



The Law Society

Adjudication in a matter raised by IT

Law Society Freedom of Information Code
March 2013

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1. The issue

Whether The Law Society acted appropriately in accordance with its Freedom of Information Code when it refused to provide an applicant, known here as IT, with certain data she had requested concerning any complaints that might have been made against various named solicitors.

2. The background

On 22 January IT emailed the Solicitors Regulation Authority (SRA) with three requests for information:

- 1) How many complaints have been lodged with your organisation that relate to [a firm of solicitors referred to here as B&Co]
- 2) List the nature of the complaint(s) and name all solicitors within this firm to whom the complaint(s) relate.
- 3) Confirm how many complaints you have received about the following staff: R, S (Debt Recovery Clerk), T (partner), U (partner), and V (assistant solicitor)[names redacted by the adjudicator]

On 29 January The Law Society's Information Compliance Manager, Mr Bob Stanley, replied. In response to Question 1, he provided a table showing ten complaints which he said had been received against B&Co.

In response to Question 2, he referred IT to the table which, under the heading "Matter Reason" showed a very brief description of the subject of each complaint ("Taking unfair advantage", "Breach of Rule 1", "Breach of litigation/advocacy requirements", "No Misconduct", and "No appropriate matter reason"[sic]). Mr Stanley said that the table contained a list of complaints made against the firm and not against particular individuals.

In response to the Question 3, he said that the Society was withholding the information under section 16 of the Society's Freedom of Information Code ("the Code"). He said this stated that the Society could not disclose personal information about someone else. The Society believed that to do so would infringe the rights of the individuals under the Data Protection Act. However, Mr Stanley confirmed that the individuals T, U and V all held current practising certificates and that no conditions or Findings and Orders had been placed on their records. He added that the individuals R and S were not admitted solicitors, nor were they listed against the firm's record. He said that the Society had carried out a search of section 43 of the Solicitors Act 1974 cases which were held by the SRA and could discover no trace of any finding against R or S. Mr Stanley explained that section 43 related to decisions in respect of non-solicitors either to impose an Order or to refer the individuals to the Solicitors Disciplinary Tribunal for an Order to be imposed preventing an individual from working for and/or being paid by a solicitor, Registered European lawyer or incorporated practice, or from becoming a manager or acquiring an interest in a firm of solicitors without the Society's prior permission.

Mr Stanley also told IT that, if she disagreed with the Society's decision to withhold some of the information she had asked for, she had the right to appeal to the independent adjudicator.

On 31 January IT requested a review of the Society's decision. In respect of Question 2 she said that the complaints would have been made against named individuals, and the fact that their names did not appear in the table provided by the Society was irrelevant, since the Society must hold the information. In respect of Question 3 and the Society's withholding of

personal data, she said that since the Code had last been revised in 2006 the law relating to freedom of information had developed, with much case precedent. She did not accept that the Data Protection Act prevented the release of the information she had requested. She said that the Freedom of Information Act allowed the release of personal data, subject to certain conditions, and that even some of the exemptions to publication were subject to a public interest test.

In that regard, IT said that the people she had asked for information about were in senior positions, had outward-facing duties, and worked in and with the public. She therefore believed that her request was compliant with the “first data principle” that processing the request would be fair, reasonable and proportionate.

In reply, Mr Stanley told IT that the Society was not governed by the Freedom of Information Act and that, instead of an internal review of the decision, the Society offered appeal to the independent adjudicator.

On 14 February the Society referred the matter for adjudication and provided copies of the exchanges between IT and the Society in relation to her request.

On 15 February I emailed IT asking her to confirm that she wanted adjudication on two matters:

1. whether the Society holds, and should release, the names of the individual solicitors against whom the complaints contained in the list it had provided her with had been made
2. whether section 16 of the Code entitles the Society to withhold information concerning the number of complaints received against the individuals IT had named

On 18 February I asked The Law Society for a written submission on these two matters, and I invited IT to make one if she wished. I also pointed out to her various previous adjudications in which I had made it clear that, because section 16 of the Code was not voluntary but reflected a statutory duty owed by the Society under the Data Protection Act, I would not feel able to instruct the Society to release information which it believed would be in breach of that Act, but I would be prepared to express a view as to whether I thought the Society had interpreted its obligations appropriately.

IT made no further submission.

3. Submission by The Law Society

On 27 February The Law Society made its submission. In respect of question 1, it said that, of the casework investigation files into B&Co, a subject individual was listed against only two of the matters in the table already supplied to IT. The Society then supplied the file numbers and the name of an individual as follows:

CDT/510908-2005	[name supplied to the adjudicator]
CDT/59895-2009	[name supplied to the adjudicator]

The name was the same in each case. The Society said that neither of these two complaints was upheld by the SRA.

In respect of question 2, the Society said that, of the individuals listed by IT, it was only the solicitors [T and U] that the SRA had on its system. For these there were just two casework

investigation matters, namely the same two it had already referred to in addressing question 1. The complaints had not been upheld.

The Society said its view was that where complaints against individual solicitors were not upheld it would be a breach of the Data Protection Act to disclose that information under the Code. In particular, it would be a breach of the first data protection principle which stated that data shall be processed fairly. It would not be fair to publish information relating to unsubstantiated complaints against individual solicitors. The information was therefore withheld under section 16 of the Code.

4. Further enquiries

After receiving its submission I referred the Society to a submission it had made in an earlier case (*Crawford* – August 2008). That case revolved around a request for details of the number of complaints against a firm of solicitors by Mr Crawford, a BBC journalist who believed he had evidence that the firm had been targeting and exploiting vulnerable clients. The Society's submission at that time had indicated that it expected shortly to reach a conclusion following a consultation exercise about what should be published concerning complaints it received. The Society said then that the resolution might be that the records of complaints which had already been received would not be published, but that there might be a cut off date after which firms would know that their future complaints records might be made public.

In response to this enquiry the Society said that it was unaware of the outcome of the 2008 consultation. It said that the SRA's position was that "outcomes" were published on its website but that unsubstantiated allegations were "not published as a matter of course". It said the SRA tended to release details of allegations in response to FoI requests where it had the opportunity to put the information in context. However, unsubstantiated allegations against individual solicitors (as opposed to firms) were not published at all, as the Society believed this would be a breach of their rights under the Data Protection Act (section 16 of the Code).

5 Adjudication

The names of the individual solicitors about whom IT enquired are undoubtedly personal data and, even though the names are known already to IT, publishing them in response to an FoI enquiry would be likely to breach the Data Protection Act if it were thought to be unfair.

IT says that the individual solicitors were "in senior positions, had outward-facing duties, and worked in and with the public". This is a reference to some of the tests applied by the Information Commissioner's Office (ICO) when considering whether the public interest in receiving information may outweigh the presumption that personal data should be protected. However, it seems to me that the ICO applies these tests only to individuals working in public authorities, because the FoI Act does not apply except within designated public bodies. Solicitors in private practice are not subject to the FoIA nor to the Society's FoI Code, which applies only to the Society itself. The tests which might be applied to an individual having a high-profile public-facing role in a public authority do not therefore apply.

On the more general question as to whether the record of complaints made, but not upheld, against either firms or individuals should be published, there is an arguable public interest on either side. In the case already cited (*Crawford* – August 2006) I recognised that the public interest might well be served if potential clients could see that no complaints had been lodged or that, of those lodged, few or none had been found to be of substance; and it might be extremely well served if potential clients knew that a particular firm or solicitor had attracted a large number of complaints, many of them upheld.

However, each case must be determined on its merits, and there are many differences between the current case and *Crawford*. In that case a firm of solicitors was under scrutiny, whereas in this one it is named individuals, each of whom has data protection rights. In the current case IT presents no evidence of widespread complaints against the solicitors named. Importantly, the entire complaints framework has changed significantly since 2008, with the SRA now publishing most of the “outcomes” of its investigations – that is, where some form of action has been taken. In general, that means that potential clients do have a means of establishing whether any complaints have been substantiated against specific firms or individuals. In addition, there is also now a Legal Ombudsman, independent of the profession, to whom complaints about solicitors can be addressed directly: this seems to me to reduce substantially any risk that, by failing to disclose complaints which have not been substantiated, the SRA might avoid questions being asked about the efficacy of its own investigations.

The SRA takes the view that to publish details of complaints against named solicitors if those complaints have not been upheld would be unfair to them and would breach their data protection rights. On balance I agree, though each case is to be determined on its merits and I do recognise that there could be a strong public interest in favour of publication in certain circumstances. I see no such public interest in this case, and I therefore find for The Law Society.

Richard Ayre
Freedom of Information Adjudicator
11 March 2013