



The Law Society

Adjudication in a matter raised by AEI LLP

Law Society Freedom of Information Code

January 2012

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1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused a request from a firm of solicitors, AEI LLP, for a copy of a report made to the Solicitors Regulation Authority about one of the firm's clients.

2. The background

The background to this request is that AEI LLP made a complaint to the Solicitors Regulation Authority (SRA) on behalf of a client firm (referred to here as SP Ltd) about another firm of solicitors (referred to here as M&Co). During the course of the SRA investigation M&Co made a 'counter-report' (counter allegations) about SP Ltd.

On 20 October Mr AE, of AEI LLP, wrote to the Law Society's Information Compliance Manager, Mr Bob Stanley, enclosing an email he had received from the SRA which referred to the report it had received about SP Ltd from M&Co. Mr AE asked for the report to be disclosed to him.

On 15 November Mr Stanley emailed Mr AE to say that the Society was withholding the report because it fell within section 14.5 of the Law Society's Freedom of Information Code ("the Code"). This states that the Society does not have to release information about specific investigations, disciplinary cases or applications arising from its regulatory role. Mr Stanley said that, before deciding to withhold the information, the Society had carried out a 'public interest test'. In reaching its decision that it would not be in the public interest to release the information the Society had taken into consideration the fact that information disclosed in response to Freedom of Information (Fol) requests was deemed to have been put into the public domain and not just disclosed to the person making the request. The Society's view was that to publish the information would be likely to prejudice the SRA's legitimate regulatory activity and would clearly, therefore, not be in the public interest.

Mr Stanley drew Mr AE's attention to the fact that he could seek adjudication of this decision, and on 22 November Mr AE duly asked for the matter to be referred to the adjudicator. Accordingly, Mr Stanley referred their correspondence to me and I invited the Law Society to make a written submission in support of its decision. I also invited Mr AE, if he wished, to make a written submission as to why he believed the Society had acted inappropriately under the terms of the Code and as to why he believed the public interest would be better served by disclosure of the information.

3. Submission by the Law Society

On 6 December the Law Society made its submission and enclosed copies of two letters from M&Co to the SRA (dated 16 June and 8 July) which the Society said constituted the information requested by Mr AE. The Society said that both had been withheld under s.14.5 of the Code.

The Society said that the SRA's Fraud and Confidential Intelligence Bureau was currently investigating the claim made by M&Co in those letters that SP Ltd had been carrying out "reserved legal activities" without authority. The Society believed that it would not be in the public interest to publish the letters in response to a Freedom of Information request. To do so would have the effect of undermining what the Society called "this ongoing SRA investigation".

4. Submission by AEI LLP

On 6 December Mr AE made a submission on behalf of AEI LLP. He said that it was difficult to make representations without having seen the information which had been withheld, but he raised a number of issues.

He said he understood that the redaction [*what Mr AE was referring to here is clarified later in this adjudication*] had been made by M&Co and not by the Law Society or the SRA.

He said that his client's complaint about M&Co had been considered by an SRA Adjudicator who had seen the full document and therefore was aware of what M&Co had said about AEI LLP and about SP Ltd. Mr AE was concerned that, if that was the case, there had been no opportunity to correct errors in the material. He believed that it was not in the public interest that factual or legal errors could not be rebutted when they were put before an SRA Adjudicator. Mr AE believed that the Adjudicator had reached findings of fact which were inaccurate, and AEI LLP had been denied an opportunity to make representations.

Mr AE observed that the SRA had investigated the firm of M&Co as an entity but had not investigated the conduct of the individual solicitor whose actions were the subject of AEI LLP's original complaint. The net result was that the alleged misconduct had not received consideration and the Adjudicator had ruled that she was unable to consider the actions of the individual solicitor because that had not formed part of the SRA's Report.

5. Further enquiries

From the two submissions it appeared that the Society believed the only information falling within Mr AE's request was the two letters it had decided to withhold. But AEI LLP's submission suggested that Mr AE was hoping to receive other information, some of which he had already been given in redacted form

I asked Mr AE to clarify whether he had already received redacted versions of the two letters (and that therefore his Fol request was to receive unredacted versions of them), and whether he had reason to believe that other information existed within the Law Society that might constitute the "report" made by M&Co about SP Ltd and was therefore the subject of his Fol request.

I also wrote to the Society to ask it to confirm that it held no information covered by Mr AE's request other than the two letters referred to in its submission. It did so on 14 December, adding that there was "no separate report by (M&Co) on the activities of (SP Ltd)".

On 15 December Mr AE said that, in a letter from the SRA on 28 October he had received a heavily-redacted letter dated 18 July from M&Co, but that was the only letter he had received a copy of. He added that, in a telephone conversation with the SRA in July he had been told that M&Co had "made a lot of complaints about (SP Ltd)" but Mr AE was unable to say whether that referred merely to the responses the SRA had received from M&Co or whether it indicated that the SRA held additional material.

Mr AE went on to say that it was clear from the SRA Adjudicator's decision that additional material had been provided by M&Co which had not been disclosed to AEI LLP.

On 17 December I asked Mr AE to provide his redacted copy of the letter dated 18 July and on receipt of it I asked the Law Society to provide an unredacted copy to me. I also invited the Society to consider whether the letter constituted information covered by Mr AE's original Fol request and, if so, what the Society's attitude was to its release.

On 5 January 2012 the Society provided me with a copy of the letter, saying that it should have been considered for release under Mr AE's FoI request and apologising for the oversight. In mitigation, the Society pointed out that Mr AE's request had referred to 'a report' by M&Co about SP Ltd rather than 'reports' in the plural.

However, the Society said its position on the release of this letter (of which Mr AE had already received a redacted version) was the same as that in respect of the two letters already withheld under s.14.5 of the Code and which were the subject of the Society's submission. The Society believed that to disclose this information would have the effect of undermining an ongoing investigation by the SRA's Fraud and Confidential Intelligence Bureau.

The Society also supplied, at my request, a copy of the Findings of the SRA Adjudicator in the complaint by S&P Ltd against M&Co.

6. Adjudication

It is a matter of concern that the Society's initial response to AEI LLP's request for the 'counter report' made by M&Co failed to take account of the existence of the letter of 18 July which constituted a major part of M&Co's claims, even though AEI LLP had already been given a redacted copy of it by the SRA itself. It is also troubling that, when asked by me to confirm that it held no information covered by the request other than the two letters it had withheld, the Society asserted that to be the case.

It is nonetheless clear that the two letters withheld by the Law Society in its initial response to AEI LLP's request, and the letter dated 18 July, all constitute "information about specific investigations, disciplinary cases or applications arising from (the Society's) regulatory role" and they are therefore covered by s.14.5 of the Code. That means that the Society is entitled to withhold them if the balance of public interest is against their being released.

Mr AE, on behalf of AEI LLP, believes that the SRA Adjudicator may have reached her decision on the complaint against M&Co partly on the basis of information which was denied to AEI LLP and SP Ltd and concerning which they therefore had no chance to raise factual or legal arguments. He argues that this is not in the public interest.

I have read the Findings of the SRA Adjudicator and examined all the documents withheld by the Society. Specifically, I have compared in detail the redacted and unredacted versions of the letter from M&Co dated 18 July.

It is important to bear in mind that information released under FoI is made publicly available, not restricted to the person who requested it. I therefore have to take a view in the specific circumstances of this case of the balance of public interest in making the withheld material available for general release.

It seems to me that there is, as Mr AE argues, a public interest in the parties to any dispute being able to challenge factual inaccuracies in their opponents' claims. However, the way that is achieved must be a matter for the procedures adopted by the body discharging a regulatory function – in this case the SRA. If those procedures are at fault – and I am in no position to take a view on that - it may be a matter for the Courts to resolve.

It is clear to me, however, that although AEI LLP and SP Ltd may well have a strong **personal** interest in accessing the withheld material there is no **public** interest in the contents being released. I also agree with the Law Society's argument that releasing them might jeopardise SRA investigations which, the Society says, are continuing. That would be contrary to the public interest if it meant that the SRA's ability to investigate or regulate the profession effectively was impeded.

I therefore find for the Society.

Richard Ayre
Freedom of Information Adjudicator
7 January 2012