



The Law Society

# Adjudication in a matter raised by Sir Alan Davies and Dr I P Patel

Law Society Freedom of Information Code  
July 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 declining to release to Sir Alan Davies and to Dr I P Patel information concerning a complaint they had made against a firm of solicitors (referred to here as “K & Co”).

## **2 The background**

On 4 June 2008 Sir Alan Davies and Dr Patel (respectively Headmaster and Chair of Governors of a school), wrote to the Legal Complaints Service (LCS) continuing a lengthy correspondence about a complaint they had lodged against K & Co. They asked for “all communications (including letters, faxes, emails, and attendance notes of telephone attendances and of meetings)” between the LCS and K & Co, and also between the LCS and Crutes concerning their complaint (Crutes being the firm to which the LCS had outsourced the investigation of the complaint). In addition they asked for “all information and documents furnished to yourselves and to Crutes concerning our clients’ complaint and issues arising from it”. They added that their request was made under the Freedom of Information Act 2000 (“the Act”).

On 12 June the Law Society’s Information Compliance Manager, Mr Bob Stanley, replied, pointing out that, since the Society was not designated a public authority for purposes of the Act, their request would be treated in accordance with the Society’s Freedom of Information Code (“the Code”). Mr Stanley said that he was unable to supply the information they had asked for because it fell within the exception in section 14.5 of the Code (which allows the Society to withhold information “if it is about specific investigations, disciplinary cases or applications arising from (the Society’s) regulatory role”).

Mr Stanley continued: “When applying 14.5 the Law Society evaluates whether the public interest favours disclosing the information requested. It is the Law Society’s view that disclosing information about a specific regulatory investigation to the public at large would be detrimental to that investigation. The confidentiality of the information collected as part of an investigation needs to be assured in order for the investigator to be able to compile the information necessary to enable a fair conclusion to be reached”.

On 24 June Sir Alan Davies and Dr Patel wrote back requesting a referral to the adjudicator.

On 26 June I wrote to the Law Society to ask for its submission in support of its refusal to disclose the information. I also invited Sir Alan Davies and Dr Patel to make a submission if they wished to do so.

## **3 Submission by Sir Alan Davies and Dr Patel**

Although Sir Alan Davies and Dr Patel made no formal submission their letter of 24 June to Mr Stanley set out their arguments. They said that the Law Society’s expressed view that “disclosing information about a specific regulatory investigation to the public at large would be detrimental to that investigation” wholly undermined the public interest test the Society claimed to have undertaken. They believed that, according to the principle articulated by the Society, information of the sort concerned

could never be disclosed. They said the Society had not applied the public interest test to the specific circumstances of their request.

Sir Alan and Dr Patel claimed that the LCS had been undertaking the investigation at their behest, so it was not yet a regulatory investigation: regulatory investigations were conducted by the SRA, not the LCS. They also believed that several factors suggested that the balance of public interest favoured disclosure: they were the ones who had made the complaint and they did not object to disclosure; any confidence in the information was theirs to waive; and it would be unfair and contrary to natural justice for the LCS to have received information from a third party which they took into account in their decision about a complaint, but which was not disclosed to the complainant.

## 4 Submission by the Law Society

The Society said that, having examined the documents, it had concluded that the information Sir Alan and Dr Patel were requesting was about their specific complaint against the firm of K & co and that s.14.5 of the Code therefore applied. The Society said that the applicants would already be in possession of many of the documents contained in the LCS file because they were items of correspondence from the applicants to the LCS or from the LCS to the applicants.

Addressing the points made in their letter to Mr Stanley of 24 June, the Society said that it had applied the public interest test with due regard to the specific circumstances of this case. The fact that the LCS was undertaking the investigation at 'the behest' (as they had put it) of the applicants was irrelevant to the matters under consideration. The Society also asserted that LCS investigations into complaints against solicitors were indeed regulatory investigations and were therefore within the scope of s.14.5 of the Code.

The Society said it took the view that in this case the public interest in disclosing the information requested was outweighed by the public interest in not disclosing it. In arriving at this decision it had taken into consideration the importance of assuring the confidentiality of the information collected as part of an investigation. The Society argued that an expectation that information provided to assist an investigation could later be disclosed in response to a freedom of information request could have the effect of dissuading informants from providing information to the Society in the furtherance of future investigations.

The Society quoted an extract from an earlier adjudication (*Williams* – January 2008): "*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*". The Society believed there were significant similarities between the *Williams* case and this one in that Mrs Williams' request was also for an entire LCS file. The Society's view was that disclosure to the public of the documents requested by the applicants would have the effect of prejudicing future investigations by removing the assurance of confidentiality from those submitting evidence in relation to such investigations.

However, the Society said that since this matter had been referred to the adjudicator a further review of the relevant LCS file had taken place. The result was that some information within the scope of the applicants' request had been provided to them on

15 July. [A copy of this information, amounting to some fifty or sixty pages, was also provided to the adjudicator.] The Society said it accepted that this information should have been provided to the applicants within 20 working days of receipt of their request dated 4 June and the Society regretted its failure to do so.

Finally, the Society referred to a recent adjudication which called for a clear and transparent framework for considering the balance of public interest in requests for information about regulatory investigations, to help ensure consistency of judgement by the Society and to clarify for requestors how the Society applied the public interest test on a case-by-case basis. The Society said it had accepted this recommendation and was working on the production of a set of criteria to be used when applying the public interest test. In the meantime it reaffirmed its commitment to looking at each case on its own merits, as it said it had done in this case.

## 5 Adjudication

Though it is for the Society to justify its refusal to release information, not for a requestor to show why it should be released, I have carefully considered the arguments put forward by Sir Alan Davies and Dr Patel in their letter to Mr Stanley of 24 June.

In respect of the argument that LCS investigations (unlike those of the Solicitors Regulation Authority) are not regulatory in nature (and therefore that information concerning them falls outside the scope of s.14.5) I note that the LCS is responsible for investigating complaints about poor service by solicitors, and it has the power to order solicitors to compensate clients. I am satisfied that this is work conducted as part of the Society's regulatory role and that s.14.5 may therefore apply.

As for the argument that the complaint was being investigated at the request of Sir Alan and Dr Patel and that therefore any confidence in the information was theirs to waive, it seems to me that they can waive the right to confidence only in material they themselves have imparted, which by definition must be information already in their possession. It is entirely possible that other information exists in the material sought by them in which others have a right, or at least an expectation, of confidence.

Sir Alan and Dr Patel also said it would be unfair and contrary to natural justice for the LCS to have received information from a third party which the LCS took into account in deciding a complaint, but which was not disclosed to the complainant. It seems to me that a decision to release information under the Code is a decision to publish it to anyone who asks for it: the Society cannot provide information to one applicant, citing freedom of information, while denying it to another. So the question of disclosure to a complainant of the reasons behind an LCS decision seems to me to be one for the complaints handling process.

It is clear to me that the information sought by Sir Alan Davies and Dr Patel is indeed about a regulatory investigation, and s.14.5 may therefore apply. But before relying upon s.14.5 the Society must conduct a public interest test in each particular case. In this case the request for information is very wide – in effect, seeking all information held by the Society in relation to the applicants' complaint against K & Co. In a number of adjudications I have accepted the Society's argument that the success of the investigatory system may depend in part on those who supply information, whether complainants or solicitors, feeling assured that it will not be made publicly available to anyone lodging a freedom of information request.

When declining a wide-ranging request under the Code it is important that the Society considers whether some part of the information requested might be made available without compromising the interests which the exceptions to publication in the Code are designed to protect. I therefore welcome the Society's belated review of the request by Sir Alan and Dr Patel, and its decision to release to them some of the documents in question. However, I uphold the Society's application of s.14.5 to the remaining items.

Sir Alan Davies and Dr Patel argued that information could never be released if the Society maintained its view that disclosing information concerning a regulatory investigation was always likely to be detrimental to the investigatory process, and they said that that wholly undermined the idea of a public interest test on a case-by-case basis. In making this point they echoed the concerns I expressed in two recent cases (*Low* and *Lumley* – June 2008). I am pleased therefore that the Society is committed to developing criteria for applying the public interest test in such cases, and I hope these criteria may be agreed and published without undue delay.

**Richard Ayre**

**Freedom of Information Adjudicator**

*1 August 2008*