



The Law Society

Adjudication in the case of Mr Robin Makin

Law Society Freedom of Information Code

31 July 2006

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1 The issue

Robin Makin, a solicitor, has appealed against the Society's decision to deny him some information, the Society claiming his request to be vexatious.

2 The background

2.1 In an earlier adjudication (14 January 2006) in respect of an appeal by Mr Makin the Law Society in its submission asked the Adjudicator's opinion as to whether it would be justified in invoking paragraph 14.3 of the Code if Mr Makin were to persist in making requests for information of a similar volume and nature. That paragraph allows the Society to withhold information if a request "is vexatious, in other words wholly unreasonable or designed simply to be a nuisance".

In that adjudication I indicated a number of considerations I would expect to apply in any future case where the Society sought to rely upon paragraph 14.3.

One of the issues in the January case was the way that Mr Makin had addressed or copied his correspondence to a range of different people within the Society: I said in the summary of my adjudication at that time: "In the event that Mr Makin seeks further information he should do so through the Society's Information Compliance Officer, as provided for in paragraph 10 of the Code, if he is to feel confident of being afforded the full protection of the Code."

2.2 The current case arises from a request made by Mr Makin on 8 June 2006 when he wrote to the Law Society concerning its activities in relation to the Victims' Advocate scheme pilots. In his emailed letter he made a number of statements and asked a number of questions, among them: "...what communications have passed between the Law Society and the DCA and also with the Bar Council and LSC regarding this matter? Please let me have full details of the Law Society's internal recorded information on this matter. Please advise me of the name(s) and designation(s) of those at the Law Society who have had responsibility for this matter."

On 14 June the Society's Information Compliance Manager, Bob Stanley, replied. He provided some other information Mr Makin had requested, but in respect of the requests cited above he said that "the Society applies the exception in paragraph 14.3 of the (Freedom of Information) Code of Practice".

Mr Makin replied to Mr Stanley on the same day to challenge the decision and to lodge an appeal, adding: "I am not prepared to have Mr Richard Ayre involved in the process. When and how and by whom will my appeal be dealt with?"

Mr Stanley emailed me on 19 June to say that, under the FoI Code, the Society was obliged to refer all appeals to the Adjudicator irrespective of the wishes of an individual appellant.

On 23 June, in accordance with the procedures outlined in the Code, I asked both Mr Makin and the Society if they wished to make a submission.

3 Submission by Mr Makin

Mr Makin made no submission. He repeated his objection to my dealing with the matter, saying that my conduct towards him in respect of the earlier adjudication had been both unacceptable and defamatory.

After receiving the Society's submission and after seeing copies of items of correspondence initiated by Mr Makin to various Law Society officials in the months following my January adjudication I further invited Mr Makin to comment upon them. He did not do so, and repeated his view that I should not adjudicate.

4 Submission by the Law Society

- 4.1 The Society made a submission and also provided, upon request, copies of correspondence between Mr Makin and the Society in the first six months of 2006. They included a letter to Mr Makin dated 17 January and written following the publication of my earlier adjudication. In that letter Mr Stanley asked Mr Makin to address future requests under the FoI Code of Practice to him.

The Society argued that Mr Makin's 8 June request for information was vexatious for a number of different reasons.

- 4.2 The Society referred to the guidance offered in my earlier adjudication which said that "once a requestor has been told by the Society to whom further requests should be directed then the requestor might be judged vexatious if without good reason he or she were to direct future enquiries elsewhere. Similarly, it might be judged to be vexatious if a person familiar with the Code were, without good reason, to address questions other than through the route outlined in it."

The Society argued both that Mr Makin was familiar with the provisions of the Code and that he had been formally asked by the Society on 17 January to address any future requests under it to Mr Stanley. The Society said that, despite this, Mr Makin's letter of 8 June had been emailed to Ms Claire Morgan, the Society's Policy Manager – Justice and Home Affairs. The Society confirmed that Mr Makin had not previously requested the disputed information from Mr Stanley.

- 4.3 The Society referred to a further extract from my earlier adjudication which said that "...a request for information might be judged vexatious if a principal motive behind it appeared to be to cause inconvenience to the Society, to force it to expend its resources unreasonably, or otherwise to interfere with its ability to do its legitimate business. In judging this, it could be appropriate in a particular case to take account of the number and timing of requests made, the manner in which they were framed, the extent to which requests duplicated or overlapped one another, and the transparency with which the requestor dealt with the Society. Someone requesting information of the Society may be expected to do so in a way which does not unnecessarily impair the Society's ability to provide them with the information in a timely and orderly fashion.

In the Society's judgement Mr Makin was intent upon causing it inconvenience. It believed that complying with his requests in this instance would have entailed expending its resources unreasonably. The Society added that it had decided not to supply Mr Makin with the names and designations of those at the Law Society who had responsibility for the Victims' Advocate Scheme pilots because it believed it was extremely likely that these people would become the recipients of further vexatious requests from him.

- 4.4 The Society also contended that the volume and frequency of Mr Makin's requests justified its decision to invoke paragraph 14.3 of the Code. In answer to an enquiry from the Adjudicator it provided a list of fifteen emails from Mr Makin to a variety of officials at the Law Society from 18 January onwards – after the time that he had been requested to address all requests to Mr Stanley.

- 4.5 Finally, the Society referred to an extract from the Information Commissioner's Fol Act Awareness Guidance no 22: Vexatious and Repeated Requests in which the Commissioner says: "Although it may be wrong to judge a request to be vexatious simply because the same applicant has previously submitted such a request or because the authority has judged other behaviour of the applicant to be vexatious, equally it may be reasonable for the authority to conclude that a particular request represents a continuation of behaviour which it has judged to be vexatious in another context and therefore to refuse the request as being vexatious."

The Society said it felt that, although it had never relied upon paragraph 14.3 of the Code in the past, a point had been reached where it felt unable to accommodate Mr Makin's persistent requests without a serious and detrimental effect on its resources.

5 Adjudication

It is clear from Mr Makin's correspondence with the Society both before and after my January adjudication that he is critical in several respects of its work and the way it is run. It is no part of the Adjudicator's role to take a view about those criticisms. But Freedom of Information is especially important for the power it gives to critics who seek to establish failure or wrongdoing by public bodies or by bodies serving a public regulatory function. The Society should be reluctant to rely upon paragraph 14.3 of its Code, and when it does so the Adjudicator should uphold the Society's position only where the vexatious nature of the requests is clear.

I have considered individually each of the Law Society's arguments for treating Mr Makin's request as vexatious, and I have also considered their impact in combination.

In the absence of any explanation from Mr Makin as to why he continued to address requests for information to a range of officials rather than to the Information Compliance Manager despite the specific provisions of the Code, despite the clarity of the earlier adjudication on this point, and despite the specific request made to him in Mr Stanley's letter of 17 January, I must conclude that his behaviour in doing so was vexatious.

I accept the Society's assertion that to comply with Mr Makin's request in this particular instance would have caused it inconvenience and required the unreasonable expenditure of resources, but an important test must be whether that was the intention of the requestor. I am not in a position to make that judgement with sufficient certainty, so Mr Makin must have the benefit of any doubt.

I agree with the Society's judgement that giving Mr Makin the names of the officials involved in the Victims' Advocate Scheme pilots would risk their becoming recipients of further requests from him for information despite the appropriate route for those requests having been made clear to him.

I do not propose to set a simple numerical threshold for the point at which the volume or frequency of requests for information would render them necessarily vexatious, because that would risk a chilling effect upon an individual who properly seeks to follow a trail of information from a body reluctant to divulge it. I am not yet wholly convinced that the volume and/or frequency of Mr Makin's requests alone is sufficient to render them vexatious, but in a future case the Society's ability to establish not just the frequency or volume of requests but also their apparently disparate or disconnected nature would strengthen their case to rely upon paragraph 14.3.

It is the Society's declared wish to apply Freedom of Information principles as though it were already subject to the Act and therefore to the Information Commissioner's judgement and guidance. However, it is not clear that the guidance quoted by the Society is strictly relevant in this case. The Society has not previously declared Mr Makin's requests to be vexatious and nor had he made this specific request for information previously. So the Commissioner's guidance notes do not appear sufficient to justify the Society's decision on this occasion, though they may become more directly relevant in a future case if Mr Makin continues to make requests of the Society.

In summary, I do not find all of the Society's arguments compelling, but I agree that some of them are sufficient to justify its reliance upon paragraph 14.3 of the Code in denying Mr Makin information on this occasion, and that taken as a whole his request has been reasonably judged to be vexatious. His appeal therefore fails.

I should also note that, if Mr Makin continues to make requests of the Society for information, he will need to pay particular regard to these findings and to the Information Commissioner's guidance notes if the Society is not to have an ever stronger case for judging those requests to be vexatious.

Richard Ayre

Freedom of Information Adjudicator