



The Law Society

Adjudication in a matter raised by Mr Gary Fusfield

Law Society Freedom of Information Code

December 2009

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supporting
solicitors

1 The issue

Whether the Law Society acted reasonably and in accordance with its Freedom of Information Code ('the Code') when it declined to provide to Gary Fusfield a copy of its digital database of solicitors and barristers.

2 The background

On 6 October Mr Fusfield emailed the Law Society saying he was interested in obtaining 'a copy of the database of solicitors and barristers'. Mr Bob Stanley, the Society's information Compliance Manager, replied by sending him a hotlink to a page of the Society's website entitled 'Find a solicitor'.

Mr Fusfield told Mr Stanley the following day that he was not requesting the information for marketing purposes but in order to publish the information on a searchable database. He said he was President of the 'not-for-profit Internet Bar Association' and that its target audience was other lawyers. He also asked Mr Stanley for a link to the Law Society's 'data policy'.

Mr Stanley replied with a copy of the Society's Data Protection Policy. He told Mr Fusfield that the Society did not publish its database of solicitors except in the Directory of Solicitors and Barristers, for which there was a charge.

Mr Fusfield responded by saying he was requesting 'public domain information exempt from the Data Protection Act', and that he wanted what was available on the 'Find a Solicitor' website and in the Directory of Solicitors and Barristers, but that he wanted it in electronic form.

Ms Jane Langan, of the Solicitors Regulation Authority, having been alerted to his request by Mr Stanley, emailed Mr Fusfield to say that the SRA did not have 'an electronic database available to the public or professions' that held all the information in the public domain regarding solicitors in England and Wales. Mr Fusfield replied to her saying that he wanted the database 'as resource to be provided to the global legal community'. He said he was curious to know whether other publishers had been provided with this database. He also said he wanted his request treated as a freedom of information (Fol) request.

On 8 October Mr Stanley emailed Mr Fusfield to say that the Law Society was not subject to the Freedom of Information Act but had adopted its own Fol Code, and he directed him to it on the Society's website. Mr Stanley promised a substantive reply to his Fol request within twenty working days. On 29 October he emailed Mr Fusfield again with that response. It said the Society's database (known as REGIS) contained a great deal of information on solicitors other than that which was in the public domain. Mr Stanley said there was no database made up exclusively of data in the public domain,

and that extracting the information Mr Fusfield had asked for would be extremely time-consuming and costly, as well as technically challenging. He said that the cost would far exceed the maximum of £450 set by the Government's Fol Fees Regulations, and that he could not therefore provide the database Mr Fusfield wanted.

Mr Fusfield responded by saying that he was requesting only 'public record information' which was already available on the Society's website. He asked what expense there would be in reproducing it.

In reply, Mr Stanley told him that the information was not held on any one database. The 'Find a Solicitor' internet search facility interrogated the REGIS database, and to extract from it the information Mr Fusfield wanted would be costly and time-consuming, even if it were possible.

Mr Fusfield replied by asking whether there was not already a software programme to extract the information when a member of the public used the 'Find a Solicitor' search function.

On 2 November Mr Stanley told Mr Fusfield that the 'Find a Solicitor' search facility interrogated the REGIS database to find information on particular solicitors or firms, and that that was very different from extracting and publishing all the public data. Mr Stanley added that the Society had no obligation to publish it.

In response, Mr Fusfield modified his request, asking for 'only the public record data that appears on the 'Find a Solicitor' search facility'. He believed that the cost of reproducing this would be negligible.

On 4 November Mr Stanley replied saying that he had been informed by the Society's IT department that the information Mr Fusfield had asked for would take at least five days to compile, and that the Law Society was charged £500 per day by its IT service provider. He repeated that the total cost would exceed the £450 limit for Fol requests.

In response, Mr Fusfield asked how the Society's IT Department had calculated its charges, which he said showed a great disparity with those of the US Bar Associations. He lodged a request 'under the Freedom of Information law' for all documents related to how the IT department had made its calculations regarding his modified request of 2 November.

Eight days later, on 12 November, Mr Fusfield wrote again to say that he had become even more perplexed by Mr Stanley's claim that the Law Society was charged £500 per day by its IT provider when the Fol Act to which Mr Stanley had referred him had made reference to a rate of £25. Mr Fusfield said he found it curious, when the Act set a ceiling of £450 (as the cost a public authority might reasonably bear in responding to an

Fol request) that the Law Society's IT provider charged £500 per day. Mr Fusfield also asked what the Society's appeal procedures were.

The next day Mr Stanley confirmed that the Society's IT department believed it would take at least five days to provide the information Mr Fusfield wanted, and that this work would need to be done by its IT service provider who charged £500 per day. He referred Mr Fusfield to section 17 of the Code if he wanted to ask for adjudication.

On 13 November Mr Fusfield asked for adjudication. He repeated that the information he wanted was 'public record data' and that it already appeared both on the 'Find a Solicitor' website and as a printed publication from the Law Society. He said he merely wanted that information in electronic form, in which he said it already existed. He also asserted that the public interest required the information to be provided.

On 16 November I asked the Law Society to make a submission in support of its decision, and I invited Mr Fusfield to make a submission if he wished to do so.

3 Submission by the Law Society

In its submission the Law Society said the information requested by Mr Fusfield was already available to the public via the 'Find a Solicitor' search facility on the Society's website. Mr Fusfield, however, was asking for an extract from the Law Society's database so that he would have all the publicly available information without having to search via 'Find a Solicitor.'

The Law Society said its IT department believed it would involve at least five days work by Logica (the Society's IT Service Providers) to extract this data from the database. The database held much more information than was publicly available, such as the training and disciplinary records of solicitors and their home addresses. The Law Society said it was charged at the rate of £500 a day for work such as this which was outside the scope of the contractual arrangements it had with Logica. This would mean that the cost to the Law Society of providing the data extract to Mr Fusfield would be in excess of £2500. The appropriate limit set out in the Government's Fees regulations was £450, and the Society said it had explained this to Mr Fusfield on 29 October and again on 4 November.

The Society said that, although it had relied on the Fees Regulations in turning down this request, there were two other reasons why it believed it did not have to make available the information requested. The first was that it was already available via the 'Find a Solicitor' facility, albeit not in the format requested. Section 14.1 of the Code therefore applied. The second was that providing a data extract in the format requested could have a harmful effect on the Society's commercial interests. If this information was released in the format requested it could be exploited for commercial gain with the

Society having no control over such exploitation. For this reason the Society also believed that section 14.9 of the Code applied.

On 23 November I emailed Mr Fusfield to tell him of the Society's references to s.14.1 and s.14.9 so that he could address those issues, if he wished, in any submission he wanted to make.

4 Submission by Gary Fusfield

In response, on 25 November, Mr Fusfield commented that the Law Society's position appeared to be shifting and looked inherently contradictory. First, they had claimed that he was not entitled to the electronic data. Then they had admitted that he would be entitled to the electronic data but for what he called their ambiguous calculation of the expenses involved in producing it. Mr Fusfield said that the Law Society had effectively ignored his separate request for the details of how they had made their calculation. He wondered what they were hiding.

Mr Fusfield said he had pointed out that State Bar Associations in the United States provided similar information about their members in electronic format for a nominal fee.

Now, said Mr Fusfield, the Law Society had conjured up a new argument about their commercial interests. He said any purported harm to the Society's commercial interests was far exceeded by the public harm caused by the Society's 'egregious conduct'.

5 Adjudication

Unusually, this dispute is not about whether the Society should release information or keep it confidential. The information is already available to the public, either by searching on the Law Society's website or by consulting the Directory of Solicitors and Barristers. The dispute is about whether it should be released in a particular electronic format for Mr Fusfield to make use of as a database for users of his own websites, namely <http://lawyers.org>, <http://lawyers.net>, and <http://uk.lawyers.org>

The Society has three reasons for refusing to give him what he wants. The first, and the reason the Society advanced to him, is that it would cost too much to extract it from the larger database in which it currently sits. The second is that the information is already available to Mr Fusfield, though not in the form he wants. The third is that, to release the information in database form could prejudice the Society's commercial interests. I will address each argument in turn.

5.1 The cost

The Society says its Information Technology department believes that abstracting the 'public' information from the existing database, which includes much material properly held in confidence, would be a lengthy task taking several days. The Society also says that its IT provider – a private company – would charge £500 a day to do the work, which would apparently not be covered by the terms of the contract that exists between them. Mr Fusfield expresses incredulity at both the time involved in doing the work and the cost charged to the Society per day. He says that most American bar associations charge less than \$50 for a similar service.

I am not qualified to judge the time that would be involved in abstracting the information but I do note that it would be a sensitive task, since the database currently also holds information which it would be inappropriate to release. The fee of £500 per day for the provision of technical professional services does not seem disproportionate.

I cannot vouch for whether the cost of this work would be £500 or, as the Society suggests, as much as £2500, but it does seem entirely plausible that it would exceed the ceiling of £450 which the Fees Regulations currently set for public authorities subject to the Fol Act, and which the Law Society mirrors through its adherence to the Code.

On these grounds I find for the Society in its refusal to provide the information.

5.2 The availability of the information elsewhere

Section 14.1 of the Code says that the Society can withhold information if the person requesting it can reasonably be expected to find it by other means, for instance in a publication or library.

Nothing in the Code requires information to be presented in the form chosen by the person requesting it, though I would expect the Society to oblige unless to do so raises significant difficulties. The Code says that if the Society holds the information electronically it will be emailed to the requestor, unless he or she asks for it to be printed. In this case, the Society has emailed to Mr Fusfield not the information itself but a link to the website on which the information can be freely obtained, albeit by use of a search engine.

Of course, Mr Fusfield requested the database, not the information which is held in the database. But in my view freedom of information must be held to apply to the contents, not the wrapping, whether the wrapping is in physical form or in computer code.

The information is available through the Law Society's 'Find a Solicitor' service, enabling anyone with access to the internet to find a solicitor, or a firm of solicitors, by entering the firm's name, or its postcode, or its location. It is possible to refine that search by stipulating one or more specific areas of law, or the languages spoken by the firm, or

6138which legal schemes the solicitors may be accredited to, or a combination of all of these factors. In other words, it appears to me to be a sophisticated and effective searchable database.

I have no reason to doubt that Mr Fusfield wishes to establish a searchable international database of lawyers, and that such a database might well have public value. But I cannot see such a strong public interest as to require the Law Society to provide information in a particular form of Mr Fusfield's choosing so that he can make available through his own website what it is already publicly available through the Law Society's website. Mr Fusfield could, presumably, include a link on his website to the Society's 'Find a Solicitor' search engine in order to make the information contained therein more widely available. At the time of writing, the link to the 'Law Society' under the UK section of the Internet Bar Association's website takes users to an organisation in British Columbia.

The availability of the same information in printed form through the Directory of Solicitors and Barristers further reinforces the fact that it is already available in the public domain, and if Mr Fusfield wants to configure it into a database he can presumably do so.

On all these grounds, too, I find for the Law Society.

5.3 Commercial prejudice

Section 14.9 says that information may be withheld if disclosing it could harm the Law Society's commercial interests

Although there appear to be many commercial advertisements on Mr Fusfield's websites I have no reason to doubt his stated intention not to exploit the disputed information for profit. But in principle I can see that a database containing the depth of information concerned in this case might be commercially exploitable.

On these grounds, too, I find for the Society.

Richard Ayre

Freedom of Information Adjudicator

6 December 2009