



The Law Society

Adjudication in a matter raised by Mr TY

Law Society Freedom of Information Code

February 2012

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|----------|---|----------|
| 1 | The issue | 2 |
| 2 | The background | 2 |
| 3 | Submission by Mr TY..... | 4 |
| 4 | Submission by The Law Society..... | 4 |
| 5 | Further submission by Mr TY..... | 5 |
| 6 | Further enquiries..... | 6 |
| 7 | Adjudication | 6 |

1 The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused to provide Mr TY with information he had requested concerning decisions about disciplinary action within the Society and about claims brought against the Society before Employment Tribunals.

2 The background

On 27 December 2011 Mr TY wrote to the Law Society, citing the Freedom of Information Act (“the Act”) and asking for various items of information regarding written threats or grievances raised between 1 January 2010 and 23 December 2011 by employees or former employees concerning Employment Tribunal claims against the Society or its employees or former employees in relation to allegations of unfair or unlawful conduct, including all types of unlawful discrimination. Specifically, he asked:

1. the number of threats to commence proceedings received by the Society
2. the dates of the threats
3. the allegations of unfair or unlawful conduct made
4. whether proceedings were issued
5. if proceedings were issued, the Claim numbers
6. the job(s) applied for
7. the outcome, for example whether compensation was paid
8. all the reasons why the allegations were not challenged in the ET if proceedings were issued
9. if the proceedings were challenged, all the grounds relied on to dispute the proceedings
10. the identities of the Managers and HRD employees involved in the recruitment selection processes which caused the threats of proceedings or issue of proceedings to arise

On 28 December 2011 Mr TY wrote to the Law Society saying that, earlier that year, an Employment Tribunal had upheld claims brought by Ms A [name withheld in this adjudication] that the Society had subjected her to unfair dismissal and disability discrimination. Citing the Act, Mr TY asked a further series of questions:

1. what disciplinary action was taken against each Society employee responsible for the unfair dismissal and or disability discrimination?
2. if no disciplinary action was taken, the reasons why?
3. who made any decision not to take any disciplinary action?
4. whether any training has been given since the hearing to each of the employees concerned in order to prevent them repeating that conduct.

Mr TY also asked for:

5. copies of all training material used in all training given to prevent repetition of that Conduct, and
6. a copy of the relevant Disciplinary Policy which applied at the time of Ms A’s Dismissal.

On 29 December the Society’s Information Compliance Manager, Mr Bob Stanley, wrote to Mr TY to say that while the Law Society was not subject to the Act it had adopted its own voluntary Freedom of Information Code (“the Code”) and he referred Mr TY to it.

On 20 and 23 January Mr Stanley sent him the Society’s considered responses. In respect of the first request the Society answered Mr TY’s ten questions as follows:

1. The Law Society does not hold this information.
2. Please refer to point 1 above.
3. Please find attached a spreadsheet containing the number of formal grievances from 1 January 2010 to 23 December 2011 for the Law Society Group and the diversity demographics. Please note that the Law Society Group, inclusive of the SRA publish on their web pages the number of completed grievances and associated demographics which relates to the previous 3 years. This is the combined total at Law Society Group, inclusive of the SRA. The data is updated on the websites every 6 months. Grievances currently under investigation with an outcome pending are not counted in these figures. As soon as an outcome is reached the grievance details are then included in the reporting tables.
4. Employment Tribunal proceedings lost - 1
Employment Tribunal proceedings settled - 8
Employment Tribunal proceedings withdrawn – 4
Current Employment Tribunal proceedings ongoing - 6
5. The Law Society does not keep any records of Employment Tribunals' Claim numbers, nor is the organisation obliged to keep such Employment Tribunal reference numbers. You may wish to look up individual judgement decisions by Employment Tribunals.
6. I am withholding this information under section 14.1 of the Code which says that we do not need to provide the requested information if you can reasonably be expected to find the information by other means. This information can be accessed by looking up individual judgements by the Employment Tribunal.
7. I am withholding this information under section 14.1 of the Code which says that we do not need to provide the requested information if you can reasonably be expected to find the information by other means. This information can be accessed by looking up individual judgements by the Employment Tribunal.
8. I am withholding this information under section 14.8 of the Code. This section of the Code says that we may withhold information if it consists of advice from the Society's legal advisers relating to court action we are or may be involved in, or other legal issues affecting us, and its release would harm our legal interests.
9. I am withholding this information under section 14.1 of the Code which says that we do not need to provide the requested information if you can reasonably be expected to find the information by other means. This information can be accessed by looking up individual judgements by the Employment Tribunal.
10. I am withholding this information under section 16 of the Code which states that we are not allowed to disclose personal data about third parties. To release personal data would be in breach of the Data Protection Act 1998 ["the DPA"] and accordingly is exempt from disclosure under the Code

In respect of Mr TY's request to know whether any employees on maternity leave during 2011 were aggrieved by any unfair and/or unlawful treatment that they were subjected to by the Law Society, Mr Stanley said that the Law Society Group reports upon formal grievance only. He said that two employees had raised a formal grievance in 2011 having been on or having returned from maternity leave. Both of these matters, said Mr Stanley, were ongoing via the internal grievance procedures and were being reviewed by the Law Society Group. He said that one employee had

raised an employment tribunal (counted in the above statistics) at the same time as referring via the Society's internal grievances procedures which were ongoing.

In respect of the first four questions asked on 28 December Mr Stanley said that the information was being withheld under section 16 of the Code which stated that the Society was not allowed to disclose personal data about third parties. He said that to release personal data would be in breach of the DPA and accordingly such data was exempt from disclosure under the Code.

In response to the fifth item requested by Mr TY, Mr Stanley said "Line Management training on completing consultation with employees is being developed. Group HRD have been trained in redundancy handling and there will be a roll out of further consultation training for 115 people managers in quarter 1 of 2012. These training materials are currently being developed and the organisation will be working closely with job centre advisors to provide support on disability matters in the cases of redundancy."

In respect of the sixth question, Mr Stanley enclosed for Mr TY a copy of the Law Society's Disciplinary Policy.

Mr Stanley also informed Mr TY that, under sections 17 and 18 of the Code, he had the right to have this matter referred to the Law Society's independent Freedom of Information Adjudicator.

Asking for the matters to be referred for adjudication, Mr TY said he had not asked for specific data relating to any specific person and he believed that direct answers could be given in relation to what action had been taken by the Society, for example that a written warning had been given. In respect of the information withheld by the Society on the grounds that Mr TY might reasonably be expected to obtain it from other sources, he said that that would require a personal search to be conducted at Bury St Edmunds – which was unreasonable and a disproportionate requirement since the Society had access to the information.

3 Submission by Mr TY

In a submission on 29 February Mr TY said he wanted to draw the adjudicator's attention to s.14.1 of the Code which says that the Society may withhold information if the requester can reasonably be expected to find the information by other means, such as in a publication or a library. Mr TY said that the relevant Employment Tribunal decisions could not be found in a library and the Society had refused to provide him with the case numbers. He believed that, since the Society had identified the number of Claims, it could easily identify the reference for each Claim. Therefore, Mr TY believed, it could and should either provide copies of each decision or each case reference number.

Regarding disciplinary action, Mr TY believed that the Law Society could state what action had or had not been taken, without identifying any individuals involved.

4 Submission by The Law Society

In its submission on 6 February the Society addressed in turn each of the items of information it had declined to provide to Mr TY, beginning with the requests he had made on 27 December.

Items 6, 7 and 9 had been withheld under section 14.1 of the Code. The Society said that HM Courts and Tribunals Service held this information on their database, to which the Law Society had no access and it could not therefore disclose a schedule of cases in the way that the Courts and Tribunals Service was able to. The Law Society said that the Courts and Tribunals Service had told the Law Society that they deal with postal, email or telephone enquiries as well as personal visits. Mr TY would not, therefore, have to make a personal visit to their offices in Bury St Edmunds to access the information. The Society provided, as part of its submission, a letter from the Courts and

Tribunal Service responding to what the Society said was a similar Freedom of Information request to the ones made by Mr TY.

The Society said that item 8 had been withheld under section 14.8 of the Code. This information consisted of legal advice obtained by The Law Society from external lawyers and was therefore covered by legal professional privilege.

Item 10 had been withheld under section 16 of the Code. The Law Society said that this information clearly related to the individual employees concerned and therefore constituted their personal data under the Data Protection Act. It believed that publication of such data would be an infringement of those employees' rights under the Act.

The Society then turned to those items of information in Mr TY's request of 28 December that had been withheld.

Items 1 to 4 had been withheld under section 16 of the Code. The Society said the information requested fell within this section if, by confirming or denying that the information was held, the Society would be revealing something about individual members of staff. In relation to items 1, 2 and 4 this would be whether or not complaints had been made against them. In relation to item 3, it would be in respect of the individuals' decision whether or not to take disciplinary action against the other employees. The Society said that, to fall within the exception, the disclosure would also have to constitute an unfair or unlawful disclosure of the information under the Data Protection Act, taking into account the consequences of disclosing the information to the particular employees. The Society's view was that to disclose the information in items 1 to 4 would be a breach of the first principle of the Data Protection Act requiring that personal data must be processed fairly. The Society believed that the publication of its employees personal data as requested by Mr TY would be unfair to the employees concerned.

In support of this contention, the Society cited and attached a recent decision notice from the Information Commissioner which it said confirmed that, in the Commissioner's view, employees of a public authority expect that, if complaints are made against them personally, the fact that such complaints had been made would be kept confidential within the authority and would not be released into the public domain.

The Society concluded that the personal information exemption in section 16 of the Code applied to requests 1 to 4 inclusive, so the Society should not disclose the information requested.

Asked whether it believed it would be possible to release the information without any of the individuals being identifiable, the Society said that a very small number of Law Society staff had been involved in the [name] case and it was very likely that Mr TY, as a former employee of the Law Society, would be able to identify the people involved if any of the information requested in points 1-4 was disclosed. The Law Society also submitted that, even if Mr TY was not able to identify the individuals concerned, others would certainly be able to do so if this information was published. That would constitute a breach of the first data protection principle which requires personal data to be processed fairly.

5 Further submission by Mr TY

On 19 February Mr TY responded. He said that he did not want to invade personal privacy but believed that answers could be given in general terms to questions 1,2,4 and 5 of his request of 28 December.

As for accessing the informed he required about Employment Tribunals, Mr TY said he had spoken to HM Courts & Tribunals Servicer at Bury St Edmunds and he had been told they would need the

names of both the claimant and the Respondent if he were to submit his request by post. Therefore, he said, a personal search would be needed which would be onerous and more difficult for him as a person with a physical disability. It would be more practicable for the Law Society to provide copies of the Tribunal decision numbers, because without knowing the case numbers it was impossible for him to access the information. He also pointed out that all the decisions were in the public domain.

In an apparent comment upon the Society's use of a previous decision by the Information Commissioner to support its view that it should not release the names of individuals against whom complaints had been made, Mr TY suggested that the FoI Adjudicator is not bound by decisions of the Commissioner.

6 Further enquiries

Having spoken with the Courts & Tribunals Service and ascertained the precise means by which Mr TY could get copies of Tribunal Judgements I asked the Law Society whether it still wished to rely upon s. 14.1 in refusing to give him some of the information he had asked for.

In response, on 29 February the Law Society provided Mr TY with a list of Employment Tribunal claims filed against the Society in 2010 and 2011. It said that, with this information, Mr TY would be able to apply by post to the Courts & Tribunals Service for the information he wanted.

7 Adjudication

I have no reason to doubt the Society's claim not to hold the information which is the subject of items 1, 2 and 5 of Mr TY's request of 27 December. Items 3 and 4 were supplied by the Society. Item 8 was withheld as being legally privileged, and **I agree with the Law Society's decision**. That left items 6, 7, 9 and 10 to be resolved through this adjudication.

In respect of items 6, 7 and 9 the Society, in belatedly supplying Mr TY with the details he needed of Employment Tribunal claims made against it, has enabled him to readily obtain copies of the Judgements in those cases.

In respect of item 10, and of items 1, 2, 3 and 4 of Mr TY's request dated 28 December, the Society relies upon section 16 of the Code, which says that information must not be released if it is personal data about someone else. Unlike other provisions of the Code (which the Society observes on a voluntary basis) section 16 reflects its legal duty under the Data Protection Act not to release personal data in response to an FoI request. In many recent adjudications I have made clear that I feel unable to adjudicate in respect of cases where the Society relies upon s.16, because I cannot require the Society to release information if by doing so it believes it would commit an offence. **So I can make no finding in relation to these items of information**, though on this occasion I agree with the Law Society that the information concerned would constitute personal data and that, even if Mr TY were not himself able to identify the individuals concerned, others might well be able to do so if the information were to be published, which is what release under the Code amounts to.

While I agree with Mr TY that I am not legally bound by the decisions of the Information Commissioner, I certainly take due note of them, as does the Law Society because it expects at some future point to be covered by the FoI Act. The Commissioner makes it quite clear that, in respect of employees of public authorities, he regards information about complaints as being private and personal to the individual concerned.

Richard Ayre
Freedom of Information Adjudicator
29 February 2012