



The Law Society

Adjudication in a matter raised by Mr AZ

Law Society Freedom of Information Code

October 2011

1. The issue.....	2
2. The background	2
3. Law Society's reconsidered response	3
4. Further consideration	4
5. Submission by the Law Society.....	5
6. Adjudication.....	5

1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused to release information Mr AZ had requested concerning a complaint he had made to the Solicitors Regulation Authority.

2. The background

In January 2011 Mr AZ complained to the Solicitors Regulation Authority (SRA) about a solicitor who, acting on behalf of a client, Mr AZ believed had behaved towards him in such a way as to be in breach of the Solicitors' Code of Conduct.

On 17 May an SRA caseworker wrote to Mr AZ thanking him for bringing his complaint to the SRA's attention. She went on to say that the information he had provided had been 'carefully assessed' and that 'if we consider that the information you have provided, and any other information we may hold, means that we should make further enquiries or take action, I can assure you that we will do so'. However, she also said that the SRA were 'not generally able' to provide reports on their enquiries, partly because those enquiries might include confidential information but also because the SRA 'try to devote our resources to taking action if we consider there is a risk to the public'. She concluded by saying that she recognised that this might be disappointing to Mr AZ, but she thanked him for supplying the information, which she said was 'much appreciated'.

Mr AZ replied later that day, saying he was dissatisfied about the lack of transparency. He asked whether the SRA had investigated his complaint; if so, when, and what conclusion it had reached; if not, when it proposed to investigate it; and what transparency there would be of the investigation. On 27 May he wrote again to ask the SRA to treat these questions as having been made as Freedom of Information (Fol) requests, and he added a request to receive a copy of the SRA file (on his complaint).

On 7 June the caseworker's manager wrote to Mr AZ saying that they realised he was dissatisfied with the decision not to keep him informed of any action the SRA might be taking. He repeated the explanation the caseworker had offered and added that the SRA would contact Mr AZ again if they required further information, but 'otherwise we will not be in touch with you again or acknowledge correspondence even if you provide new information or documentation'.

The manager went on to tell Mr AZ that if he wished to complain about the way his complaint had been dealt with he could contact the Complaints Team, but he asked Mr AZ to note that 'the Complaints Team cannot review our decision that we will not respond to correspondence from you or keep you informed of our investigation'. He added that AZ 's requests for information had been passed to 'the appropriate department'.

On 14 June the Law Society's Information Compliance Manager, Mr Bob Stanley, wrote to Mr AZ to say that the information he had requested fell within section 14.5 of the Society's Freedom of Information Code ('the Code'). This states that the Society does not have to release information about 'specific investigations, disciplinary cases or applications arising from (its) regulatory role'. Mr Stanley said that, before withholding information under this section of the Code, the Society was required to carry out a 'public interest test'. He said that it was the Society's view that it would not be in the public interest to release the information, and in reaching this conclusion the Society had taken into account the fact that information disclosed in response to an Fol request was deemed to have been put into the public domain. Mr Stanley explained that the reason the SRA did not disclose the outcome of complaints was that even though the SRA might have decided to take no action over a

specific complaint they might decide to include it in a future action if further complaints were received. Mr Stanley concluded by saying that the Society's view was that to publish the information would be likely to prejudice the legitimate regulatory activity of the SRA and would clearly, therefore, not be in the public interest. Mr Stanley also informed Mr AZ of his right, under the Code, to seek adjudication of this decision.

On 17 June Mr AZ wrote to both the SRA and Mr Stanley to repeat his dissatisfaction, and the Society responded by repeating that he was entitled to seek adjudication.

On 20 September Mr AZ replied to the Law Society to say he failed to understand why it could be in the public interest not to disclose whether his complaint had been investigated or not. He wondered if this was because no investigation had taken place, because the SRA acted in the best interests of solicitors. Mr AZ said he was now interested in how widespread this conduct was and to what degree the SRA was failing the public interest whilst protecting the solicitors' interests. He said he was concerned that the SRA might not be investigating any complaints at all, and he thought self-regulation seemed to be promoting self-interest in the legal profession. He then asked for the matter to be referred for adjudication.

On 21 September Mr Stanley forwarded the correspondence to me and I invited both the Society and Mr AZ, if he wished, to make written submissions to me concerning whether the Society had or had not acted in accordance with the Code in refusing to release the information.

On 13 October Mr Stanley indicated that there would be a delay before the Society could make its submission. He said that the Society was reconsidering its response to Mr AZ's request. Mr Stanley said that the request had highlighted some important issues and the Society needed time to examine them fully in the context of the Code.

3. Law Society's reconsidered response

On 19 November the Law Society gave Mr AZ its reconsidered response to his requests. It said that the SRA was an independent regulatory body, acting in the public interest, with limited resources, and that it therefore applied a risk-based approach to information it received. The Society said that, though the SRA welcomed and encouraged reports from members of the public, it could not investigate every complaint. The Society said that the SRA made clear on its website under the heading *Providing information and intelligence to the SRA* that it would apply its risk assessment to the information received.

The Society said that, in every case where the SRA received an FoI request, it was obliged to consider carefully if, in the public interest, the requested information should be disclosed. Having reconsidered Mr AZ's request, the Society wanted to amend its earlier responses.

In answer to Mr AZ's question whether the SRA had investigated his complaint and, if so, when, and what conclusions it had reached, the Society said that the information he had provided had been considered carefully and risk assessed in accordance with the SRA policy. The SRA assessment had concluded that in relation to the specific concerns raised, namely that the letter Mr AZ had received from a firm of solicitors had been threatening in tone and had asked improperly for confidential information, the SRA had determined that it had been proper for the firm to ask for the information and that therefore there had not been a breach of the Code of Conduct. Although it thought the terms of the solicitor's letter had been quite strong, the SRA did not agree that there was anything in its content that was improper or that the firm had been seeking to take unfair advantage of Mr AZ. The SRA's assessment had concluded that the firm were setting out their clients' position in robust terms which they were entitled to do.

In the light of this response, the Society said that its answer to Mr AZ's second question, asking when, if it had not already done so, the SRA would be investigating his complaint, was that the complaint would not be investigated further.

In answer to Mr AZ's question about what transparency there was to the SRA's investigation or assessment, the Society said that it was impracticable, costly and contrary to the SRA's stated objectives to respond individually to every piece of information it received. The Society said that the SRA welcomed such reports and would acknowledge that they had been received but its communications made clear that it might not be in contact again. Depending on the information received the SRA might keep it for future use in assessing risk or use it to supervise a firm in a particular way.

Finally, in respect of Mr AZ's request for a copy of the SRA file on his complaint, the Society told him that the file comprised various emails he himself had written, or copied, to the SRA, and various replies the SRA had sent him. The Society said that all of these should already have been in his possession, though it offered to provide copies. The Society said that the file also contained some internal emails and the SRA's risk assessment profile on which the decision not to investigate this particular matter further had been based. The Society said that both of these were confidential to the SRA and were being withheld under section 14.5 of the Code. The Society said that the profile contained information about the regulatory history of the firm of solicitors about which Mr AZ had complained, and it would not be appropriate or necessary in the public interest to publish these. In arriving at this decision, the Society said that it had given consideration to the fact that any information disclosed in response to an Fol request was deemed to be placed in the public domain and not merely disclosed to the person making the request.

4. Further consideration

In the light of the answers belatedly supplied by the Law Society I considered each of the requests Mr AZ had made and the information he had received. I decided to consolidate a separate but related request for adjudication on behalf of Mr AZ which the Society had sent me on 13 October.

I explained to Mr AZ that I could take no view on the appropriateness or otherwise of the SRA's complaints investigation processes, merely on whether the Society had acted appropriately within the terms of its Code in refusing him some of the information he had requested. I told Mr AZ that, without yet having heard a formal submission from either party, there appeared to be a prime facie case that the Society had provided him with the information he had requested in every case except his request to be given a copy of the SRA file relating to his complaint. I proposed, and Mr AZ agreed, that the sensible way forward was for me to adjudicate only upon the Law Society's refusal to give him copies of two items of information in that file, which it had withheld under s.14.5 of the Code.

Accordingly I invited the Society to make a formal submission in support of its decision and of its conclusion that the balance of public interest was against disclosure. I also invited Mr AZ, if he wished, to make a submission as to why he believed that the Society had acted in breach of the Code, or why he believed that the balance of public interest was in favour of his being given the information. Mr AZ made no submission.

5. Submission by the Law Society

On 1 November the Law Society said that it had now provided Mr AZ with the internal file note concerning his risk profile assessment, so only the assessment itself was still being withheld. The Society said that the assessment contained the criteria and scoring system which were used by the SRA to determine whether any further regulatory action would be taken against a firm. It also contained information on the reliability of the information provided by the informant (in this case, Mr AZ).

In the Society's view it would not be in the public interest to publish this information. To do so would have the effect of alerting solicitors' firms to the criteria used by the SRA on whether to take further action. The Society also took the view that it would be inappropriate to publish information as to the reliability or otherwise of the information provided by Mr AZ, or by any other informant.

6. Adjudication

On 27 October I visited the Law Society's offices and inspected the SRA file in question. Apart from the information already in Mr AZ's possession at that time it contained a four-page 'risk assessment profile' and a three-sentence internal 'file note' written by a member of the SRA's Conduct Investigation Unit. The file note was subsequently released to Mr AZ, and I must therefore adjudicate only upon the Society's decision to withhold the risk assessment. This consists of a pro-forma document with a number of boxes into which ticks or scores are entered according to various criteria.

There is no doubt that the completed pro-forma constitutes information about 'specific investigations, disciplinary cases or applications' arising from the Society's regulatory role, and it therefore falls within s.14.5 of the Code as being information which may be withheld, subject to a public interest test.

I endorse the Society's view that release of information in response to an FoI request amounts to publication: it is not possible to release information under FoI to one applicant and then to deny it to another. The question is therefore not whether Mr AZ would benefit from release of his particular risk assessment, but whether there is a stronger public interest in such items in general, or in these particular items, being withheld or made publicly available.

I am 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 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.

However, the information in this case constitutes not merely the criteria used by the SRA but how, in the SRA's judgement, this particular complainant and the particular firm he had complained about scored against those criteria. The risk assessment profile contains an evaluation of the reliability of the complainant as well as a record of past complaints against the firm being investigated. Although I can see an arguable reason why the complaints history of a firm might be a legitimate matter of public interest I can see no good reason why a complainant should have the SRA's assessment of his or her reliability made public. In my judgement, 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.

The only remaining question is whether there are particular factors in this case which would tip the public interest in favour of publication of the risk assessment of Mr AZ's complaint. In short, I can see none. Nothing about the contents of the risk assessment casts doubt on the

propriety of the SRA's regulatory approach. **I therefore find for the Society in withholding this one element of the SRA file.**

In view of what I have described of the risk assessment pro-forma I should perhaps make clear that the SRA made no adverse evaluation of Mr AZ's reliability as a complainant.

Richard Ayre
Freedom of Information Adjudicator
4 November 2011