



The Law Society

## **Adjudication in a matter raised by Ms Samantha Denham**

Law Society Freedom of Information Code

June 2010

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## **1 The issue**

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code ("the Code") when it refused to give to a solicitor, Samantha Denham, copies of correspondence between the Legal Complaints Service (LCS) and a person who had lodged a complaint about her and her firm.

## **2 The background**

Ms Denham and her firm are the subjects of a complaint to the LCS by a person referred to here as Mr C.

On 18 February 2010, in the course of a detailed letter to the LCS responding to aspects of this complaint, Ms Denham referred to her belief that the complainant had received copies of correspondence between her and the LCS while she had not received copies of all correspondence between the LCS and him. Citing freedom of information, she asked to receive copies of all such information.

On 17 March Ms Denham wrote to the Law Society's Information Compliance manager, Bob Stanley, enclosing a copy of her earlier letter and saying that she was waiting for him to disclose the information she had requested. The following day Mr Stanley replied, advising Ms Denham that she could complete a form to request personal data which the Society held about her, and that she could request any other information under the Code.

On 22 March Ms Denham emailed Mr Stanley to say that she had already made her request under the Code, first in her letter of 18 February to the LCS and then in her letter to him on 17 March. She said she was therefore asking for the third time to receive copies of "all communications and correspondence that have passed between the LCS and (Mr C) as regards the complaint he made against myself and my firm".

In reply, the Law Society promised Ms Denham a substantive answer within twenty working days, and on 13 April Mr Stanley gave the Society's considered response. He said he was withholding the information she had requested, because Section 16 of the Code stated that the Society must not release personal information about someone else, in order to protect other people's privacy. Mr Stanley added that, if she was dissatisfied with his decision, she had the right to ask for adjudication.

On 20 April Ms Denham emailed Mr Stanley to ask for the matter to be referred to the adjudicator. The following day Mr Stanley alerted me to this request and I asked him to send me copies of the Law Society's exchanges with Ms Denham. On 23 April, having received those exchanges, I wrote to the Law Society to ask for a written submission in defence of its decision to deny Ms Denham the information she had asked for, and I wrote to Ms Denham inviting her, if she wished, to make a submission of her own.

### **3 Submission by Samantha Denham**

On 6 May Ms Denham made a submission which included a letter of 29 January from her to the LCS, which she said contained her original request for the information. From that she concluded that the Law Society had failed to acknowledge her request within seven working days and to respond substantively within twenty days, the timescales laid down in the Code.

Ms Denham repeated her question why, if Section 16 of the Code said that the Law Society must not release personal information about someone else, it had felt able to release what she called “all” of her own personal information to Mr C. She suggested that, in doing so, the Law Society had surely also breached the Data Protection Act as well as disadvantaging her status as a client of Mr C’s firm by releasing that information to him without her consent.

Ms Denham added that, as if the release of her personal information to Mr C had not been a serious enough breach, the fact was that incorrect copies of her personal information had been supplied to him and also used to her detriment with another body of the Law Society - the Solicitors Regulation Authority.

Ms Denham suggested that the Law Society should have sought her firm's consent to the release of any information to Mr C. Given that he was a client of the firm, she thought that it should have been entitled to see the personal information held between the Law Society and Mr C when it related to the firm.

### **4 Submission by the Law Society**

After an agreed delay resulting from staff sickness the Law Society made a submission on 2 June. It outlined the sequence of events following Ms Denham’s letter of 18 February to the LCS. The Law Society said it had emailed her on 18 March to ask whether she wanted to make a subject access request under the Data Protection Act for her own personal data or a request under the Society’s FoI Code for other than her own personal data. In its submission the Law Society said it considered that it had been entirely appropriate to give Ms Denham this choice and to explain these matters to her. It said that the information held on complaints files was of its nature almost always personal data about the complainant and, in those cases where the complaint was against an individual solicitor (as opposed to, or in addition to, a firm) personal data about the individual solicitor too. The Law Society noted that, in her letter of 18 February, Ms Denham herself had referred to some of the matters involved in the complaint as containing highly personal and sensitive information.

The Society said that the question of what information it was appropriate for the LCS to disclose as between the parties to a complaint as part of the complaints-investigation process was a separate question to what it was necessary to disclose in response to formal information requests under the Data Protection Act or the Freedom of Information Code.

The Law Society observed that, where complaints file information was requested by one or other of the parties to the complaint itself, it would often be more beneficial to the requester to make a subject access request, since that would usually confer a greater entitlement to access to personal data than a Freedom of Information request would. Freedom of Information entailed publication to the world and was about public transparency. In the Law Society's view the parties to complaints usually wanted access to information for different reasons, sometimes connected with the private and personal interests they had in the complaint. The Society said that it considered that in these circumstances it was good practice and beneficial to the requester to seek to clarify which type of request he or she actually wished to make.

The Law Society's submission pointed out that Ms Denham had responded by email on 22 March, referring to the fact that she had specifically requested the information under Freedom of Information in her original letter of 18 February, and expressing irritation that this was now the third time she had had to make the request. Consequently, Mr Stanley had responded formally on 13 April, refusing to disclose the information because it contained personal information about someone else, and referring Ms Denham to Section 16 of the Code.

In its submission the Law Society said that its refusal to release the information was correct because it contained personal information about someone else and Section 16 specifically said that such information must not be released.

The Society noted that Ms Denham had questioned the fairness of this in the light of her assertion that the LCS had released personal information of hers to Mr C. However, the Society believed that this confused the entitlement to information which a member of the public has pursuant to the Code with the access to information which a party to a complaint has pursuant to the process of investigating complaints fairly and in accordance with due process.

The Society said that Freedom of Information entailed publication to the world and was about public transparency. It was not about the public disclosure of personal information about individuals. According to the Society, once Ms Denham had decided that she wanted to make a Freedom of Information request, good practice had been followed in offering her the choice between making a subject access request under the Data Protection Act and a Freedom of Information request. She had chosen to make a Freedom of Information request.

## **5 Adjudication**

In her submission, Ms Denham says that she first made her request for the information in a letter to the LCS dated 29 January. In fact, the reference to a request for information in that letter was to ask the LCS to "confirm what correspondence/calls have been made between yourselves and (Mr C) to date and supply evidence of the same." In my view that was too vague a request to be regarded as one under the Code for copies of documents. I judge that the first clear request under Fol came in her letter of 18 February to the LCS in which, in a section headed "Freedom of Information" she referred to "correspondence/communications you have had with (Mr C)" and requested copies of all this information. She does not appear to have received an acknowledgement from the Law Society to that request

within the seven working days envisaged by the Code, nor did the eventual substantive response from the Law Society, dated 13 April, fall within the target of twenty working days referred to in the Code. However, I accept that at least some of that delay was as a result of the Law Society's wish to establish whether Ms Denham understood the difference between making an FoI request and making a subject access request under the Data Protection Act for personal information about herself.

Under Freedom of Information principles, information is released to anyone who requests it, unless there is a clear reason under the Code why it should not be released at all. Information cannot be released to one person under FoI but then withheld from someone else who may ask for it. That is one reason why an individual will be refused information about himself or herself under FoI, because once released it would be publicly available to anyone else who asked for it. Similarly, personal information about a third party cannot be released under FoI, because that would breach his or her rights under the Data Protection Act.

It follows that a public authority which is subject to the FoI Act, or a body like the Law Society which volunteers, through its Code, to abide by the principles in the Act, may give information to a person under some circumstances whilst not being able to release it in response to an FoI request. In the current case, the Law Society might well have been able to release to Ms Denham information it held about her if she had chosen to make a subject access request under the Data Protection Act, even if it was not able to release the same information to her (and to anyone else who might ask for it) under FoI. That is why, in my opinion, it was appropriate for the Law Society to seek to establish which type of request Ms Denham wanted to make .

The question of what information the Law Society chooses to disclose to either party in a dispute is a matter for its investigations procedure, and any breach of natural justice is one which would need to be pursued through the Courts.

The Law Society did not choose to argue, in this case, that it should withhold the information Ms Denham had requested because it was part of a specific investigation (an exemption to publication which is allowed by Section 14.5 of the Code). In previous cases where it has done so I have urged the Law Society wherever possible to narrow the scope of the material to be withheld. However, in this case the Law Society has cited Section 16, and it seems clear that the information Ms Denham has requested does contain personal data about someone else – most obviously, the complainant. Although Mr C's identity is already known to her, his name and other matters which appear in the correspondence between him and the LCS are highly likely to be regarded as personal data under the Data Protection Act, and their release is specifically forbidden under both the Code and, for those organisations to which it applies, under the FoI Act.

In cases where the Law Society has cited Section 16 I have felt it necessary to decline to adjudicate. The reason for that is that, even if I were to find against the Society, I cannot compel it to commit what it would judge to be a criminal offence in releasing information in breach of the Data Protection Act. **I must therefore decline to adjudicate in this case, and I repeat my previously stated view that it would assist both the Law Society and complainants if the matters covered in Section 16 were to be excluded from the Adjudicator's remit.**

I do hope, however, that this adjudication helps to clarify why some people who request certain sorts of information from the Law Society might be advised to request it under the Data Protection Act rather than under the Code. I also express the hope that, in relying upon Section 16, the Law Society interprets personal data as narrowly as the law allows.

**Richard Ayre**

Freedom of Information Adjudicator

*5 June 2010*