



The Law Society

Adjudication in a matter raised by Mrs Patricia Waters

**Law Society Freedom of Information Code
September 2008**

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1 The issue

Whether the Society acted appropriately and in accordance with its Freedom of Information Code (“the Code”) in denying Mrs Patricia Waters access to the contents of a file held by the Legal Complaints Service (“LCS”) in connection with a complaint she had lodged against a firm of solicitors.

2 The background

On 26 February 2008 Mrs Waters wrote to the LCS in continuance of correspondence concerning a complaint she had made about a firm of solicitors and which had subsequently been referred to the Legal Services Ombudsman. She asked the LCS for three items of information, the third being “your files which I am given to understand were used by the Ombudsman”.

On 20 March the LCS wrote to Mrs Waters and told her that this aspect of her request had been passed to the Law Society’s Compliance Manager at the time, Ms Fariha Ayyub. On 1 April Ms Ayyub wrote again to say that she was unable to supply the information because it fell within the exception in Section 14.5 of the Code (the section which allows the Society to withhold information “if it is about specific investigations, disciplinary cases or applications arising from our regulatory role”).

Ms Ayyub said that, when applying s.14.5, the Society evaluated whether the public interest favoured disclosing the information, but that the Society’s view was that to publish information about a specific investigation would be detrimental to that investigation. She added that “assuring the confidentiality of the information collected as part of an investigation was a factor in the success of this investigation”.

On 5 April Mrs Waters replied, saying that she did not see how an investigation could be deemed a “success” if the result had been achieved by denying the complainant access to the information on which it was based, and therefore denying her too of the right to respond.

On 26 August the Society’s new Information Compliance Manager, Mr Bob Stanley, wrote to Mrs Waters saying he had referred the matter for adjudication, and he also apologised for the delay in having done so.

On 9 September I asked the Society to give me its submission in defence of its refusal to release the information, and I invited Mrs Waters to make a submission if she wished to do so.

3 Submission by Patricia Waters

Mrs Waters, in a submission on 16 September, referred to Ms Ayyub’s claim that “assuring the confidentiality of the information collected....was a factor in the success of this investigation”. Mrs Waters did not find this credible, particularly because the LCS had stated to her in a letter dated 18 October 2007 that no formal investigation had been conducted.

Mrs Waters said she had asked to see the files because, when she had received the Legal Services Ombudsman's report in February 2008 she had discovered "a version of events which was totally at odds with the truth" and with the evidence that she herself had supplied. She said she had found that her side of the matter was almost totally missing and that documents had been either ignored or misrepresented. She now wanted to know where what she called the errors, distortions and omissions had originated. Mrs Waters thought it appeared that the Ombudsman's office had merely rubber stamped the account submitted by the LCS. She said she had also been told by the LCS that it would not be sending to the Ombudsman two letters she had written on 2 and 16 October 2007 because they had contained "no further evidence".

Mrs Waters concluded by saying that "according to the compliance officer" the entire file should have been sent to the Ombudsman but that, given "all the misrepresentations and mistakes" she found it difficult to accept that this had been the case, and that the matter remained unresolved.

4 Submission by the Law Society

The Society, in its submission on 23 September, said it had concluded that Mrs Waters was requesting information about a specific investigation into a firm, and that section 14.5 of the Code therefore applied, because the files requested were clearly about specific investigations arising from the Society's regulatory role.

The Society said it had also considered the public interest test as the Code requires it to do where the information requested relates to its regulatory activities. In considering the public interest test the Society said it noted that Mrs Waters had requested the entire contents of the files which were sent to the Ombudsman by the LCS on 15 and 22 November 2007 respectively. The Society's conclusion was that the public interest was better served by withholding the information requested by Mrs Waters than by disclosing it. In arriving at this conclusion the Society had taken note of the *Low* adjudication of June 2008 which in turn referred to the *Williams* adjudication in January 2008. The *Low* adjudication had said: "*In the current case Mr. Low's request was for an entire complaints file and was therefore similarly broad. I accept the argument that the balance of public interest in this case too is against disclosure....*"

The Society said that Mrs. Waters' request was also for the entire contents of complaints files and it would not be in the public interest to place the files into the public domain. It cited its submission in the *Low* case: "*The disclosure to the public of complaints files compiled by the Legal Complaints Service in the course of its investigations into complaints made about solicitors would be likely to have the effect of prejudicing future investigations by removing the assurance of confidentiality from those submitting evidence in relation to an investigation.*"

The Society said it also wanted to draw attention to an email from Mrs Waters to Sarah Ivory of the LCS dated 20 July in which Mrs Waters had said: "*I do not feel there is any justification for withholding them [the files] especially since I can hardly be described as just 'a member of the public' in this matter nor, given that the 'investigation' has resolved nothing these last eighteen months, can it ever be deemed a 'success'.*"

The Society said that Mrs Waters seemed to believe that disclosure under the FOI Code would be to her alone, whereas it would in fact be to the public at large. The Society noted that this is a common misconception in relation to disclosure under FOI. Aside from the Society's conclusion in this case that it would not be in the public interest to disclose the files requested, the Society said it also believed that it would not be in Mrs Waters' interest to have the files placed in the public domain.

The Society also referred to comments made by the adjudicator in both the Low and Lumley cases of June 2008: *"I remain concerned that the Society's assertion that all requests are considered on their merits and that the public interest test is applied to the particular circumstances pertaining to each case may seem hard to reconcile with a series of recent cases in which the Society has argued that it is essential for the proper investigation of complaints that the Society is able to assure the confidentiality of those making submissions. I therefore recommend that the Society consider, with a view to publication in a revised version of its Code, the sort of factors or circumstances which might lead it, on applying the public interest test in each individual request for information about a regulatory investigation, to conclude that the public interest might be better served by disclosure. A clear and transparent framework for considering the balance of public interest would help ensure consistency of judgement by the Society and would clarify the test for requestors, enabling them better to frame future requests for information."*

The Society said that it was no longer arguing that it is "essential" for the proper investigation of complaints that it is able to assure the confidentiality of those making submissions in the course of regulatory investigations. The Society's position is rather that the disclosure of entire LCS or SRA files would be *likely* to have the effect of prejudicing future investigations but that each request for such files will be considered on its own merits. The Society confirmed that it was in the process of considering the sort of factors or circumstances which might lead it to conclude that the public interest might be better served by disclosure. The Society said it hoped to publish the outcome of this process by the end of 2008.

5 Adjudication

Given that she feels that neither the LCS nor the Legal Services Ombudsman has given her complaint the consideration it deserves, it must have been particularly irritating for Mrs Waters to be told by Ms Ayyub's in her letter of 1 April that the investigation into her complaint had owed its "success" partly to the confidentiality of the information gathered. Nonetheless, in asking for the contents of the LCS file, Mrs Waters is clearly asking for information about a specific investigation arising from the Society's regulatory role, and that is information covered by s.14.5 of the Code. It remains necessary to apply the public interest test: is the public interest better served by disclosure or non-disclosure in the circumstances of this particular case?

The Society is right to point out that a decision to release information under FOI is a decision to release it, when asked, to the general public. If this file were to be released to Mrs Waters it would be freely available to anyone else who asked to see it too.

The Society also rightly cites previous cases (*Low* and *Williams*, among others) where I have accepted the general proposition that release of entire complaints files might undermine the assurance of confidentiality without which complainants (or those complained against) might not be willing to contribute frankly to an LCS

investigation. I recognise that there may be cases or circumstances where it might nonetheless be in the public interest to comply with such a request (and I await with interest the Society's work to identify such circumstances) but I can see no compelling argument in Mrs Waters' case to outweigh the risk to the integrity of the LCS investigatory process. I therefore find for the Society.

Richard Ayre

Freedom of Information Adjudicator

28 September 2008