

Adjudication in a matter raised by Mr QA

Law Society Freedom of Information Code

February 2012

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1. The issue

Whether the Law Society acted appropriately and in accordance with its Freedom of Information Code in refusing to disclose to Mr QA information about the training of a solicitor about whom he had lodged a complaint.

2. The background

This case arises from what Mr QA says was a fraudulent claim made against him by a solicitor and the subsequent costs awarded against Mr QA. He believes that the solicitor [known here as Mr R] had not at that time completed his training, was not supervised, and was acting outside the terms of his training contract. Mr QA wants to know the circumstances which led the Law Society to issue Mr R with his practising certificate.

On 30 January Mr QA wrote to the Law Society's Information Compliance Manager, Mr Bob Stanley. He said that, for about a year, the Solicitors Regulation Authority (SRA) had been investigating a complaint he had lodged against Mr R. He said he had information suggesting that Mr R had been dismissed from a firm of solicitors [referred to here as H & Co] in November 2010 and that Mr R completed the five months that had been missing on his training contract before being issued with a practising certificate in July 2011. However, Mr QA said that he had emails showing that Mr R had been employed in a media company in April and May 2011, representing himself as a lawyer on the firm's letterhead, so Mr QA could not see how Mr R could have legitimately completed his training in the time available.

Mr QA said that he was extremely surprised that the SRA had closed its file without supplying him with evidence that would refute his original complaint, namely that Mr R had submitted requests for costs to the Court without due authority.

In reply, the Law Society asked Mr QA to be specific about what information he was requesting. Mr QA's response was to ask where Mr R had completed his articles and between what dates. He also asked the Law Society to confirm that it had checked with Mr R's employers as to his start date and asked whether the Society had any evidence from the Department for Employment, HMRC or the NHS that would confirm when Mr R began working for a new firm of solicitors.

On 31 January Mr Stanley emailed Mr QA confirming that Mr R had been an employee at a named media company from 7 July 2011 to the present time. Mr Stanley said that this was the only firm at which Mr R had practised since his admission, and that he had been admitted to the roll on 1 July 2011 and held a current practising certificate.

Mr Stanley said that information on where Mr R completed his training contract was personal data about Mr R and was therefore exempt from disclosure under the provisions of the Data Protection Act 1998. He told Mr QA that, under Section 16 of the Society's Freedom of Information Code ("the Code"), the Society could not disclose personal information about someone else. He referred to emails from the SRA to Mr QA to this effect over the previous few days.

Explaining why he had been able to provide some information about Mr R but not all that Mr QA had requested, Mr Stanley said that the employment history of solicitors after they were admitted to the roll was a matter of public record, but information prior to admission was not in the public domain and since it was personal data about the individual it was exempt from disclosure.

On 2 February the Society informed Mr QA of his right, under the Code, to seek adjudication. Mr QA replied, saying he had forwarded an email from Mr R which clearly indicated that Mr R was already working for the media company in May and probably earlier, so he could not have completed his training after he was sacked from his training contract the previous November. Mr QA said that, since fraud was involved, he required proof that Mr R had been eligible to be awarded a practising certificate on 1st July 2011. Mr QA stated that it was a criminal offence for someone to pretend to be a solicitor and he believed this extended to trainee solicitors who were not being actively supervised.

Mr QA said that it was in the public interest for him to receive this information, which he said was incriminating only if Law Society regulations had been broken. He therefore asked the Society to escalate the matter (to the adjudicator).

On 2 February the Society referred the matter to me, providing copies of the email correspondence it had had with Mr QA on this matter. At my request, the Society also provided the emails from the SRA to Mr QA which Mr Stanley had referred to when declining to provide him with some of the information.

3. Submission by Mr QA

On 4 February Mr QA made his submission. He said he found it difficult to see how his requests for information could affect the Law Society adversely. He believed it was in the public interest for the Society to prove that it had properly awarded a practising certificate to a trainee. He said he had information supplied by the SRA that Mr R had been dismissed by H&Co five months short of completing his contract. If Mr R had not completed his articles, Mr QA wondered why the Society had awarded him a certificate.

Mr QA said that he had a judgement against him for the wrong amount and with costs added that Mr R had not been entitled to submit, and Mr R's firm at the time had denied all knowledge of the case. Mr QA said that, notwithstanding his complaint to the SRA, the Law Society had chosen to award Mr R a practising certificate, and Mr QA wanted to know in what circumstances they had done so. He said he was not aware of any exceptions being made with regard to completion of articles and in his view it would be wrong for the Society to have issued a certificate merely to protect a trainee from prosecution for exceeding the terms of his training contract.

He believed that Mr Stanley's assertion that Mr R had begun work at his present company a week after the issue of his certificate was not true. Mr QA said he had information that Mr R was working for the media company in mid-May and perhaps in early April.

He said there was absolutely no point in a member of the public submitting a complaint of this kind if the SRA had made no substantive effort to investigate it. He noted that a previous caseworker at the SRA had been removed from his case which, he implied, might have been because of her sympathetic handling of it. He had subsequently been told by another caseworker that the case was closed.

Finally, in what may have been a reference to the Society's reliance upon the Data Protection Act to explain its withholding of the information, Mr QA said that hiding behind legislation was not ultimately going to assist the Society in maintaining an image of fairness and impartiality.

4. Further developments

On 3 February, in providing various emails that I had requested, the Law Society informed me that Mr QA's complaint against Mr R had now been referred to the SRA's Supervision Unit. I noted that this

appeared to contradict the assertions made in the SRA's emails to Mr QA in late January that the file on his complaint had been closed. I asked the Law Society to explain this apparent contradiction.

On 8 February the Society replied that "there seemed to have been some confusion within the SRA as to whether or not this file has been closed". The Society said that, since telling Mr QA repeatedly in late January that the file had been closed, the SRA had taken the decision to refer the matter to the Supervision Unit for a decision on whether to pursue the issues further. The Society said the SRA had not yet told Mr QA of this development but they were content for him to be made aware of it as part of the process of the exchange of information enabling this adjudication.

Accordingly, on 9 February I acquainted Mr QA with this information to ask him if he wished to continue with the adjudication process or to put it on hold pending a decision by the Supervision Unit. Mr QA replied that he had submitted further evidence about Mr R's employment with the media company and also evidence that Mr R claimed to have served his articles from October 2009 until May 2011 at a different firm of solicitors from H&Co. Mr QA added that some of the information the Society had refused to reveal was in the public domain because Mr R had chosen to put details of his training on the *LinkedIn* website

5. Submission by The Law Society

On 14 February the Society made its submission. It repeated the reasoning it had already given to Mr QA when it declined to give him some of the information he had requested: information about trainee solicitors was personal data and therefore exempt from disclosure under Section 16 of the Code. The Society repeated its reasoning that information on trainee solicitors prior to admission was "not in the public domain" and that it was only once an individual was admitted to the roll of solicitors that details of his or her employment were deemed to be a matter of public record. To disclose the information requested would be equivalent to publishing it and would be a breach of Mr R's rights under the Data Protection Act.

6. Further enquiries

On 18 February, having read the Society's submission, I asked for further clarification about the distinction between what is, or is not, "in the public domain". I noted that the employment record of solicitors admitted to the roll is in the public domain because the Law Society publishes it, whereas the training record is not in the public domain because the Law Society does not publish it. I asked why the same public interest that extends to publishing a solicitor's employment record does not extend to publishing his or her training record.

I said that I found it hard to see a difference between an individual's training record and his or her employment record when it came to what is or is not personal data. I asked what the justification was for publishing the one while withholding the other because of Data Protection Act constraints.

I informed Mr QA that I had posed this question. He responded by saying that he was "somewhat incredulous with regard to what I see is a rather irrelevant investigation that you would have me believe you are pursuing". He said the only points of interest to him were whether Mr R had obtained a practising certificate based on false information about the completion of his training, and why the Society had refused to confirm information about his training which Mr R himself had put in the public domain.

Responding, on 23 February, to my enquiries about the distinction between training information and employment information, the Law Society said it agreed that all the data in question was personal data. The Society said that the distinction between the two was that the Society was obliged by the Solicitors' Act 1974 to make certain information about solicitors on the roll publicly available. Section 3.1 of the Keeping of the Roll Regulations set out the information that must be made available to the public about solicitors on the roll. Information about an individual's training record was personal data that the Society was not obliged to publish whereas the employment details of a solicitor on the roll must be made publicly available.

The Society added that even the information on the roll was strictly about a solicitor's *present* situation: the Society would never reveal where someone had worked in the *past*. In the Society's view there was therefore nothing to instil any expectation on the part of a member of the public that the Society would supply information regarding the past appointments or training of a solicitor.

7. Adjudication

Unlike the other provisions of the Code, Section 16 reflects a statutory duty upon the Law Society. It must not release personal data in response to a Freedom of Information request, and to do so may constitute an offence under the Data Protection Act. I do not agree, therefore, with Mr QA when he accuses the Society of "hiding behind legislation": the unauthorised release of personal data has become a matter of significant public concern and public bodies must ensure that they act within the law.

Mr QA makes what appears to be a reasonable point when he observes that, while the Society claims it cannot release Mr R's training information because it is "not in the public domain", Mr R appears to have made some of it public himself by putting it in his online *Linked-In* entry. However, that does not, in my view, alter the fact that it is personal information and, whereas Mr R is fully entitled to reveal it, the Society is constrained from doing so.

I recognise that there may be a public interest in the training records, and the past and present employment records, of solicitors being made publicly available. However, this is a matter for Parliament to determine, and the current legal requirement for publication is much more limited, as the Society has explained. I am especially surprised at the Society's statement, on 23 February, that it publishes details of solicitors' current employment only and that it would never reveal where a solicitor had worked in the past. I find it hard to understand how employment details published by the profession's regulator can cease to be a matter of public record and revert to being personal data at a later date. However, that is not the issue in this case.

I have made clear in previous adjudications that, in the sole case of the Society's reliance upon Section 16 of the Code, even if he disagrees with the Society's decision, an adjudicator cannot require the Society to release information if it believes that doing so would constitute a breach of the law. In this case that issue does not arise, because **I consider that the Society has properly applied the Code in respect of Mr QA's request.**

Richard Ayre
Freedom of Information Adjudicator
25 February 2012