



The Law Society

Adjudication in a matter raised by Nick Nenadich

Law Society Freedom of Information Code
April 2007

Contents

1	The issue	2
2	The background.....	2
3	Submission by Nick Nenadich	2
4	Submission by the Law Society	2
5	Adjudication	3

1 The issue

Whether the Society acted appropriately in refusing to release to a complainant correspondence between the Solicitors Regulation Authority (SRA) and the solicitor he had complained about.

2 The background

On 2 February 2007 the SRA told a complainant, Mr Nick Nenadich, that he had failed to satisfy them that his wife's solicitor ("Mr B") had acted dishonestly during their divorce proceedings. At the heart of Mr Nenadich's complaint had been his allegation that Mr B had failed to send a particular bundle of documents to the Court, resulting in Mr Nenadich incurring considerable costs.

Mr Nenadich continues to believe there is evidence to support his allegation, and he wishes to establish whether the SRA put that evidence to Mr B during the investigation of his complaint and, if so, what Mr B's response was. Consequently Mr Nenadich wrote to the SRA on 21 February requesting "all papers (including any letters I sent you), copy letters and replies/correspondence from Mr B (under the freedom of information act)".

On 1 March the Law Society's Information Compliance Manager, Joshua McKim, emailed Mr Nenadich saying that the Society was unable to supply him with the information because it fell within the exception to disclosure referred to in paragraph 14.5 of the Society's Freedom of Information Code ("the Code"). That paragraph says the Society may withhold information "if it is about specific investigations, disciplinary cases or applications arising from our regulatory role".

On 12 March Mr Nenadich sought adjudication under the Code about the Society's decision.

3 Submission by Nick Nenadich

In a submission to the Adjudicator on 19 March Mr Nenadich reiterated the evidence he believes supports his allegations against Mr B. He asserted that he wanted to know whether these points had ever been put to Mr B by the SRA enquiry, and that was why he wanted to see the correspondence between them. He said that, as a member of the public, he had to have faith that a complaints procedure would investigate his complaint appropriately, and he could see no reason why, if the Society was open, transparent and honest, he should not be afforded the records of how the enquiry had been conducted.

4 Submission by the Law Society

Under the Code the onus is on the Society to satisfy the Adjudicator that it has withheld information appropriately. In requesting its submission in this case I asked the Society to address specifically the question of why it felt that the balance of public interest was against disclosure.

In its submission on 3 April the Society said it bore in mind that disclosure under the Code was disclosure to the public at large and not just to the complainant. For that

reason it believed that the public interest test must be considered from the viewpoint of a third party.

The Society said that what it called “the independently acting SRA” had a duty to protect the public by ensuring the high standards of solicitors and acting on identified risks. Regulatory investigations fulfilled part of that duty and relied on the establishment of an environment in which informants were able to supply information or raise complaints and in which solicitors were able to respond. The Society believed that harm might be caused to an investigation if an informant failed to come forward with information or was not candid because of the belief that it might be released to the public at large. The response of the solicitor might be constrained for the same reason. The Society said that assuring the confidentiality of the information collected as part of an investigation was a factor in its success.

The Society added that investigations conducted by the SRA were subject to procedures, guidelines, and protocols which outlined the role of the informant, solicitor, and caseworker. This information was communicated to the informant. The decisions made by the SRA were communicated in detail to the informant. In addition, the Society pointed out that the informant had an external right of appeal to the Legal Services Ombudsman who could review the integrity of the investigation and of any decisions made.

Finally, the Society said that the information contained within the case file was significant to the investigation and in some cases was sensitive, or personal, information that related to living individuals or to ongoing legal matters before the court. For all of those reasons the Society did not believe that the public interest favoured disclosure of the information requested.

5 Adjudication

It is quite clear that the information requested by Mr Nenadich falls within the exception to disclosure specified in 14.5 of the Code because it is about a specific investigation. It is also clear that this information is about the Society’s regulatory role.

In respect of regulatory information the Code requires the Adjudicator to consider whether the public interest is in favour of publication. The Code does not explicitly require the Society to apply this public interest test in reaching its original decision, but the Act will do so when it eventually applies to the Society’s regulatory functions and the Code commits the Society to follow the provisions of the Act as if it already applied.

The question to be determined is therefore not whether the information sought by Mr Nenadich falls within the exception of s.14.5 but whether the public interest justifies the Society in invoking that section.

In essence, Mr Nenadich argues that unless he can see the detailed exchanges conducted as part of the SRA investigation he cannot be satisfied that it was properly conducted. The nub of the Society’s argument is that there is an overriding public interest in confidentiality as to the detail of SRA investigations, because both informants and solicitors must feel able to speak frankly to the SRA.

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 Mr Nenadich's 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 SRA enquiry the balance of public interest might be different, but I note that the independent Legal Services Ombudsman offers a channel for Mr Nenadich to satisfy his concerns about the thoroughness of the investigation and he tells me that he is already pursuing it.

I am **satisfied** that the Society applied the Code appropriately in this case and that its judgement about the public interest was well founded. It would have been helpful if, in telling Mr Nenadich that it was invoking section 14.5, the Society had also told him why it felt the public interest was against disclosure in this case. I **recommend** that the Society follows that course whenever it decides to withhold information covered by what the Act calls a qualified exemption such as that in 14.5 of the Code.

Richard Ayre

Freedom of Information Adjudicator

4 April 2007