



The Law Society

Adjudication in a matter raised by Paul Hampton

Law Society Freedom of Information Code

November 2010

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supporting
solicitors

1 The Issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused to give to a solicitor, Mr Paul Hampton, copies of correspondence between the Legal Complaints Service (LCS) and two clients who had lodged a complaint about him.

2 The Background

Mr Hampton is the subject of a complaint to the LCS by two people referred to here as Mr K and Mr B. Earlier in 2010, the LCS wrote to both Mr K and Mr Hampton to say that the investigation was being closed because Mr K had not responded to recent correspondence. Subsequently Mr K contacted the LCS citing ill-health as the reason he had not responded earlier, and the LCS considered re-opening its investigation.

On 28 September 2010, in the course of a letter to a senior LCS caseworker questioning whether that was appropriate, Mr Hampton made a formal request to receive “written, as well as [the] record of verbal, exchanges between you, your office, your colleagues and between those persons and [Mr K] and/or [Mr B].”

The LCS passed this request to the Law Society’s Information Compliance Manager, Mr Bob Stanley, who replied to Mr Hampton on 15 October saying that he was withholding the information under section 16 of the Society’s Freedom of Information Code (“the Code”). This says that the Society must not release “details of a personal nature about someone else”. Mr Stanley said that the relevant LCS file was structured in a way that it was apparent it contained specific information capable of amounting to personal data about Mr K as defined in the Data Protection Act 1998. Mr Stanley said that, under the Code, Mr Hampton had the right to have the matter referred to the Adjudicator.

On the same day Mr Hampton asked the Society to reconsider its response. He pointed out that Mr K had been his client and that he had obtained all relevant due diligence information about him, so there was no personal data which was not already known to Mr Hampton. Mr Stanley replied immediately, saying that the Code did not allow the Society to disclose personal data. He said that information disclosed in response to a Freedom of Information (Fol) request was deemed to be [put] in the public domain and not merely disclosed to the applicant, and he believed it would clearly be inappropriate for Mr Ks personal data to be made available in that way.

Mr Hampton asked for the matter to be referred for adjudication and Mr Stanley did so on the same day, providing me with all the relevant exchanges between Mr Hampton and the Society.

On 16 September I invited the Law Society to make a written submission in support of its decision to withhold the information Mr Hampton had requested. I also invited Mr Hampton to make a submission if he wished to do so. I explained to him that, unlike the Code's other provisions, which the Society promises to abide by on a voluntary basis, section 16 reflected a legal obligation, placed upon the Society by the Data Protection Act (DPA), not to release personal data. In this respect the Code mirrored section 40 of the Freedom of Information Act. I pointed out that in previous cases referred to me concerning section 16 of the Code I had taken the view that, irrespective of my judgement of the facts of any particular case, I could not instruct the Society to release information if it believed that to do so would be an offence under the DPA. All I felt able to do was to satisfy myself that the information requested did or did not contain personal data of the sort covered by the DPA and to say so in my adjudication. I also told Mr Hampton I had repeatedly asked the Society to remove section 16 from the remit of the adjudicator, so as to avoid giving those who request information covered by section 16 an unrealistic expectation that it may be released as a result of adjudication.

3 Submission by Paul Hampton

On 28 October Mr Hampton made a submission. He said there were two points he wanted to make. The first was that the personal data concerned was already in the public domain. The complaint of Mr K and Mr B related to litigation in the High Court of New South Wales, the Scottish Court of Session and in the Queen's Bench Division in London. The pleadings filed were in the public domain and could be inspected. Both complainants had filed evidence in both courts. Mr Hampton said that both had featured in what he called some pretty unsavory newspaper publicity both here and in Australia. He felt bound to say that it was pretty rich that they could seek to hide behind the DPA when their personal details had been in the courts and the newspapers.

Secondly, Mr Hampton said that it was normal practice for cases where the personal details remain protected (which, in his submission was not the case here) that the information was published in redacted form.

4 Submission by The Law Society

On 5 November the Law Society made its submission. It repeated that it had told Mr Hampton originally, that the LCS file in which the information was held was structured by reference to the complainants in such a way that it was apparent at the outset of the search that there was specific information capable of amounting to personal data about them on the file. The specific written and verbal correspondence requested by Mr Hampton comprised personal data relating to the complainants. The Society said that it would not be possible to provide redacted copies of the correspondence as this would render the documents meaningless.

The Society added that LCS files were typically structured by reference to the complainant and were therefore likely to form part of a 'relevant filing system' as set out in the Data Protection Act (DPA) when the individual making a request under section 7 was the complainant rather than the subject of the complaint.

5 Further enquiries

On 10 November I attended the offices of the Law Society and inspected the papers filed under the name of Mr K as complainant. The majority of the papers are copies of correspondence from or to Mr Hampton himself, which are not, of course, the subject of his request for disclosure. There are also a number of documents which, though they contain personal data concerning Mr K, have already been disclosed to Mr Hampton with Mr K's agreement.

The remaining documents, the subject of Mr Hampton's request for disclosure, include a number of items of correspondence between the LCS and Mr K. I can confirm that in my opinion they unquestionably include personal data.

6 Adjudication

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

Information released under Fol principles is available to anyone who requests it: it cannot be released to one person under Fol but withheld from someone else who may ask for it. The fact that personal data contained within information might already be known to the person requesting it is irrelevant: personal data cannot be released under Fol because to do so would make it publicly available and risks constituting a breach of the DPA.

Having seen the file of information Mr Hampton requested it seems clear to me that it does contain substantial amounts of personal data about both complainants, some of it being what the DPA defines as "sensitive" personal data. Some or all of this may already be known to Mr Hampton, by virtue of his having acted for them, but it remains the case that personal data cannot be released in response to a Fol request.

Mr Hampton claims that all this information is in the public domain already, through pleadings filed in Court or through newspaper publication. Though that may be true I am unable to verify it.

In all cases where the Law Society has cited Section 16 of the Code I have felt it necessary to decline to adjudicate because, even if I were to find against the Society, I could not compel it to commit what it believed would be an offence in releasing information in breach of the DPA. **I must therefore formally decline to adjudicate in this case. However, it is my opinion that the Society has rightly interpreted its obligations under the DPA in this case by citing section 16 of the Code and withholding the material in question.**

Richard Ayre

Freedom of Information Adjudicator

11 November 2010

Appendix

Separately from this case, but in the light of a whole series of cases recently referred to me of which this has been one, I have asked the Law Society to clarify why it appears to be relying more frequently than before upon section 16 in withholding information in files of the LCS and the SRA (Solicitors Regulation Authority). I am summarising here the Society' reply, in the hope that it may inform future applicants for the release of information.

The Society accepted that, until recently, it had taken the view that LCS complaints files did not constitute a “relevant filing system” as set out in section 1 of the DPA and, on the basis of the Durant judgement (*Durant v Financial Services Authority, CA*, 8 December 2003) were unlikely to contain personal data about a complainant. However, the Society's view had been challenged in a number of cases by the Information Commissioner's Office (ICO) which had submitted that LCS files were likely to contain personal data relating to the complainants.

Guided by the outcome of ICO assessments of several cases and ICO guidance notes on the definition of personal data, the Society now took a different view. Requests from subject solicitors, typically for all correspondence between the LCS and the complainant on a particular matter, tended to be dealt with as FoI requests on the basis that LCS files were unlikely to contain personal data relating to the subject solicitor. The Society explained that a complaint file was structured by reference to the complainant and contained personal information relating to their affairs which have subsequently become the subject of a complaint. Any information about the subject solicitor was likely to relate to his or her handling of the matter in their professional capacity rather than to his or her private life.

The Society repeated that Freedom of information was about public transparency, not about the public disclosure of personal information about individuals. Where information on a complaints file 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 confer a greater entitlement to access to personal data than would an FoI request. The Society said that the ICO considered that much of the information on complaints files falls within the definition of personal data as set out in the DPA. The Society now takes the view that LCS complaints files typically contain personal data relating to the complainant and that it is often more appropriate to rely on section 16 rather than section 14.5 in response to a FoI request from the firm that is the subject of the complaint.

The Society added that information withheld under section 16 may equally be caught by section 14.5 [information about specific investigations], but if it was primarily personal data it should not be disclosed in response to a FoI request. The Society said that information in SRA files was less likely to contain personal data and, if caught by section 14.5 of the Code, its release would be subject to the public interest test. This was because a typical SRA file was structured by reference to a firm of solicitors rather than an individual complainant and was therefore less likely to form part of a “relevant filing system” as set out in the DPA.

Asked what steps would be taken to ensure that only personal data within the meaning of the DPA would be withheld under s.16, the Society said that all requested information was reviewed in each case and the ICO guidance notes (links below) applied in each case. The Society referred to guidance on this available from the ICO website.

- http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/complaintsandinvestigationfiles_howtoapproachthemv1.0.pdf
- http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf
- http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/160408_v1.0_determining_what_is_personal_data_-_quick_reference_guide.pdf

Asked whether the Society would be prepared to redact personal data wherever possible (and to satisfy the adjudicator that it has done so) so that, in cases where the Society had relied solely upon s16, all other information covered by the request might be released, the Society said that it would redact personal data wherever possible but in many cases this was not practicable. Redaction, for example, of the complainant's personal data from an LCS file would leave little or no information to be disclosed to an applicant who is the subject solicitor.