



The Law Society

Adjudication in a matter raised by HR
Law Society Freedom of Information Code
May 2014



1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it declined to tell an applicant (known here simply as HR) whether it had records of any complaints made against a named solicitor.

2. Background

On 15 April 2014, continuing a previous correspondence with the Society, HR asked six questions. He was dissatisfied with all the answers he received and asked for adjudication. Having considered his request I concluded there was no case for the Society to answer except in relation to one question in which HR had asked: *“Do you have any complaints recorded against [solicitor’s name withheld by adjudicator]?”*

The Society had responded: *“Information about any complaints recorded against [her] as an individual is being withheld under section 16 of the Code. This is because the information constitutes personal data about [her] and therefore it is exempt from disclosure under the provisions of the Data Protection Act 1998. Section 16 of the [Society’s Freedom of Information] Code states that we cannot disclose personal information about someone else”.*

3 Submission by HR

HR said that the reason given for not furnishing the information was flawed. He believed that, should the Society’s reasoning be valid, then to divulge information about complaints made against all members of what he called controlled professions would be unlawful, and this could not be right. HR said he also understood that the Society’s approach contradicted its own website.

On 21 May, in response to an invitation to make a submission in support of his appeal, HR said he did not believe that The Law Society and the Solicitors Regulation Authority had been established lawfully, and that it therefore followed that the procedure for adjudications was fundamentally flawed too, such that the rights of complainants like him had been undermined. He believed that all past adjudications should be considered null and void and that what he called “Court approval” should be sought for the process.

4 Submission by The Law Society

On 22 May the Society made its submission. Referring to HR’s assertion that it could not be right to say that publication of complaints against members of a regulated profession is necessarily unlawful because it might include personal data, the Society said it agreed that such publication was not necessarily unlawful. However, it said that the Society had a legal obligation as a data controller to ensure that it did not infringe the rights of any individual under the Data Protection Act, and the Society took this obligation very seriously.

The Society said that, even in the case where there were no matters recorded against a named solicitor, it believed that this fact would constitute personal data and should not therefore be disclosed.

The Society explained that reports received by the SRA from organisations or members of the public were not necessarily complaints but could fall within one of several categories of report about the alleged conduct of a solicitor or firm. This was why the SRA referred to 'matters' or 'reports' rather than 'complaints'. The Society said that this was distinct from what it called "consumer complaints", namely people complaining about their own solicitors, which were now dealt with by the Legal Ombudsman. The Society said there was a good argument to be made to put the complaints records of firms and individual solicitors into the public domain but not such a convincing case for the disclosure of the number of reports made to the SRA when, in the majority of cases, the SRA sees no reason to follow up reports, which are instead kept on file as part of the SRA's risk based approach to regulation. The Society's view was that it would be a breach of an individual solicitor's data protection rights to publish information on reports received about that solicitor.

The Society said that the SRA had a publication policy which clearly stated that regulatory outcomes relating to both firms and individuals would be published: that policy is available at <http://www.sra.org.uk/consumers/solicitor-check/policy.page>.

The Society said that it was right that regulatory outcomes should be published but it would be unfair for the number of reports made about an individual solicitor to be published.

5 Adjudication

In this case the Society has relied upon the one section of its Freedom of Information Code which it observes not on a voluntary basis but because it reflects a statutory obligation under the Data Protection Act. I explained to HR at the outset that in such cases I have no power to require the Society to publish information if it believes that doing so may constitute an offence under the Act. Nonetheless I am free to express an opinion as to how the Society has interpreted its obligations to protect personal data.

It is clearly not the case that the Data Protection Act denies the public information about people in a regulated profession who have had complaints upheld against them. That is why the Legal Ombudsman is able to publish the outcome of what the Society calls the "consumer complaints" made by clients against their solicitors. It is also why the SRA generally publishes its regulatory decisions against both firms and individual solicitors – decisions to intervene, for instance, or to prosecute before the Solicitors Disciplinary Tribunal. The SDT itself publishes the outcomes of such cases.

In the case of the individual solicitor HR has asked about it seems there have been no such decisions, outcomes or findings. That may indicate that no matters have been brought to the SRA's attention, or that the SRA has judged that no action is required in respect of any such matters, or it may mean that action is still being considered or that information is being kept on file in case further reports are received.

HR alleged in correspondence that the Society's refusal to say whether any complaints had been recorded against the solicitor contradicted what it says on its

website, though he failed to elucidate when asked to provide a submission. I have been unable to find any such contradiction.

The Society points out that in the majority of cases the SRA sees no reason to follow up reports it receives and that they are instead kept on file as part of its “risk based approach to regulation”. I take this to mean that although one complaint of a relatively minor nature would be left on file, the occurrence of a number of such reports about a firm or a solicitor would increase the likelihood of the SRA investigating further.

In the current case, it may be that the individual solicitor HR has asked about has not been the subject of any reports to the SRA. In such a case she might well welcome publication of that fact, but the Society believes that that would itself constitute unfair processing of personal data. If the Society were to release the information in such a case it would indicate that on those occasions where it withheld such information it would be because complaints or reports had indeed been lodged with the SRA.

Ultimately whether or not publication of personal data contravenes the Data Protection Act is a matter of law to be determined by the Courts and not by me. There is clearly a very strong public interest in information about regulatory actions and disciplinary decisions being made public, and that appears in general to happen. I think the public interest in knowing about all complaints or reports lodged about a named individual, irrespective of whether they are justified, is much more debatable. On the one hand a prospective client might well wish to be aware that a particular solicitor has been the subject of many such reports, even though none has resulted in regulatory or disciplinary action. On the other hand, an individual who is the subject of ill-informed or even malicious reports to the SRA about her conduct might suffer unfairly from publication of unsubstantiated allegations none of which results in any regulatory action.

Such information clearly does constitute personal data under the Act and, on balance, I think there is insufficient public interest to override the individual’s expectation that such data should be fairly processed and not disclosed. I therefore find for the Society.

Richard Ayre
Freedom of Information
Adjudicator
26 May 2014