



The Law Society

Adjudication in a matter raised by JA
Law Society Freedom of Information Code
May 2012



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 JA, with some of the information he had requested about the outcome of a complaint he had lodged with the Solicitors Regulation Authority.

2. The background

On 14 February JA emailed the Contact Centre of the Solicitors Regulation Authority (SRA). He said that, over the course of the previous year, the SRA had investigated a complaint he had made against a named solicitor and that, in its final response to JA, the SRA had explained that he would not be made aware of the outcome of the investigation. JA said that, while he understood the SRA's reasoning, he would like the SRA to consider releasing the information under the Freedom of Information Act. He repeated this request in a letter to the Conduct Investigation Unit of the SRA the following day.

The Law Society acknowledged receipt of this letter by email on 23 March, apologising that it could find no record of his original email. However, a few hours later the SRA responded to the original email saying that it could confirm that the solicitor held a current practising certificate and that it was free from conditions. The SRA also confirmed that no Findings and Orders had been made by the Solicitors Disciplinary Tribunal (SDT) against the solicitor concerned. It added that "any pending matters at the Regulation Response Directorate are not held on our records until a hearing of the SDT has been held. Up to that stage such matters are not public record".

Responding to the Law Society's Information Compliance department, JA gave some background to his request. He said that a solicitor who had acted for the vendors of a property JA had purchased had been negligent in failing to show on his property purchase contract that use of an area of flat roof outside one of his bedroom windows had been granted to a neighbour for use as a balcony, and that the nature of what JA had purchased had therefore been misrepresented. He said that the vendor's solicitor had also been negligent in granting such use to the neighbour, mis-describing the roof as a "patio", because no planning or building regulation approval had been given for such use. Finally, JA said that the solicitor had been unprofessional in delaying a reply to his detailed concerns about this from September 2010 to January 2011, thus reducing the prospect of JA having the purchase rescinded.

JA said that, under Freedom of Information (Fol), what he wanted to discover was whether the SRA had found any justification to his complaint. He therefore wanted to see a copy of any internal SRA document analysing the arguments and reaching a conclusion, or any final letter to the solicitor concerned setting out the outcome of the investigation.

JA said he accepted that there might be arguments of confidentiality against providing him with details of all aspects of the SRA investigation, but he could see no reason why he should not be told whether or not his complaints had been found to be valid and why, and what action, if any, had been taken as a result.

On 27 March the Society's Information Compliance Manager, Mr Bob Stanley, gave the Society's formal response to the Fol request. He said that the information JA had provided had been considered carefully and risk assessed in accordance with the SRA policy. He provided a web link to that policy.

Mr Stanley said that the SRA's view there was not a breach of the Code of Conduct, therefore no letter was sent to the solicitor concerned.

The Society said that the "internal SRA document analysing the arguments and reaching a conclusion" which JA had asked for was the Risk Assessment Profile, and that this document was being withheld under section 14.5 of the Society's Freedom of Information Code ("the Code"), which said that the Society did not have to release information about specific investigations, disciplinary cases or applications arising from its regulatory role. In deciding to withhold this document, the Society said, it was further required to carry out a 'public interest test' in relation to the regulatory information requested. In this case it was the Society's view that it would not be in the public interest to release the SRA's Risk Assessment Profile (RAP) form. In reaching this decision the Society said it had taken into consideration the fact that information disclosed in response to FoI requests was deemed to have been placed into the public domain, and not just disclosed to the person making the request.

The Society said that the SRA protected the public by regulating law firms and individuals who provide legal services. Its work focused on firms and behaviour that caused risk to the public, and through this work it received information from many different sources. The Society said that, depending on the information someone provided, the SRA might take different types of action, including keeping the information for future use in deciding whether a particular law firm posed a risk to the public; using the information to supervise a law firm more closely; and using the information as part of a formal investigation of a particular firm.

The Society said its view was that it would not be appropriate to publish the RAP, because the document contained the criteria and scoring system which was used by the SRA to determine whether any further regulatory action would be taken against a firm or solicitor. It also contained an evaluation of the reliability of the information provided by the informant, and therefore publication of this document might have the effect of prejudicing the SRA regulatory role.

The Society told JA that it could, however, provide him with the comments written on the RAP, which were: "Instigator needs to take independent legal advice".

The Society concluded by telling JA that, under the Code, he had the right to have this matter referred to the independent Freedom of Information adjudicator.

In reply, on 8 April JA asked that the matter be referred to the Adjudicator. He gave further details of why he believed the solicitor concerned had acted inappropriately and misleadingly. He said that, in making his FoI request, he was anxious to ensure that in considering his complaint the SRA had taken all the circumstances into consideration.

JA said that it seemed to him that if the SRA had taken all his points into account and concluded that the solicitor did not breach any code of conduct, there could be no objection him seeing its analysis. If, on the other hand, the SRA had concluded that the solicitor had fallen below the standards required, it seemed wrong to JA, in the context of freedom of information, for the solicitor's position to be protected at the cost of keeping the complainant in ignorance of the findings. Similarly, if the decision rested on the solicitor claiming simply that he had acted on instructions, there seemed no reason why this information should not be in the public domain.

Stressing that he would be prepared to answer further questions the SRA might wish to ask him, JA said that for the purposes of freedom of information he would have no objection to any comments by the SRA in this regard entering the public domain.

On 16 April the Law Society referred the matter to me for adjudication and I invited both parties to make written submissions to me as to whether or not the Society had acted appropriately in accordance with the Code.

3. Submission by JA

On 21 April JA made his submission. He said he noted that the Code should be read as though the Freedom of Information Act 2000 applied, and that under the Act access to information should be allowed unless there were proper reasons for withholding it. He also noted that while the Society was *allowed* (my emphasis) not to release information under section 14.5 of the Code, that was discretionary, not mandatory.

JA said there was no reason why the Society should refuse to supply information under s.14.5 in his particular case. The information requested was intended solely to enable him to ascertain that in reaching its decision the SRA had taken into account all the points made in his original complaint, and that it had taken a reasoned decision on that basis. JA believed there were no sensitive legal points involved, nor third party issues of client confidentiality. His complaint had been directed solely against the solicitor concerned. He said that if the SRA had found that the solicitor's conduct met acceptable standards, then there seemed no reason why JA should not be told this, together with any reasoning. If, on the other hand, the solicitor had failed to meet acceptable standards, JA felt entitled to know this.

JA noted that he had not been asked by the SRA for any additional information beyond that contained in his complaint. He assumed from this that it had accepted that what he had said had been accurate. If the SRA did have any doubts, however, JA wanted to make it clear that he had no objection to this information entering the public domain.

4. Submission by the Law Society

On 27 April the Law Society made its submission. It said that the RAP form contained the criteria and scoring system used by the SRA to determine whether any further regulatory action would be taken by the SRA against an individual or firm. It also contained information on the reliability of the information provided by the informant (in this case, JA).

It was the Society's view that it would not be in the public interest to publish the RAP form as it would be inappropriate to publish the SRA's view as to the reliability or otherwise of the information provided by JA, or indeed any other SRA informant. The Society had, however, provided JA with the comments written on the RAP, namely 'Instigator needs to take independent legal advice.'

5. Further enquiries

On April 29 I received a scanned copy of the SRA file relating to JA's complaint, including the RAP. Having read it, I asked a range of questions of the Law Society about how RAPs were used, about the meaning of various headings in the profile, and about how the final decision not to take further action in respect of JA's complaint had been reached. On 18 May the Society provided detailed answers.

The Society also responded to my observation that, whereas it was the Society's view that it would not be in the public interest for the criteria used in a RAP file to become widely known, there was a contrary view, namely that there was a public interest in knowing that regulatory complaints are assessed in ways, and according to criteria, which would command public confidence in the regulation.

In response, the Society said the RAP form was an internal tool, guide and a triage mechanism, used by the SRA to ensure that it consistently assessed and recorded the reported regulatory risks and got the information to the relevant departments. It enabled the SRA to allocate the appropriate resources and time to risks to the regulatory objectives. It was one of many tools used by the SRA in their investigations. To build a full picture of the risk posed by a firm, the RAP form needed to be considered alongside other risk tools, indicators and data.

The Society said that in order to understand what information could be gleaned from the RAP form, it was necessary to have a very good understanding about its purpose, how it worked and what the information that was recorded on it indicated. That required training, and to an untrained person the information would, in most cases, come across as confusing, of little benefit and would raise more questions than it answered.

The Society added that the RAP might also, in certain cases, refer the SRA staff member to other on-going investigations within the SRA that linked in with the latest piece of intelligence. These other investigations would involve other parties & might contain, or refer to, confidential information, including information that might have come from the police, other law enforcement authorities and other regulators.

By disclosing information in the RAP about ongoing investigations, said the Society, it might also lead to what it called “tipping off.” It said for, for example, from time to time the SRA undertook investigations into issues like fraud, and if the RAP form were disclosed, and there were references in it to other on-going investigations, there was a danger that this information could get back to the firm or solicitor under investigation, and they might then be able to take steps to destroy evidence or evade investigation.

On 19 May I asked one final question of the Society. I noted that the final section of the RAP was entitled **“Suitable for Disclosure -- Yes/No -- If not to be disclosed please indicate all relevant grounds below”**. I further noted that neither the Yes nor the No box had been ticked in JA’s RAP, and that no relevant grounds for non-disclosure had been indicated. I asked therefore what had been assessed as to its suitability for disclosure, and disclosure to whom?

On 21 May the Society replied that this section had since been removed from the RAP form. It had previously been used to indicate that the SRA should not disclose the information on the file if by doing so, they might breach any duty of confidentiality; increase the risk that a firm under investigation might destroy evidence, seek to influence witnesses, default, or abscond; or otherwise prejudice or frustrate an investigation or other regulatory action.

Asked further to explain why the section had now been dropped and what, if anything, the fact that it was left blank in JA’s case might indicate, the Society replied that there was “nothing sinister” in the fact that it had been left blank. The default on the tick-box field was blank. The Society said that all the correspondence on the file at the time of the assessment either came from - or was sent to – JA himself, so there was nothing in that correspondence which fell into the categories that might suggest non-disclosure. The Society pointed out that that did not include the RAP form itself. The Society said that the section had since been taken out of the RAP because it had been decided that it was the responsibility of the Caseworker / Supervisor / recipient of the RAP to implement the Society’s disclosure policy, not the Assessment Team, whose role was “to risk assess the incoming data”.

6. Adjudication

In an earlier adjudication (Gavin Jones – 4 November 2011) I said that I was “*not convinced by the Law Society’s argument that the public interest is against solicitors being aware of the criteria the SRA applies in assessing complaints. Indeed, I cannot see how a request for the release of the blank [RAP] pro forma could possibly fall within s.14.5 of the Code. In any event, there might well be a strong public interest in both solicitors and potential complainants having the information*”.

I remain unconvinced by the Society’s arguments that publication of the RAP pro forma itself (as opposed to the information which it contains in respect of any particular case) would be contrary to the public interest. I can see absolutely nothing in the template itself which could assist an errant solicitor seeking to evade regulatory attention.

The fact that the RAP form is “an internal tool, guide and a triage mechanism, used by the SRA to ensure that it consistently assessed and recorded the reported regulatory risks” does not seem to me to be any reason why its should not be made public. On the contrary, there must be a public interest seeing how the regulator approaches that task.

I am also un-persuaded by the argument that, to a person without training, the RAP pro forma would be confusing and of little benefit. I rejected a similar argument in an earlier adjudication (Teodorico Gomez – 29 September 2006), where I pointed out the relevant Guidance from the Office of the Information Commissioner: “*It may sometimes be argued that information is too complicated for the applicant to understand or that disclosure might misinform the public because it is incomplete.... Neither of these are (sic) good grounds for refusal of a request. If an authority fears that information disclosed may be misleading, the solution is to give some explanation or to put the information into a proper context rather than to withhold it.*”

In conclusion, I can see no good reason to withhold the RAP pro forma itself. But of course the applicant in this case, JA, is not seeking merely the template, but the completed form with details of how the SRA assessed his particular complaint. I am therefore obliged to carry out a separate public interest test in relation to the completed form.

It is the very essence of a public interest test that it must be taken according to the balance of interest in the circumstances of each individual case. It is worth noting that JA has said that he would be perfectly content for any of the information concerned to be put into the public domain. That willingness is perhaps most pertinent to the release of the SRA’s assessment of what, in its submission, the Society calls the “reliability of the informant” (what the RAP pro forma calls “Source Evaluation”).

In the earlier case referred to (Gavin Jones – 4 November 2011) I accepted that “routine publication of the details of individual risk assessments might impede the SRA’s effective regulatory supervision of the profession, and that could not be in the public interest.” I then went on to ask whether there were particular reasons in that case to tip the balance in favour of publication, and I decided that there were not.

I have asked myself the same question in the case raised by JA. There is no reference in the RAP to a previous complaints history for the firm concerned, nor to any other complaint or investigation that could be prejudiced by release of this information. Nothing on the RAP form could possibly encourage or enable a solicitor to take action that might impede any future investigation. There is no personal data which cannot easily be redacted. The RAP indicates why the SRA did not take matters further, though this reason does not seem to have been conveyed to JA when the SRA formally communicated its decision. It also indicates, under “Guidance and Comments” the advice that the “Instigator (JA) needs to take

independant (*sic*) legal advice” though it seems that even this guidance might not have been passed on to him if he had not pursued this Freedom of Information request.

On balance, on the facts of this case, it seems to me that the public interest is in favour of release of the information, subject to redaction of the name, the Regis ID, and postcode of the solicitors against whom the complaint was lodged; the name of the SRA assessor; the initials at the bottom of the form (“Completed by XX”); and the name of the complainant himself. **Given those redactions I therefore find for the applicant, JA, and ask the Society to give him the information.**

For the avoidance of doubt, the decision to release a completed RAP must be taken on the merits of each particular case. It seems probable that substantial, perhaps wholesale, redactions would often be necessary, especially where regulatory action remained a possibility or the form contained confidential data.

Richard Ayre
Freedom of Information Adjudicator
23 May 2012