



The Law Society

Adjudication in a matter raised by Maitland Hudson LLP
Law Society Freedom of Information Code
April 2013



1. The issue

Whether The Law Society acted appropriately in accordance with its Freedom of Information Code when, on the grounds that to do so would contravene the Data Protection Act, it refused to give any information concerning whether or not the Solicitors Regulation Authority had a record of unpublished findings against a named solicitor.

2. The background

On 1 March 2013 a firm of solicitors, Maitland Hudson, wrote to the Solicitors Regulation Authority (SRA) on behalf of a client who had a complaint against the behaviour of a named solicitor (referred to here as ST) from another firm. Maitland Hudson said that this was the subject of a complaint to the Legal Ombudsman. Maitland Hudson said that, in view of their client's experience of ST, they had searched the SRA's website for his disciplinary record but the search had proved negative. They therefore asked the SRA to carry out a search of "the unpublished disciplinary record" in order to provide them with any past disciplinary findings against ST.

On 6 March the Society's Information Compliance Manager, Mr Bob Stanley, replied. He said he was withholding the requested information under Section 16 of the Society's Freedom of Information Code ("the Code"). He said this section of the Code stated that the Society could not disclose personal information about someone else. Mr Stanley said the unpublished disciplinary record constituted personal data about ST and therefore it was exempt from disclosure under the provisions of the Data Protection Act 1998. Mr Stanley told Maitland Hudson that, under the Code, they had the right to ask for independent adjudication of his decision.

On 14 March, in asking for adjudication, Maitland Hudson said that the information was highly relevant in the context of the complaint their client had made concerning what they said were serious issues of conduct by ST.

On 18 March The Law Society referred the matter for adjudication. On 19 March I asked the Society to provide a written submission in support of its decision to withhold the information and I invited Maitland Hudson, if they wished to do so, to provide a submission as to why they believed the Society had been wrong not to release it. I reminded Maitland Hudson that, unlike the other parts of the Code, which the Society observes on a voluntary basis, section 16 reflects its legal obligations under the Data Protection Act (DPA) to handle personal data fairly. I pointed out that I have repeatedly taken the view in relation to section 16 that I am unable to instruct the Society to release information where it believes that by doing so it would be in breach of the DPA. I said, however, that I was prepared to express an opinion as to whether the Society had acted appropriately in interpreting its obligations when withholding what it believed to be personal data.

3. Submission by Maitland Hudson

Maitland Hudson referred to what they had said when asking The Law Society to forward the matter for adjudication. They cited a submission they had made on

behalf of their client to the SRA concerning ST's conduct and they asserted that his disciplinary record was of great relevance to their client's case and they were not on a mere fishing expedition.

4. Submission by The Law Society

On 27 March the Society said that its position was that any disciplinary findings against ST that would be published on the SRA website would clearly be in the public domain and would not be caught by section 16 of the Code. There were in fact no published findings against him and that was a matter of public record.

The Society's view was that the very fact of whether there were any unpublished disciplinary matters relating to ST would constitute his personal data and it would therefore be a breach of ST's rights under the DPA even to confirm or deny the existence of any such record. The request had therefore refused under section 16 of the Code.

The Society also confirmed to me the results of the search it had carried out of the record of unpublished findings held by the SRA.

5 Adjudication

In an earlier case (*Crawford* – August 2008) the Society initially withheld information concerning whether or not there had been a history of a particular type of complaint against a named solicitor. In that adjudication I said “...*it is hard to see why there is a public interest in the public being denied knowledge of the fact that a particular solicitor has or has not been the subject of many complaints. Indeed, the public interest might be well served by the knowledge that no such 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 by knowing that a particular solicitor had attracted a large number of complaints...*” I found for the applicant in that case and the Society duly confirmed that there had been no such complaints against the solicitor in question. However, there were a number of differences between that case and this one. The applicant claimed to have *prime facie* evidence of systematic exploitation of a number of vulnerable clients and he was proposing to publish his allegations. More crucially, the Society had relied not upon section 16 of the Code (and therefore the Data Protection Act) but upon section 14.5, which allows the withholding of information concerning specific investigations. Section 14.5 is a qualified exemption which explicitly requires the application of a public interest test, and there were a number of elements in the *Crawford* case which in my view tipped the balance of public interest in favour or publication.

In the years since that case it seems to me that The Law Society, like many institutions, has become increasingly aware of its legal obligations in the handling of personal data. Interpretation of the DPA has also been modified, both by the Courts, by Information Tribunals, and by guidance from the Information Commissioner. It is now accepted that there may be reasons why the public interest requires the publication of certain personal data which would otherwise be protected.

In the current case I have therefore taken account both of my own previous findings and of the way that application of the DPA has developed. To the extent that a

public interest test is relevant to the application of section 16, it is important to note that the SRA says it publishes regulatory and disciplinary decisions “when it considers that it is in the public interest to do so”. The SRA’s publication policy is complex (<http://www.sra.org.uk/consumers/solicitor-check/publications/publication-policy.page>) but it would appear that the majority of cases where there is a finding of fault against a solicitor are placed on the public record. The SRA cites the principal reasons why it might decide **not** to publish, for example that it would be impossible to do so without disclosing someone’s confidential or legally privileged information; without disclosing someone’s confidential medical status; without prejudicing legal proceedings or regulatory investigations; or without posing a significant risk of breaching someone’s rights under the European Convention on Human Rights.

While there could be findings against ST which had not been published for one or more of those reasons, there may be no findings against him at all, either on or off the public record. The Law Society argues as a matter of principle that disclosing whether or not there are unpublished findings against ST would breach his data protection rights.

The DPA defines personal data as being data that relate to a living individual who can be identified from those data and [from] other information which is in the possession of, in this case, the SRA. A named individual’s disciplinary record, whether published or unpublished, clearly falls within that definition, though the SRA, as part of its regulatory duties, does publish findings against a solicitor except where it judges that any public interest is outweighed by other interests, such as those cited in its publication policy.

It seems clear that to release unpublished findings against a named individual, or even the fact that such findings exist, would risk breaching his data protection rights. The Society argues that it would be a similar breach to publish the fact that there were no such findings. That feels counter-intuitive, because a solicitor against whom there were no such findings might be expected to wish the fact to be known, but I accept the logic of the Society’s argument that the very act of confirming that unpublished findings do not exist against a named individual would itself constitute the release of personal data about him.

That being the case, there would need to be a strong public interest in confirming whether or not unpublished findings against ST exist, such as to outweigh his legitimate expectation of privacy. I have taken account of the interests of Maitland Hudson’s client in knowing whether there have been previous findings against ST. I have borne in mind the commitment of the SRA to publish findings where it believes it is in the public interest, and its indication of the circumstances under which it might not do so. I have also been informed by The Law Society of the outcome of its search for any unpublished findings against ST.

Taking all of these matters into consideration I can say that in this case I see no public interest in publication which could outweigh ST’s legitimate expectation that The Law Society will protect his personal data. **I therefore find that the Society acted appropriately in refusing to release this information in response to a freedom of information request.**

Richard Ayre
Freedom of Information Adjudicator
1 April 2013