



The Law Society

Adjudication in a matter raised by TA
Law Society Freedom of Information Code
July 2013



1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code (“the Code”) when it refused to provide an applicant, known here as TA, with information concerning the rates of pay of the panel solicitors appointed to act for the Solicitors Regulation Authority (“the SRA”).

2. Background

TA, himself a solicitor, wrote to the Society on 18 June 2013 asking how and on what terms the SRA funded legal cases in which it was the defendant. He said that, as a member of the Roll, he was concerned that funds were not being used efficiently and that the SRA were in effect subsidising a solicitors’ firm by paying them win or lose for work that could properly be tendered out on reduced rates.

On 26 June the Society provided TA with some information which is not the subject of this adjudication. It added that the SRA used two panels of solicitors and that the firms were appointed to the panels after a competitive tender exercise.

That prompted TA to ask “Can you please confirm the rates of pay, per hour paid to the panel solicitors in each area?”

On 1 July the Society replied, saying that it was withholding the information under section 14.9 of the Code. It said that this section allowed the Society not to release information if to disclose it could harm its commercial interests or those of anyone the Society might have a commercial relationship with. The Society told TA of his right, under the Code, to have the decision referred to the adjudicator and, later that day, the Society having provided me with the relevant correspondence between them, I invited each party to let me have a written submission as to why the Society had or had not acted appropriately in accordance with the Code.

3. Submission by TA

On 4 July TA said he had simply asked for information in relation to the amounts payable to solicitors as an hourly rate in respect of cases that had been tendered for in respect of litigation conducted on behalf of the SRA.

TA said that this information would be available to a party involved in litigation, because the summary assessment would disclose it and, as such, he saw no reason why it could be commercially sensitive. In any event, he argued that, as a Solicitor, he felt that the money belonged in effect in part to himself and to other solicitors, so they should be entitled to have the information.

4. Submission by The Law Society

On 18 July the Society made its submission. It said that it was the Society’s strong view that to publish the rates paid to panel solicitors would have a harmful effect on the Society’s commercial interests and the commercial interests of the panel

solicitors themselves. If this information were to be disclosed into the public domain, the Society said, it would prejudice its ability to negotiate future contracts with panel solicitors. It would also be harmful to the interests of those panel solicitors currently engaged by the Society in that there would no longer be a 'level playing field' for future contract negotiations.

The Society therefore believed that section 14.9 of the Code was engaged in this case.

5. Adjudication

What information the Society should make available to its own members, such as TA, is a matter for the Society and its members to determine. Freedom of Information – and the Code which governs its operation for The Law Society – is about what information should be made freely available to anyone who asks for it, no matter who they may be and no matter why they may want to have it. My role is to determine what information may properly be withheld from an applicant, no matter who he or she may be, under the FoI Code.

TA argues that the information about the hourly rates of panel solicitors engaged in litigation on the Society's behalf would be available to a party involved in that litigation. But the release of information under FoI is about what information should or should not be made available to the world at large, and releasing it under FoI constitutes making it available for general publication.

It seems to me that the Society has a duty to its members to secure legal support on the most cost-effective basis commensurate with qualitative standards, and that that will involve competitive tendering and contract negotiations in which the Society's commercial interests are best served by being able to keep the financial terms of those contracts confidential. I also recognise some strength in the Society's argument that disclosing the rates paid to panel solicitors could harm the commercial interests of those solicitors themselves, since it would set a price which competitors might use as a benchmark in future tenders.

In this case I find for the Society in its reliance upon section 14.9 of the Code.

Richard Ayre
Freedom of Information
Adjudicator
21 July 2013