



The Law Society

Adjudication in the case brought by Teodorico Gomez

Law Society Freedom of Information Code
May 2007

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1 The issue

Teodorico Gomez has asked for adjudication over the Society's responses to a series of requests he sent them on 24 October 2006 for information concerning complaints made against a particular solicitor and about the complaints process itself. The Society declined to provide some of the information, citing section 14.5 of its Freedom of Information Code which allows the withholding of information about "specific investigations (or) disciplinary cases". In respect of some other items of information the Society cited section 16 which prohibits the release of personal data.

The identities of the solicitor in question, his firm, and another firm against whom Mr Gomez had previously complained are not relevant to the issue to be determined here, so the solicitor is referred to in this adjudication as Mr C, his firm as C & Co and the other firm as M & Co. Another former client of Mr C's is referred to as Mrs M.

2 The background

Mr Gomez used the services of Mr C as his solicitor from 1982 and believes that as a result of a conveyancing matter in 1989 he suffered loss, distress and ongoing litigation over the last seventeen years. He is critical of the effectiveness of the Law Society under past and current regulatory procedures in investigating complaints against practising solicitors.

Mr Gomez appealed successfully for adjudication earlier in 2006 following the Society's refusal to tell him how many complaints, if any, it had received about Mr C in the previous 25 years. On that occasion too the Society had relied upon s14.5 in refusing to give him the information. Following the adjudication (29 September 2006) the Society wrote to Mr Gomez on 13 October telling him there had been nine complaints against Mr C and C& Co since 1995 and that they had no earlier records.

In the light of that, Mr Gomez wrote to the Society on 24 October asking for what he called "*clarification... and further information... without which the meaning of your answer could not be understood.*" It is the Society's responses to these questions which is the subject of the current adjudication.

3 Information requested by Mr Gomez

Mr Gomez asked thirteen questions of the Society which are summarised below or, where necessary, quoted directly:

- 1 How many complaints the Society had received from Mr Gomez himself against M & Co (this question apparently asked as a means of trying to establish what the Society categorised as a "complaint")
- 2 The date of the first recorded complaint against Mr C and/or his firm in 1995.
- 3 The date of the last complaint.
- 4 Whether Mrs M had complained about Mr C or C & Co.
- 5 Whether the Society kept records of complaints made before 1995.
- 6 "*Has my complaints against (C & Co) been computerized in your answer, and if so how many?*"
- 7 The nature of the nine complaints and their outcome.

- 8 *“Did any of the nine recorded complaints lead to complain against the Law Society to the LSO including mine?”*
- 9 Whether the Law Society would disclose the names and addresses of complainants against Mr C if those complainants consented to it doing so.
- 10 Whether the Legal Services Ombudsman (LSO) was aware of any complaints against C & Co between 1995 and 2001.
- 11 *“How many times has the OSS insisted in investigating old cases and how many times has the LSO criticised the OSS for doing so?”*
- 12 What constitutes an “old case”.
- 13 Finally, Mr Gomez asked a question about potential involvement in his affairs by the Land Registry, the Local Authorities and the District Valuer.

On 22 November the Society’s Head of Knowledge Management, Fiona Parkinson, replied to Mr Gomez’s thirteen questions. In essence, she supplied him with information in respect of items 1, 5, 6, 12 and part of item 9; explained that information was not held in respect of items 11 and 13; refused to disclose information in respect of 2, 3, 7, 8 and 10, citing s14.5 of the Code; and refused to disclose information in respect of items 4 and 9, citing s16 of the Code (which forbids the release of personal data).

On 11 April 2007 Mr Gomez wrote to the Adjudicator appealing against the Society’s refusal to release some of the information he had asked for on 24 October. [It should be noted that there was a good deal of correspondence between Mr Gomez and the Society in the following months but it is upon the Society’s 22 November response to his letter of 24 October that Mr Gomez has sought adjudication].

On 16 April I invited the Society to make a submission in support of its application of the Code. I particularly asked that, in addressing its reliance upon s14.5, the Society should take account of earlier adjudications (Gomez – 29 September 2006; Nenadich – 4 April 2007) which had discussed the question of the public interest test on the application of s14.5. I also invited Mr Gomez to make a further submission if he wished to do so.

4 Submission by Teodorico Gomez

Mr Gomez made a submission which explained in some detail the history of his involvement with Mr C; the reasons why he wanted the information he had asked for; and the reasons why he felt the Society was behaving unreasonably in refusing to release it. Mr Gomez also wrote about his attempts to obtain information from the Legal Services Ombudsman.

5 Submission by the Law Society

The Society’s submission explained each of its responses to Mr Gomez’s thirteen requests for information. I shall summarise here only its arguments in respect of those items of information which the Society held but did not supply in its answer of 22 November.

Submission in relation to questions 2 and 3

The Society asserted that the date of a complaint is information about a specific regulatory matter and that therefore s14.5 applies. The Society went on to address the public interest test, taking into account the circumstances and history of the information sought by Mr Gomez and the recent adjudications in the cases of Gomez and Nenadich. The Society's submission was as follows:

“Mr. C was the sole principal and practitioner in his Firm. The solicitor has now been struck off and the Firm was intervened in and is now defunct. The public interest favouring disclosure would be considerably more difficult to apply if the firm were still active, Mr. C still practising, and employing solicitors. In these cases, there would be concern that harm may be caused to individuals with little connection to the information disclosed.

There is often a continuing regulatory interest in complaints records which includes the date of complaint and frequency. To release information about these specific matters may cause harm to the decision to investigate or to an on-going investigation. However, the actions of striking off and intervention have concluded this matter and this information is publicly available. The amount of information requested is small and will not reveal details about the individuals making the complaint. Finally, the date of complaint and frequency of complaints in this instance can be seen as a factor in evaluating The Law Society's effectiveness as a regulator.

For the above reason, the Law Society has decided that upon consideration of the specifics of this request the public interest in disclosing the information does outweigh the public interest in withholding.”

The Society said that in the light of this decision it had now sent Mr Gomez the dates of the nine complaints of which it had records, thus answering questions 2 and 3.

Submission in relation to question 4

The Society argued that, although Mr Gomez knew the name of Mrs M as a result of a civil action she had brought against Mr C, the information about whether she had lodged a complaint remained personal data and they were unable to provide it because of s16.

Submission in relation to question 7

The Society said it believed that complying with this request would mean releasing information about a specific regulatory investigation, where s14.5 applied. The Society addressed the public interest test as follows:

“The Law Society believes that by releasing this specific and substantial information about the cause for complaint or the outcome of that complaint may create an atmosphere by which complaints are not made or that responses are not candid. The LCS seeks to assist customers and solicitors to resolve complaints quickly and amicably. If the parties believed that specific details of their complaint or its resolution would be released to the public at large simple matters will become more contentious and acrimonious. The LCS seeks not to punish solicitors nor defend them. Their goal is to serve the public by resolving complaints about perceived poor professional service to both party's satisfaction. In cases where conciliation is not possible or agreed, the LCS may make formal decisions about the complaint. In addition, the public have an external right of appeal to the Legal Services Ombudsman that ensures review of the integrity of the process, the investigation, and any decisions made. There is also the possibility that information disclosed would identify a living individual

which would contravene the Law Society's obligation under the Data Protection Act."

For these reasons the Society continued to believe that the public interest in withholding the information covered by question 7 outweighed the public interest in releasing it.

Submission in relation to questions 8 and 10

The Society believed that s14.5 applied to the information covered by both these questions. In relation to the public interest test the Society relied upon the arguments it had made in relation to questions 2 and 3 supplemented by the following consideration:

"If an affected individual is displeased with the outcome of a complaint or how it was handled it is within their rights to refer the matter within three months to the LSO for review. There are many reasons why a complaint is referred to the LSO and may be done by either affected party. That an affected party refers a matter to the LSO could be seen as an indicator of the effectiveness of complaints handling. Although this may add some additional public interest in favour of disclosure, disclosing the number of referrals to the LSO would be releasing information about specific regulatory matters, affect the ability of the regulatory function, and have an affect upon living individuals as mentioned in the response in 2 and 3 above. However as also mentioned in 2 and 3, the particular details surrounding this request diminish these arguments."

The Society said that upon consideration of the specifics of this request it had concluded that the public interest in disclosing the information did outweigh the public interest in withholding it. It had therefore now informed Mr Gomez of the dates of the three complaints which had been referred to the LSO.

Submission in relation to question 9

The Society re-stated its position that it would not disclose the identity of complainants because such information constituted personal data covered by s16. It repeated that it would consider requests to release data if it received consents from the complainants but that it would not initiate requests for such consents.

5 Adjudication

The Adjudicator's role is limited to deciding whether the Society has acted appropriately under the Code on those occasions when it declines to release information.

The matters upon which Mr Gomez sought adjudication in this case were essentially whether the Society had rightly applied s14.5 in its responses to questions 2, 3, 7, 8 and 10, and whether it had rightly applied s16 in its responses to questions 4 and 9.

In respect of questions 2, 3, 8 and 10 the Society, in considering the application of the public interest test to the circumstances of this particular case, has belatedly decided that the public interest is in favour of disclosure and has supplied the information Mr Gomez had requested. I endorse that decision and note the Society's arguments in reaching it.

In respect of question 7 I am persuaded by the Society's argument that the balance of public interest is against disclosure of the information requested, because it might

risk undermining the effective operation of the LCS in investigating and resolving complaints.

In respect of questions 4 and 9 I agree with the Society that s16 applies and that release of the information requested would be unlawful.

Richard Ayre

Freedom of Information Adjudicator

5 May 2007