



The Law Society

Adjudication in a matter raised by MM
Law Society Freedom of Information Code
November 2012



1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused to provide a solicitor, known here simply as MM, with a copy of all the information held about him and his firm by the Solicitors Regulation Authority (SRA).

2. The background

The SRA has been engaged in an investigation originally arising from a conduct complaint, since withdrawn, against MM's firm. The complaint had been referred to the SRA by the Legal Ombudsman. Following an exchange of correspondence between MM and the SRA, he wrote on 5 September 2012 to ask for "all the information you hold about our firm or the partners [to] enable us [to] take proper legal advice in this matter".

On 4 October the Society's Information Compliance Manager, Mr Bob Stanley, replied. He said the information was being withheld under section 14.5 of the Society's Freedom of Information Code ("the Code"), which stated that the Law Society does not have to release information about specific investigations, disciplinary cases or applications arising from its regulatory role. Mr Stanley said that, in applying this exception, the Law Society was further required to carry out a 'public interest test' in relation to the regulatory information requested. The Society's view was that it would not be in the public interest to disclose the information. In reaching this decision the Society had taken into consideration the fact that information disclosed in response to Freedom of Information requests was deemed to have been placed into the public domain, and not just disclosed to the person making the request. Mr Stanley said it would clearly not be appropriate for the details of this matter to be placed in the public domain: to do so would have the effect of undermining the SRA investigation into the firm which MM represented.

The Society told MM that under the Code he had the right to ask for the decision to be referred to the independent Freedom of Information adjudicator. MM replied immediately asking the matter to be referred and requesting the chance to make oral representations to the adjudicator.

On 8 October I invited both the Society and MM to make written submissions as to why they believed the Society had or had not acted appropriately in accordance with the Code in withholding the information. I informed MM that there was no provision for oral hearings and that the issue would be decided upon an examination of the issues and in the light of written submissions.

MM asked for an extension until "after 20 November" to make his submission, saying that he was heavily engaged in case preparation and presentation including advocacy, with hearings scheduled up to 31st October 2012. In reply I noted that he had already told the SRA that he would not feel able to reply to their regulatory enquiries until after the adjudication process was complete. Noting that the professional commitments he had cited lasted only up until 31 October, I said I felt unable to agree an extension beyond 9 November, by which time he would have had five weeks to address what I suggested were the rather narrow issues raised in this case.

3. Submission by The Law Society

On 19 October the Law Society made its submission. It said that the SRA's investigation into MM's firm was continuing. The Society disclosed to the adjudicator various documents from the relevant SRA file outlining more than one matter from which the investigation had arisen

and some of the evidence in the SRA's possession. The Society argued that it would clearly be against the public interest to disclose it. It said that the SRA was waiting for MM's response to an Explanation With Warning (EWW) letter and that giving him prior sight of the file would have a prejudicial effect on the investigation

4. Submission by MM

On 9 October MM made his submission. He said he believed that he was entitled to have all the information the Law Society held against him concerning any complaint he might be expected to respond to. He thought he would be deprived of an opportunity to defend himself if he was given only selected or incomplete information.

MM then went on to cite various stages in his firm's interactions with the SRA in recent months. He asked why he had received no report following a visit of a forensic investigations officer in March and why no compliance certificate had been issued. He said that the officer had checked the firm's accounts, and its training and complaints records, and had raised no serious concerns. MM said that the investigator had asked no questions concerning the complaint referred to the SRA by the Legal Ombudsman and that the investigator had said that he did not want to waste his time on it.

MM said he was also asking for specific information regarding what he called "whistleblowing to red alert" while he had worked for a previous firm, and why he had been unfairly penalised, as he saw it, by the SRA for many years for whistleblowing.

He said he was asking for the information held by the SRA against him because he was continuously subjected to the stigma of intervention which had affected his career: when he applied for professional indemnity insurance he had to make disclosures and declarations that caused him to pay increased premiums. MM said he needed the SRA's records to discover the truth and he believed he was entitled to any information held against him so as to inform his response, satisfy his human rights entitlement, and ensure fairness towards him.

5. Adjudication

I have to resolve two questions: whether the information MM has requested is covered by section 14.5 of the Code and, if so, whether the balance of public interest is in favour of or against publication.

The first is easy. The information is clearly "about specific investigations, disciplinary cases or applications" arising from the SRA's regulatory role: indeed, that is the very reason why MM wants it, in order that he can take legal advice in the face of the SRA investigation. The information is therefore covered by section 14.5.

As for the balance of public interest, the priority must surely be that regulatory supervision of the legal profession is effective. That must include the ability to investigate complaints and, where appropriate, take consequent action. There is also a general public interest in a regulator acting fairly, but the demands of fairness towards MM, and of natural justice and his human rights, would need to be satisfied at the point where he or his firm faced regulatory action. At the current time they are merely under investigation, and in my view it would be preposterous to suggest that freedom of information means that a suspect must be given all the information that may be held against him before he answers questions from an investigator. It is the very fact that someone under investigation may not know what evidence is already held against him that increases the risk he faces if he answers less than truthfully.

It seems to me that the public interest is best served in this case by the SRA being able to weigh all the evidence, including any answers MM may give to its enquiries, before deciding whether any form of regulatory action against his firm is appropriate. When and if regulatory action is taken, natural justice would suggest that the evidence would be made available so that the firm could challenge it.

I therefore find for the Law Society in this matter.

Richard Ayre
Freedom of Information Adjudicator
13 November 2012