

Law Society Freedom of Information Code Adjudication in a matter raised by Mrs F Jean Briggs – August 2007

1 The Issue

Whether the Society acted appropriately in its handling of a number of requests for information from Mrs F Jean Briggs about the handling by the Legal Complaints Service (LCS) of an investigation into an invoice from her solicitors.

2 The Background

Over a period of several months Mrs Briggs corresponded with a number of people at the LCS seeking information concerning the handling of her case. The Society believes she sent 29 letters between September 2006 and January 2007 of which 14 included requests for information, some general and some specifically relating to files held by the LCS about her case and her solicitors. The Society accepts that some of these letters may not have received responses and it also accepts that when the LCS did refuse to provide the information Mrs Briggs wanted it did not tell her why she was not entitled to receive it, as the Code requires.

From March to July 2007 there was further extensive correspondence between Joshua McKim, the Society's Information Compliance Manager (ICM), and Mrs Briggs. This culminated in June when Mrs Briggs categorised three sorts of information she wanted: communications between the ICM and the LCS; communications between the LCS and the firm of solicitors whose invoice they were investigating; and information provided to the LCS by those solicitors.

Mr McKim told Mrs Briggs that most of his contacts with the LCS had been by telephone and no notes of the conversations had been kept, but he supplied her with a redacted copy of their email exchanges dated 27 April, 3 and 4 May (the sole redactions being of Mrs Briggs' own name). In respect of the other two categories of information, Mr McKim repeated the Society's view that they fell within exemption s14.5 of the Code. He told her that one of the reasons the Society felt it was not in the public interest to disclose this information was that any disclosure under the Code was a public disclosure, not merely disclosure to the person who requested the information.

The redacted emails released by Mr McKim disclosed that Mrs Briggs had been placed on "restricted communication" by the Society, and the exchanges suggested that this meant that staff should feel under no obligation to respond to her communications unless they raised new requests for information.

On 6 July Mrs Briggs contacted the Adjudicator to seek adjudication under the Code.

3 Submission by Mrs F Jean Briggs

In various letters to the Adjudicator Mrs Briggs asked about her entitlement under the Code to the three categories of information she had identified. She expressed concern that her name had been redacted from the emails provided by Mr McKim. She said that the reason she had originally written so many letters to various people at the LCS was because many of her letters had simply gone unanswered, so she found it wholly unacceptable that the volume of these letters should be used by the Society as a reason for its failure to reply to them. She objected to the advice given (in one of the redacted emails) by Alexandra Edwards to Mr McKim that he need not reply to further letters from Mrs Briggs unless they raised new issues. However, Mrs Briggs accepted that it was not within the Adjudicator's remit to judge the appropriateness of this tactic.

4 Submission by the Law Society

The Society gave a detailed account of its handling of Mrs Briggs' enquiries since the Information Compliance Manager became involved in March 2007. It repeated its view that much of the information she had requested concerned specific investigations by the LCS and therefore fell within exemption s14.5 of the Code.

The Society cited its submissions in two recent cases in which it had relied upon s14.5 (*Gomez and Nenadich*). The Society said that, in order to review the invoice Mrs Briggs had received from a firm of solicitors, the LCS had had to liaise with the firm and analyse the bill to see if the fees were fair and accurate: this required the LCS to take possession of the solicitors' file. The Society believed that this service, which sought to resolve disputes and seek conciliation between solicitors and clients, was highly reliant on assurances that the confidentiality of the information collected would be maintained. For this reason the Society believed that disclosure would be against the public interest.

The Society said that, because of the frequency of her correspondence "it is not apparent whether all of these requests were dealt with individually" but the information requests were refused. It added that, before the ICM became involved on 26 March 2007 "the requests were not responded to citing the Code or the specific exemption applicable". It offered no explanation for this.

5 Adjudication

At the core of Mrs Briggs' various requests for information is her wish to know in detail about the work done by the LCS to review the appropriateness of an invoice she had received from a firm of solicitors. It is quite understandable that she should wish to have this information. However, it is clear to me that this work constitutes an investigation by the LCS, and it is therefore appropriate for the Society to apply s14.5 if, in this case, the public interest in confidentiality outweighs that in disclosure.

I agree with the Society that information which is disclosable under the Code to one applicant is disclosable to *any* applicant. Mrs Briggs wants to see the complete file on her case, so the public interest test is whether it is in the public interest for the entire file to be disclosable to anyone who asks for it. As I said in the recent case of *Nenadich (April 2007)* I am satisfied that to release wide-ranging information about a specific investigation risks undermining the necessary framework of confidentiality with which all parties should feel able to contribute to an investigation. I therefore **uphold** the Society's decision to apply s14.5 to these requests.

I also said in *Nenadich*, and I repeat it here, that it would have been helpful if, when it first told Mrs Briggs that it was invoking s14.5, the Society had also told her why it felt the public interest was against disclosure in this case. I therefore again **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 s14.5

Among the items the Society did provide to Mrs Briggs was internal correspondence between the Information Compliance Manager and the LCS relating to her case. She objects that her own name was redacted from this correspondence, and on the face of it the redactions look like a petty decision. But they were consistent with the Society's emphasis that information it releases under the Code would be released in the same form to anyone who requested it, Mrs Briggs' name constituting personal data which no-one but her would be entitled to receive. Mrs Briggs continues to believe there is further correspondence between the ICM and the LCS concerning her which the Society has failed to provide, but the Society denies this and I have no reason to doubt their denial.

The Society accepts that it failed to respond to some of Mrs Briggs' requests within the 20-working day target set by the Code, and though it says it apologised to her it offered no explanation. The volume and frequency of the correspondence may have been a factor, but the apparent failure of the LCS to respond to Mrs Briggs made for a vicious circle in which, she says, she felt it necessary to write again and again. I **recommend** the Society to review the procedures within the LCS for ensuring that requests for information are handled according to the Code, irrespective of who receives them and irrespective of any managerial decision about placing the requestor on a "restricted communication" list.

Richard Ayre
Freedom of Information Adjudicator
27 August 2007