 2004, and not FOIA, which contain such a presumption.

69. Accordingly, I find that the public interest balance favours maintaining the exemption at paragraph 14.5 of the Code in respect of the information at Section D which is not otherwise already excluded from disclosure by paragraph 16 of the Code.

6. Finding and Steps

70. In light of the above, I find that the Society was correct to refuse to disclose the requested information set out at Sections A to D of its schedule in reliance on paragraphs 14.5 and 16 of the Code in this case.

71. The Society is not required to take any further steps in this matter.

Adam Sowerbutts

Freedom of Information Adjudicator to the Law Society

7 June 2016