

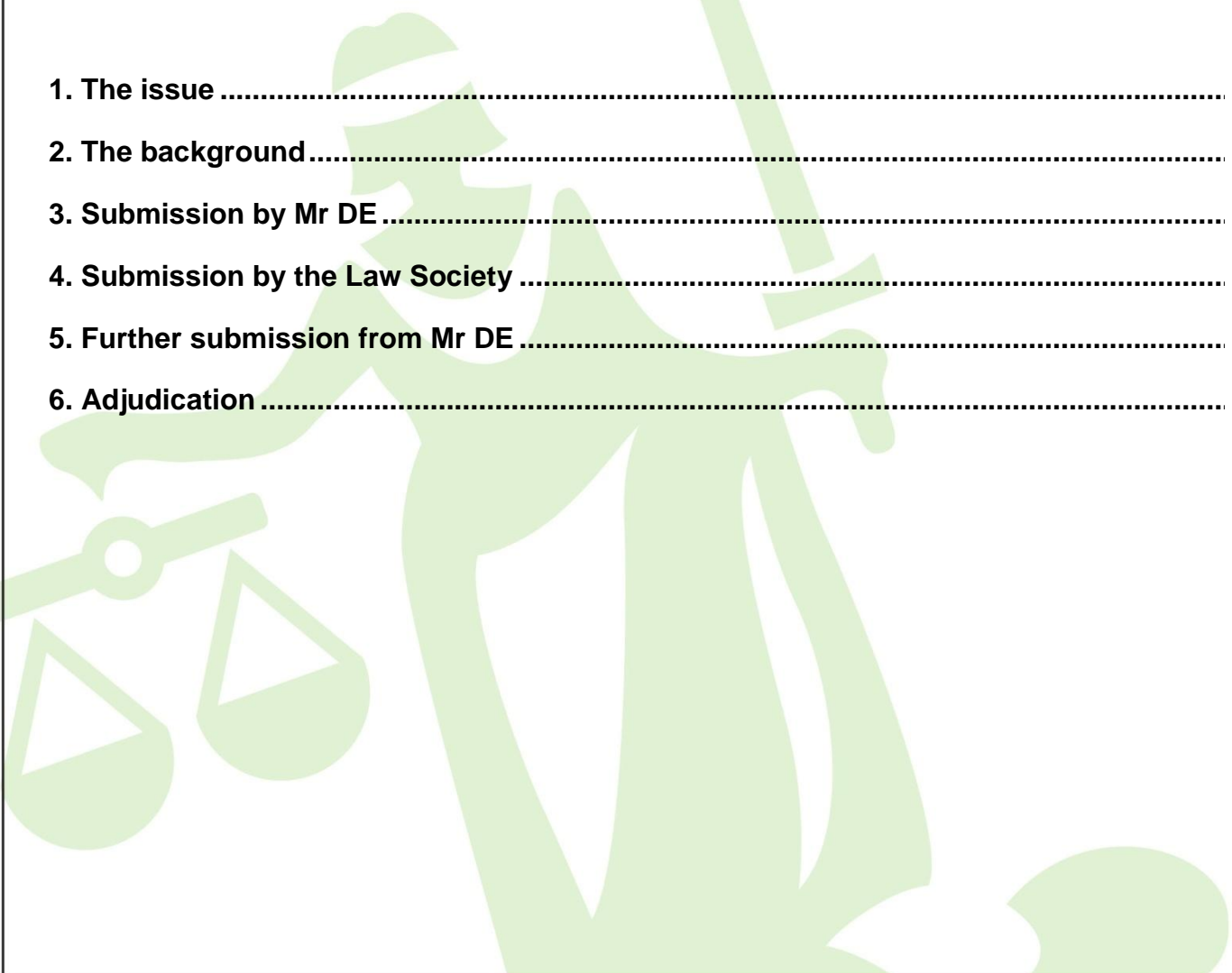


The Law Society

Adjudication in a matter raised by Mr DE

Law Society Freedom of Information Code
March 2012

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1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused Mr DE information he had requested about the ethnicity of members of staff in a section of the Solicitors Regulation Authority (SRA).

2. The background

On 9 March Mr DE emailed the Law Society, citing a reference number for a complaint he had lodged with the SRA. Referring to the Freedom of Information Act, he asked to be provided with the names and ethnicity of all members of staff within the SRA's Supervision Unit. He cited the name of the individual he believed might be the manager of the Unit.

Mr DE said that he had notified the Independent Complaints Resolution Service of this request because he strongly believed that the SRA's decision to allocate the complaint he had made to what was possibly a predominantly British Asian team demonstrated outright prejudice and/or direct racial discrimination, perhaps aimed at getting him to withdraw his complaint.

Later that day the Society acknowledged his request, pointing out that it was not governed by the Freedom of Information Act but would instead consider his request under its own Freedom of Information Code ('the Code').

On 14 March the Society's Information Compliance Manager, Mr Bob Stanley, emailed Mr DE to say he was withholding the information under section 16 of the Code. This section stated that the Society could not disclose personal information about someone else. Mr Stanley said that the requested information was personal data about the SRA members of staff working in the Supervision Unit and was therefore exempt from disclosure under the provisions of the Data Protection Act 1998 ('the Act'). He informed Mr DE of his right, under the Code, to seek adjudication.

Later that day Mr Stanley referred the matter for adjudication, saying that he had received a telephone request from Mr DE asking him to do so. I wrote to Mr DE to explain the adjudication procedure to him and I also explained the unusual position of section 16 of the Code which, unlike its other provisions which the Society followed on a voluntary basis, reflected a legal obligation upon the Society not to breach the Data Protection Act. I referred Mr DE to several recent adjudications in which I have addressed the difficulties which this section presents both to complainants and to the adjudicator.

3. Submission by Mr DE

On 16 March Mr DE wrote to say that, for the sake of absolute clarity, his request had arisen solely because of what he called the negativity, undermining and/or delaying tactics of the SRA in its handling of a complaint he had made about a named solicitor. He said that in all probability he would never have made his request if the SRA had sought to deal with the original complaint vigorously, rather than sending out a diversity survey form, subsequently misinforming him as to the identity of the SRA's investigating official and thereafter seeking 'to change the SRA Complaint Report handling amongst at least three different British Asian individuals'.

Mr DE suggested that, if the Society would provide merely the ethnicity of the individuals within the SRA's Supervision Unit, expressed as a percentage, then it would suffice to

confirm his suspicions and he would no longer need to know the names of the individuals concerned.

In the light of Mr DE's suggestion to resolve their disagreement I informed the Society of this proposal. However, on 21 March Mr DE made clear that he continued to want to know both the names and the ethnicities of the personnel in the Supervision Unit.

4. Submission by the Law Society

In its submission on 22 March the Society differentiated between Mr DE's request for the names of the Supervision Unit staff and that for their ethnicities.

The Society said its view was that to provide the names of the members of staff would be a disclosure of personal data and an infringement of the rights of those staff members under the Data Protection Act. Mr DE would already know the names of any members of the Unit with whom he had been in correspondence or with whom he had engaged on the telephone, but this normal business contact was distinct from providing names of staff members not directly involved in Mr DE's matter. The Society said it was happy to publish names of senior members of staff, and it did so in a variety of publications, but considered that the publication of the names of more junior staff members was unnecessary and in breach of section 16 of the Code.

In respect of Mr DE's request to know the ethnicity of each individual member of the Unit, the Society said that this information was classified as sensitive personal data and to publish it without explicit consent would constitute a serious breach of the Act.

In response to Mr DE's earlier suggestion that a percentage breakdown of staff by ethnicity might be sufficient, the Society said it had carefully considered this but had come to the view that even to provide a percentage breakdown of staff in the Unit would be likely to constitute a disclosure of sensitive personal data. The Society said that Section 1 of the Act defined personal data as data which relate to a living individual who can be identified (a) from those data or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

The Society said that there were only fourteen people in the Unit and to provide a percentage breakdown by ethnicity would be likely to enable Mr DE to deduce the ethnicities of one or more members of the Unit. If there were a substantially higher number of people employed in the Unit, the Society believed that there would be less chance of an individual's ethnicity being identified from a percentage breakdown and it would be more likely to release the information under the Code. However, it was the Society's submission on this occasion that to provide a percentage breakdown by ethnicity of the fourteen people employed in the Unit would be very likely to amount to a disclosure of personal data as defined in section 1 of the Act.

The Society attached a Decision Notice from the Office of the Information Commissioner ('the ICO') in 2010 which the Society suggested was pertinent to this case. This related to a request for information concerning the ethnicity of doctors employed by an NHS Foundation Trust. The ICO had said that, because the requested information related to a small number of individuals and disclosing it would be likely to provide information that could be tied to a specific individual, its release would constitute a disclosure of personal data. The ICO went on to say that disclosure would be unfair to the data subjects because the information about their ethnicities had been gathered for internal monitoring purposes and the individuals would have had no expectation that the data would be made public.

5. Further submission from Mr DE

On 25 March I supplied Mr DE with a copy of the ICO's Decision provided by the Law Society so that he could comment upon its relevance to his own case. I made it clear that, although I was not bound by the Information Commissioner's approach I took due note of it because his statutory role was to advise upon and consider appeals under the Freedom of Information Act, which the Society sought to emulate through its Code.

Mr DE said that, since the Law Society's Adjudicator was not bound by the ICO's decisions, he had decided not to read most of the sections of the ICO's reasoning that the Society had argued were relevant to its own decision in his case.

Mr DE said he was becoming increasingly frustrated by the handling of his original complaint against the Law Society of possible racial discrimination in relation to a complaint against a regulated solicitor.

In what appeared to be a reference to his earlier suggestion that anonymised information about the ethnicity of staff might suffice, Mr DE said that he had simply requested a percentage of personnel being of British-Asian origin. He said he found it increasingly perplexing how, as Adjudicator, I had allowed the Law Society to blur my 'mindset'. He said that it was clear from the Decision Notice of the ICO that in that case, following interpretation of the Act by the ICO, the public authority concerned had released some of the information it had originally withheld. Mr DE urged me to take the same approach and release the information he wanted.

6. Adjudication

In a number of cases over the past two years the Society has relied upon section 16 of its Code in withholding information. On each occasion I have pointed out that, unlike the other provisions of the Code, which the Society observes on a voluntary basis, section 16 reflects its statutory duty not to release personal data in a way which would be contrary to the Data Protection Act. Whereas the Adjudicator can overturn the Society's decision in relation to the voluntary provisions of the Code, I am unable to do so if it would place the Society at risk of breaching the Act. The best that I can do, therefore, is to express my own view as to whether the Society has acted appropriately in this case.

Mr DE suspects that racial discrimination lies behind what he regards as the unsatisfactory handling by the SRA of his complaint about a solicitor, and he believes that having information as to the names and ethnicities of the staff of the SRA's Supervision Unit might substantiate his suspicion.

However, the information Mr DE requests is unquestionably 'personal data' and, in the case of the ethnicity of identifiable individuals, it is what the Act calls 'sensitive personal data'. Release of such data without the permission of each data subject seems to me likely to be in breach of the Act, and it is certainly in breach of Section 16 of the Code.

Mr DE appears, at times at least, to be open to the idea of release of anonymised data in the form of ethnicity broken down by percentages. The Society's view is that the size of the staff team concerned – fourteen people – might well make it possible for Mr DE, or for others if the information were published, to identify the ethnicity of individuals from a percentage breakdown. I agree with that view. Although it is difficult to say how large the number of people would need to be in order to eliminate that risk, in my view it would need to be very substantially more. The case considered by the ICO and cited by the Society seems to me

to be a valid analogy, and the fact that neither the Society nor I are bound by decisions of the ICO does not make it any less valid as a view of the requirements of the Act.

Observance of the law is not an option for the Society to choose or not to choose. Its view is that the Data Protection Act requires it to refuse this information. I agree.

Richard Ayre
Freedom of Information Adjudicator
25 March 2012