



The Law Society

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



## 1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it redacted from an internal memo information the release of which it said would breach the Data Protection Act.

## 2. The background

On 30 October 2012 the requester in this case, referred to here simply as MB, received a letter from the Solicitors Regulation Authority (SRA) which said that a named official “*wrote to you on the 7<sup>th</sup> July 2011 setting out the position that the SRA were unable to consider your complaint further.*” MB said she had not received such a letter and doubted that it had really been written on 7 July, believing that it had been written subsequently and pre-dated. As part of the exchanges of information leading to an adjudication on these matters the Society subsequently agreed that the letter had indeed been written at a later date than that purported. An adjudication dated 6 January 2013 addressed these events.

On 3 January 2013 MB made a series of further requests of The Law Society for information concerning a complaint she had lodged in November 2009. On 31 January the Society’s Information Compliance Manager, Mr Bob Stanley, provided her with the information she had asked for but with parts of one internal SRA file note redacted. The Society said that personal data had been withheld under section 16 of its Freedom of Information Code (“the Code”). The Society explained that section 16 prohibited the disclosure of personal data relating to third parties in breach of the Data Protection Act.

On 21 February MB replied, saying that she understood and fully accepted the reasons for redacting certain parts of the correspondence she had been sent and that it had been in compliance with the adjudication of 6 January. However, she was concerned at the redactions to the 13 January file note: she said that she already knew the name of the author because the note had been specifically referred to in a Legal Services Ombudsman’s (LSO’s) letter of November 2010. MB therefore asked for an un-redacted copy of what she called “this most vital document the full text of which was seen by the LSO but is being kept from me.”

In reply, the Society repeated its reasons for redacting the note. MB then asked for the matter to be referred for adjudication.

The Law Society provided me with the redacted and un-redacted notes, together with the exchanges of correspondence with MB. I asked The Law Society for a written submission explaining why it believed that the redaction was necessary and I recalled that the Society had accepted a recommendation in my last annual report that, when withholding information under section 16, it should explain clearly to requesters how it believed that releasing the information would breach the Data Protection Act.

### 3. Submission by MB

In a submission on 28 February MB said that obtaining factual information from the SRA was akin to pulling teeth. She said she discerned an institutional resistance to the provision of information which was properly sought and perceived a very defensive attitude even when there was overwhelming evidence of wrongdoing. She recalled what she described as the deliberate backdating of documents by SRA staff.

MB said that the unredacted memo of 13 January 2010 had been seen and referred to by the LSO in her report of 2 November 2010. MB said she had been advised that in any legal proceedings the SRA would not be allowed to prevent full disclosure of it. In such circumstances (and where she said she had accepted that the names of SRA employees could be redacted) she saw no need to redact any other part of the document. She said that she had already been advised in other material produced by the SRA of the identity of the person who created the note, so she thought that the only item that merited redaction was the name of the recipient.

In reply to a query from the adjudicator MB provided a copy of a file note dated 31 January 2011, already released to her by the SRA, which said: "*The note that [forename provided, redacted by the adjudicator] did on 13.01.10 suggest that there had been a breach of Rule 8.....*". MB said she already knew the surname of the individual referred to only by a forename, and that this person was clearly the author of the redacted file not in dispute.

MB said that once again she felt aggrieved that the SRA was continuing to withhold information which was likely to cause the organisation severe embarrassment.

### 4. Submission by The Law Society

On February 13 The Law Society said that the redacted information was withheld under section 16 of the Code. This was personal data relating to [names redacted by the adjudicator] three people who had been SRA employees at the time, to MB herself, to her husband, and to another individual.

The Society said it believed that disclosure of the redacted information would be a breach of the data protection rights of the six individuals concerned (including MB herself). In the case of the three SRA employees this was because they should not expect to have their names placed into the public domain in respect of an internal memo discussing a particular case. None of the three was of sufficient seniority to expect their names to be made public in this way. The Society said that, although MB might well already be aware of the names of these three SRA employees, they should not be placed in the public domain in this way. The Society said that this should have been explained to MB in response to her request under the Code.

The Society said it did not feel that it could explain how the release of the redacted personal data relating to MB, her husband, and the other named individual would breach the Data Protection Act, because to provide such an explanation would risk disclosure of the very information the Society was seeking to withhold. It did not see how it could provide such an explanation without disclosing the personal data themselves.

## 5 Further enquiries

On 19 March I wrote to the Society to seek an explanation of its reliance upon section 16 in two respects.

First, I noted the fact that the redacted file note had been released to MB under Fol, containing unredacted references to her, to her husband, to one of his former clients, and to another named individual, and I observed that that meant in effect that the Society had published their names. I found that hard to reconcile that with what appeared to be a rather strict interpretation of personal data relating to the names of the three SRA staff members, each of which had been redacted.

Secondly, I noted that the names of MB and of her husband's former client had then been redacted from the two substantive paragraphs towards the end of the file note, along with material which appeared to me to consist of two assertions by the author of the note [“(name redacted by the adjudicator) *is obviously being used to circumvent this*” and “*In opening the file we might be opening a can of worms and we are being used to further the dispute*”] and a question to the note's recipient [“*But can we just decide not to investigate.(sic)*”]. I said I could not see how this material could properly be regarded as being personal data.

I invited the Society's further response to these observations.

The Society replied immediately saying that, having reconsidered, it had decided to release an unredacted copy of the file note to MB. The Society said it agreed that it was difficult to reconcile the redactions with the fact that unredacted references to the same people had already been released to her.

The information having been provided in full to MB, there was no need for me to reach a determination in this case.

**Richard Ayre**  
*Freedom of Information Adjudicator*  
19 March 2013