



The Law Society

Adjudication in a matter raised by MB
Law Society Freedom of Information Code
January 2013



1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it declined to release information about a member of staff who had advised the Society's Manager of Information Compliance in his answer to a request for information.

2. The background

On 30 October 2012 the requester in this case, referred to here simply as MB, received a letter from the SRA which included the sentence "[name redacted by the adjudicator] wrote to you on the 7th July 2011 setting out the position that the SRA were unable to consider your complaint further." MB says that she had not received such a letter and, having been sent a new copy of it, doubted that it had really been written on 7 July, believing that it had been written subsequently and pre-dated.

After further correspondence, on 28 November MB wrote to the Society *"I have been advised that in order that you are able to prove the authenticity of the creation date of the letter from [name redacted by the adjudicator] of 7 July 2011, I should request that your IT Department examines the SRA computer server(s) and certifies the precise date and time of the creation of the 7 July 2011 letter."*

In reply, the Society's Information Compliance Manager, Mr Bob Stanley, sent her two screenshots from the SRA database containing what he said was the original record of the creation of the letter.

On 29 November MB said that she had seen from the screenshot that the "Creation Date is stated as 9 November 2011". She believed this indicated that there had been "substantial misconduct here in relation not only to the original backdating a document but the deliberate provision of misinformation by a different SRA officer in relation to the date of the alleged dispatch of the letter".

The next day Mr Stanley wrote to MB to say that "the date that appears on the matter on the system is the date the document is dragged across from Word, for example, into the SRA system. The same thing happens with emails or other documents being put onto the system. It is therefore entirely possible, and even likely, that when a matter is ongoing the Supervisor [name redacted by the adjudicator] would have stored all communications elsewhere and then, when the file is eventually closed, they would add all relevant documents onto system. This would appear to be what has happened here as this is the way it is often done by Supervisors, although I am unable to confirm this."

On 5 December MB asked Mr Stanley for the name of the SRA employee who had given him the information upon which he had based his explanation. Mr Stanley replied saying that he was withholding it under section 16 of the Society's Freedom of Information Code ("the Code") which says that the Society cannot release personal data about other people.

On 6 December MB disputed the suggestion that the letter had been created on 7 July. Noting the Society's refusal to tell her the name of the individual who had advised Mr Stanley, she asked for "such informant's job title, his/her computer and/or information technology expertise and his/her particular experience of the SRA's computer system/server". She also asked that the matter be referred to the adjudicator and, on the following day, Mr Stanley provided me with the relevant correspondence.

There were further exchanges between Mr Stanley and MB and on 13 December he asked the SRA to access the “MyDocs” area of the computer upon which the “7 July” letter had been written (the member of staff concerned being away at the time). On 20 December Mr Stanley wrote to MB and attached a screenshot which he said showed that the letter dated 7 July 2011 had indeed been created on 9 November 2011 after all. He said this had been verified by the IT Department. Mr Stanley said that the Supervision Manager at the SRA would be contacting MB about this this early in January 2013.

In the light of this development I suggested to MB on 20 December that it was no longer appropriate for me to adjudicate upon the Society’s original failure to provide her with the date of the creation of the “7 July” letter, since the information had now been provided. However, I proposed to adjudicate on the Society’s failure yet to respond to her request of 6 December for details of the job title, expertise and experience of the person upon whom Mr Stanley had originally relied for his explanation on 30 November of why the apparent creation date of 9 November 2011 had not been the date when the letter was first written.

3. Submission by the Law Society

On 24 December the Society confirmed that it would withhold these details. The Society said that the information was personal data, disclosure of which would be a breach of the Data Protection Act. The Society said that, as Information Compliance Manager, it was Mr Stanley’s responsibility to respond to requests under the Code and that the name of any employee providing him with information towards the response constituted personal data which must not be disclosed. This also applied to any employee’s computer and/or information technology expertise and experience of the SRA’s computer system/server.

4. Submission by MB

On 3 January 2013 MB made her submission. It consisted of four points:

1. MB said that Section 16 of the Freedom of Information Act imposed a duty to reasonably provide information. She said her submission was made against the background of a considerable volume of correspondence, pursuant to which the SRA had wrongly sought to conceal information relating to the wrongdoing of one of its officers who had deliberately and unlawfully backdated a document. That had been discovered only following a forensic examination of computer metadata after she had exerted considerable pressure and following the initial reticence of the SRA to deal with her request properly or at all.
2. MB believed that, accordingly, it was wrong for the SRA to seek to hide behind the veil of the Data Protection Act in a belated attempt to avoid the further and proper investigation of the circumstances which led to the wrongdoing and what she called the subsequent cover-up. The SRA had misdirected themselves as to the nature and meaning of the Act and clearly did not understand what it intended to protect.
3. The blanket refusal by the SRA to provide information under Section 16 of its Code was not, in MB’s view, in the public interest. Her request had been perfectly legitimate (given the background to this matter) and might well embarrass the SRA and subject it to a level of scrutiny which it wished to avoid, but that was not sufficient reason to reject such request.
4. MB said that the generic information required clearly could not be the subject of any Data Protection Act exclusion, because the identity of the person would not be provided. If the SRA policy were to be adopted across the board, she believed the Society would not divulge any information whatsoever at any time to any party. MB said that the job description and/or expertise and/or experience and/or knowledge of a computer system/server were not personal data within the meaning or contemplation of the Data Protection Act.

5. Adjudication

In withholding this information The Law Society relied upon section 16 of the Code. Unlike its other provisions, which the Society observes on a voluntary basis, Section 16 reflects the legal obligations imposed upon the Society by virtue of the Data Protection Act (DPA). I make applicants aware that, in cases where the Society relies upon section 16, I can offer a view as to whether it has properly applied the Code but I cannot require the Society to release information disclosure of which it believes might breach the DPA.

The Information Commissioner recognises areas of potential conflict between the right to freedom of information held by public authorities and the right of individuals to have their personal data treated fairly by anyone who processes it. Although The Law Society is not designated a public authority for the purposes of the Freedom of Information Act (FoIA) it aims to behave as if it were, and the same principles therefore apply.

Having finally established that a letter the SRA claimed to have sent to her in July appears actually to have been written subsequently in November, MB asserts that the SRA has been guilty both of unlawful activity and of an attempted cover-up. I am not in a position to comment on those assertions, but simply upon whether I believe the Society has acted reasonably in accordance with its Code (and, in this particular case, in accordance with law) in withholding information about an employee.

MB says that, because the Society will not release the name of the staff member concerned, details of that individual's title, qualifications and work experience cannot be considered personal data. In this respect I believe she has misconstrued the DPA. That Act makes clear that personal data is information that relates to a living individual who can be identified from the data (or from the data together with other data in the possession of the data controller – in this case The Law Society). It is clear to me that data about an individual in a relatively small organisation like the SRA, if it identifies his or her job title, qualifications and experience, would readily enable the individual to be identified. It therefore constitutes personal data.

It is equally clear to me that the individual has a reasonable expectation that such information held about him or her by the SRA would be kept confidential and not published without his or her permission. Being employed as an IT professional in the SRA seems to me to entail no expectation whatsoever that one's personal data will be published.

The Information Commissioner's office offers guidance as to circumstances in which the public interest in the release of personal data by a public authority might outweigh the reasonable expectations that an individual might have in the data being withheld. Such circumstances include the seniority of the individual, his or her level of responsibility for taking decisions, and the extent to which the individual has a public-facing role.

In the current case I can find no public interest to outweigh the reasonable expectation that an individual in the SRA's IT department is entitled to hold that his or her personal details will not be published. Whatever his or her level of responsibility may be for IT, in these circumstances he or she was merely giving technical advice to Mr Stanley whose job it was to determine what information to release to MB and therefore to publish. The explanation offered on 30 November by Mr Stanley as to why the apparent "Creation Date" of the "7 July" document might not be the date upon which it was first written turned out not to be the correct explanation in this case, as MB's persistence finally established. However, the responsibility for offering it to her was Mr Stanley's on behalf of The Law Society, not his IT adviser's.

I therefore consider that The Law Society reasonably applied section 16 of the Code in withholding the personal data requested by MB.

Richard Ayre
Freedom of Information Adjudicator
6 January 2013