



The Law Society

Adjudication in a matter raised by Mr Nicholas Low

Law Society Freedom of Information Code
June 2008

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1 The issue

Whether the Society acted appropriately and in accordance with its Freedom of Information Code (“the Code”) in refusing to release to Mr Nicholas Low information held in a complaints file.

2 The background

On 29 April 2008 Mr Low wrote to the Society’s Information Compliance Manager, at that time Ms Fariha Ayyub, seeking “release of papers in reference CRO/75035-2007” and naming a firm of solicitors who appear to have been the subject of a complaint investigated by the Legal Complaints Service (LCS).

On 13 May Ms Ayyub acknowledged his request. On 5 June she wrote to tell him that the Society was withholding the information because it fell within exception s.14.5 of the Code (which allows the Society not to release information “if it is about specific investigations, disciplinary cases, or applications arising from our regulatory role”). She said that, when applying s.14.5, the Society evaluates whether the public interest favours disclosure. She said that disclosing information about a specific regulatory investigation would be detrimental to that investigation. Ms Ayyub stated that assuring the confidentiality of the information collected as part of an investigation was an essential factor in the successful completion of an investigation.

On 9 June Mr Low replied, saying that “the present reference to 14.5 does not appear to decline release in terms of public interest”, and he went on to say that “a request is made in terms of consideration by adjudicator as to the area referred (sic) to as public interest”.

On 12 June the Society’s new Information Compliance Manager, Mr Bob Stanley, forwarded the exchanges of correspondence for adjudication.

On 13 June I wrote to the Society asking for its submission in support of its decision not to release the information. I also wrote to Mr Low to invite him, if he wished to do so, to make a submission about why the information should be released in accordance with the Code. On 27 June the Society made its submission. No submission was received from Mr Low.

3 Submission by the Law Society

The Society said that, having examined the papers in the file cited by Mr Low, it had concluded that the information he had requested was about a specific investigation involving a firm of solicitors and that therefore s.14.5 of the Code applied. The Society said that Mr Low was seeking the information to corroborate details in relation to a Judicial Review hearing, but that in the Society’s view the reason for a request should play no part in determining whether s.14.5 applied.

It said it had gone on to apply the public interest test and had concluded that the public interest was better served by withholding the information than by disclosing it. The Society referred to a previous adjudication (*Williams* – January 2008) in which a broad request for information had been made and I was satisfied that to have granted it would have “*undermined the necessary framework of confidentiality with which both informants and solicitors should feel able to contribute to an investigation*”.

The Society said that in its view the disclosure to the public of files compiled by the LCS in the course of its investigations into complaints made about solicitors would be likely to prejudice future investigations by removing the assurance of confidentiality from those submitting evidence in relation to an investigation. The Society added, however, that all requests are considered on their merits and that the public interest test is applied according to the particular circumstances pertaining to each case.

4 Adjudication

It is clear that the information requested by Mr Low falls within the exception to disclosure specified in s.14.5 of the Code because it is about a specific investigation. It is also clear that the Society holds this information as part of its 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 Freedom of Information 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.

In its submission in this case the Society relies in part upon an earlier adjudication (*Williams* – January 2008) in which I said that “there may be cases where the public interest favours disclosure of particular items of information about an investigation, but Mrs Williams' 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”.

In the current case Mr Low's request was for an entire complaints file and was therefore similarly broad. I accept the argument that the balance of public interest in this case too is against disclosure, and I therefore uphold the Society's application of s.14.5.

I remain concerned that the Society's assertion that all requests are considered on their merits and that the public interest test is applied to the particular circumstances pertaining to each case may seem hard to reconcile with a series of recent cases in which the Society has argued that it is essential for the proper investigation of complaints that the Society is able to assure the confidentiality of those making submissions. I therefore recommend that the Society consider, with a view to publication in a revised version of its Code, the sort of factors or circumstances which might lead it, on applying the public interest test in each individual request for information about a regulatory investigation, to conclude that the public interest might be better served by disclosure. A clear and transparent framework for considering the balance of public interest would help ensure consistency of judgement by the Society and would clarify the test for requestors, enabling them better to frame future requests for information.

Richard Ayre

Freedom of Information Adjudicator

29 June 2008