



The Law Society

Adjudication in a matter raised by Mr TY
Law Society Freedom of Information Code
May 2012



1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code ("the Code") when, on the grounds that it would involve excessive cost, it refused to provide Mr TY with various details of Employment Tribunal claims made against the Society over a period of ten years. Also, whether the Society acted appropriately in accordance with the Code in relation to information it supplied to Mr TY as a consequence of an earlier request which was itself the subject of adjudication.

2. The background

These matters should be read in the context of an earlier adjudication (*29 February 2012*) in which Mr TY asked for details of Employment Tribunal ("ET") claims made against the Society in 2010 and 2011. Having received some of that information Mr TY emailed the Society on 1 March 2012 to ask for similar information stretching back over the previous decade. Asked to clarify what he wanted, Mr TY gave examples of the information he required, namely "names of the parties, case numbers, nature of each claim and the outcomes". Mr TY also claimed that there had been omissions in some of the information supplied by the Society in response to his initial request and to the adjudication on that request. He asked to be given what he said was the missing information.

On 20 March the Law Society replied, saying that its database did not record all ET cases, although it recorded the file names of all jobs the Society had handled over the last 13 years. The Society said that the file name itself did not necessarily indicate whether an ET claim had been involved or whether an ET claim was issued. It said that, for example, the files sometimes started at the grievance stage before an ET claim was threatened or issued, so the file name would not have a reference to an ET claim; also the Society said it sometimes named what it called "really sensitive files" anonymously, for example as "Staff matter no 1 2009".

The Society said that, therefore, Mr TY's request could not be answered without accessing each file and assessing each case to see whether an ET claim had been issued. That, said the Society, would take many hours. It pointed out that the three legal advisers who had handled claims during 2002-9 had all since departed, and so no-one had personal recollection of the cases to speed up the exercise, and it would require capturing and assessing files current staff had had no involvement in, which would require many hours of work.

The Society said that recovering this information would cost more than the appropriate limit of £450 which is set out in Section 3 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

In respect of the information already provided by the Society in response to Mr TY's original request, and to the adjudication dated 29 February on that matter, the Society said it had sent Mr TY a list containing the case numbers and the names of the claimants to ensure that he had sufficient information to be able to make enquiries of the Courts & Tribunals Service. The Society said it was clear that it was not obliged to provide him with any additional information under the Code in relation to that request.

The Society informed Mr TY that, under the Code, he had a right to ask for adjudication. In reply, Mr TY asked for "the e-mail address to challenge your decision" and on 28 March the Society's Information Compliance Manager, Mr Bob Stanley, referred the matter for adjudication.

3. Submission by the Law Society

On 20 April the Law Society made its submission. In respect of Mr TY's request for details of ET cases in the decade prior to 2010, the Society repeated precisely the explanation it had previously given to Mr TY: in essence, that the task of searching all job files to discover whether they had featured ET cases would take staff time in excess of the £450 limit set in relation to requests made under the Fol Act or the Data Protection Act.

In respect of Mr TY's claim that he had not received all the information which should have been disclosed to him following his request for details of ET cases in 2010 and 2011 (which was the subject of the earlier adjudication) the Society said that, in response to that adjudication, it had supplied Mr TY on 29 February with more than sufficient detail of each case to enable him to obtain any additional information direct from HM Courts and Tribunals Service. The Society therefore declined to provide him with further information, citing section 14.1 of the Code, which says that the Society may withhold information if the requestor can reasonably be expected to find it by other means.

4. Submission by Mr TY

On 21 April Mr TY made a submission as to why he believed the Society had not complied with the spirit of or requirements of its Code.

In respect of the Society's decision not to provide him with the details of ET claims lodged over the ten year period prior to 2010 he believed that the estimate of the costs involved in supplying the information was excessive. He believed that, as a public authority, the Society should have this information available in order to monitor its equality and diversity performance as a method of preventing unlawful discrimination.

In respect of what he called the omissions (such as the nature of each Claim) from the information provided by the Society in response to his previous request, Mr TY said that no satisfactory explanation had been given to explain why the information was not supplied, and each piece of information could have been provided within the statutory costing framework.

5. Further enquiries

I visited the Law Society's office on 1 May to assess whether the Law Society had acted reasonably in concluding that it would be too expensive to retrieve the information Mr TY had asked for. I was shown the database for all the Society's Legal Services files.

There are more than seven thousand such files stored on the database. The database appears to be extremely primitive (I was told it is scheduled to be replaced later this year). With the help of an operator I attempted to search to find some of the files that Mr TY had asked for. The search fields are extremely limited:

- it is possible to search by title (which, typically, might be the name of third party), but without knowing the name to search for this does not help identify the information for Mr TY.
- it is possible to search by date, but only by entering a specific day (not a period of time). It seemed to me that it would require 36,500 separate searches to identify all the files held in the system relating to the years 2000-2009. But this would merely produce lists of file names, none of which would necessarily reveal whether an Employment Tribunal claim was involved
- it is possible to search by a range of subjects, one of which is Litigation, but again this reveals only the names of files, without any indication in the title as to whether an ET was involved

I was informed that the Law Society destroys physical files six years after they are closed, but those that remain are stored in box files, each box labelled with a reference number that coincides with the number automatically generated when the file's contents are added to the electronic database. Searching the box files would therefore be no easier than searching for their contents via the database.

6. Adjudication

In respect of Mr TY's new claim – for details of ET cases from 2000 to 2009 inclusive – and on the basis of my own examination of the Law Society's data retrieval systems, I agree that it would take a disproportionate (and frankly incalculable) amount of effort to find the information.

Though the Code does make reference to the fact that the Society may choose, in exceptional circumstances, to charge for providing information, and that any charge would be within the limits set by Government, it is a deficiency of the Code that it makes no clear reference to the statutory limits. Those limits (either £600 or £450 depending upon the nature of the public authority concerned) are frequently relied upon by bodies subject to the FoI Act.

I have considered whether the failure of the Code to make clear that information may be withheld if the cost of providing it exceeds the limits set by Government should negate the Society's ability to rely upon these limits. That would impose upon the Society, which has chosen voluntarily to adhere to the principles of the FoI Act, obligations which go beyond those which the Act itself imposes on public authorities having a statutory duty to do so. That would seem to me to be unfair and irrational. I therefore agree with the Society that the limits provided by Government under the Act may be relied upon by the Society under the Code, though I strongly urge the Society to amend the Code to make this clear.

Accordingly, in respect of Mr TY's claim for details of ET cases from 2000 to 2009 inclusive I find for the Law Society.

For the avoidance of doubt, and without reference to this particular case, it seems to me to follow that section 12.4 of the Act (specifying a "totting-up" procedure whereby related requests from one individual may be subject collectively to the same monetary limits) could also be relied upon by the Society. This too should be made explicit in the Code.

In relation to Mr TY's claim that he has not been supplied with sufficient information arising from his initial request for details of ET cases in 2010 and 2011, I have spoken again to the HM Courts and Tribunals Service and they have confirmed to me that the details already provided by the Law Society should have been sufficient to enable Mr TY to retrieve the information he requires. It seems to me clear that HM Courts and Tribunals Service is to be regarded as a prime source of this information, and that the Law Society has acted in accordance with section 14.1 of the Code in asserting that Mr TY can reasonably be expected to obtain the information from that source, given the details he has already been provided with. **I therefore find for the Law Society.**

Richard Ayre
Freedom of Information Adjudicator
1 May 2012