



Legal Services Board
The Rookery
2 Dyott Street
London
WC1A 1DE

www.legalservicesboard.org.uk

FOI request (Ref: 20200608-01)

We write in response to your 6 June 2020 request for information from the Legal Services Board (the "LSB") under the Freedom of Information Act 2000 ("FOIA"). Your request was for the following information:

...regarding the SDT's recent consultation on the supply of documents to non-parties ("the consultation"). Under the Freedom of Information Act 2000. Please send me a copy of :-

1. All correspondence which has passed between the Legal Services Consumer Panel and the LSB on the topic of the consultation.

2. All correspondence which has passed between the LSB and the SDT on the topic of the consultation.

3. All correspondence which has passed between the LSB and the SRA on the topic of the consultation.

4. All correspondence which has passed between the LSB and the Law Society on the topic of the consultation.

5. All correspondence which has passed between the Legal Services Consumer Panel and the SDT on the topic of the consultation.

6. Any internal documents and correspondence generated by the LSB on the topic of the consultation.

7. Known publicising about the consultation as made by the LSB, SDT, SRA, Law Society and LSCP.

I confirm that the LSB:

- 1) does not hold information responsive to questions 1, 3, 4 and 7 of your request
- 2) does hold information responsive to questions 2, 5 and 6 of your request.

I have enclosed the following documents:

Email chain internal to the LSB with subject line 'RE: SDT's Dismissive & Unremarkable Response To Consultation on Disclosure To 3rd Parties';

Email with subject line 'SDT- Consultation response'; and

Email with subject line 'Solicitors Disciplinary Tribunal Consultation'.

The LSB has considered the exemptions in Part II of FOIA in relation to some of the information falling within the scope of your request.

The LSB has concluded that the exemption in s36(2)(b) and (c) is engaged by some of the information responsive to your question 6 – internal emails. This exemption applies if, in the reasonable opinion of the LSB's qualified person, disclosure of the information would or would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation, and would otherwise prejudice the effective conduct of public affairs. As s36 is a qualified exemption, in assessing whether it is in the public interest to disclose this information to you, we considered the following factors.

There is a general public interest in the LSB as the oversight regulator for legal services being accountable for the quality of its decision-making and ensuring that decisions have been made on the basis of sound advice. Transparency in the decision-making process and access to the information upon which decisions have been made can enhance this accountability.

Balanced against this, is the public interest in free and frank discussions on an issue where all the facts are not known, and which relate to an independent tribunal body over which the LSB has certain functions (s36(2)(b)). There is a distinction between these email discussions, when an issue may be emerging, and where warranted further analysis that we take to formal meetings where consideration of issues is more fully developed, and where the balance of the public interest might lie in disclosure. The LSB's ability to discharge its responsibilities effectively relies upon Board members and staff being able to give and receive free and frank advice to inform, and have free and frank discussion for the purposes of, deliberation regarding issues within the LSB's horizon. Releasing certain information in this instance would likely limit similar future discussions and the willingness to provide full and frank information in future.

In terms of s36(2)(c), disclosure of this information would have a chilling effect on advice and ideas being given freely. That loss of frankness and candour would damage the quality of advice and deliberation and will lead to poorer decision making and less fulsome consideration necessary for good decision making. A lack of candour and thus rigour would be prejudicial to the LSB's work, and thus the wider public interest. There is also a likely prejudice to the public interest if discussions in future take place in a way that does not fall within the scope of FOIA. This would damage the effectiveness of FOIA processes. In turn, this is likely to be prejudicial to the LSB's effective discharge of its functions and thus prejudicial to the public interest. Finally, there is value in the LSB having a safe space in which to develop ideas and make decisions. Taking all these matters into consideration, in our view the public interest favours some information being withheld in this instance.

The LSB has further concluded that the exemption in s42 applies to information falling with your question 6 that is subject to legal professional privilege. Having considered the importance of safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, the LSB has concluded that there is no strong public interest in disclosure here to outweigh the strong general public interest inherent in this exemption. No clear, compelling, and specific need for accountability or transparency is present to override the inherent public interest protected by s42.

Finally, the LSB has also concluded that the s40(2) exemption for personal data applies in relation to the personal data of a junior staff member and individuals outside the LSB (i.e. names and email addresses). For reasons of personal privacy, it would be inappropriate for a junior staff member to be identified and exposed to communications from the public at large. In respect of personal data relating to individuals outside the LSB, in this case, our view is that disclosure would contravene the first data protection principle which provides that personal data must be processed lawfully, fairly and in a transparent manner. Section 40(2) is an absolute exemption and the LSB is not obliged to consider whether the public interest favours disclosing the information.

In view of the above, information to which the s36(2), s40(2) and s42 exemptions apply have been redacted or withheld.

If you are dissatisfied with the outcome of your complaint, you may refer the matter to the Information Commissioner for a decision. Please be aware that the Commissioner will be

unlikely to make a decision until you have been through our internal complaints' procedure first. You can write to the Commissioner at:

FOI/EIR Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

The reference for your request, which should be quoted in all correspondence, is: **20200608-01**.

Enclosures

From: Responses <responses@solicitorsdt.com>

Sent: 26 November 2019 16:08

To: [REDACTED]
[REDACTED]
[REDACTED] Steve Brooker

<Steve.Brooker@legalservicesboard.org.uk>; [REDACTED]
[REDACTED]
[REDACTED]

Subject: Solicitors Disciplinary Tribunal Consultation

Dear All

Please find below a link from the Solicitors Disciplinary Tribunal website in respect of a consultation on proposed amendments to its Policy on the Supply of Documents to a Non-Party.

[SDT Consultation](#)

If you have any questions please do not hesitate to get in touch.

Kind Regards

[REDACTED]
Deputy Clerk and Data Protection Officer
Solicitors Disciplinary Tribunal

From: [REDACTED]@legalservicesconsumerpanel.org.uk>

Sent: 10 January 2020 16:06

To: 'Responses' <responses@solicitorsdt.com>

Subject: SDT- Consultation response

Dear Sir/Madam

The Legal Services Consumer Panel welcomes the opportunity to respond to the Solicitors Disciplinary Tribunal's consultation on amendments to the policy on the provision of documents to non-parties. Please find our views on the document enclosed.

Please do not hesitate to get in touch if you have any further questions.

Many thanks

Best regards
[REDACTED]

Consumer Panel Associate | Legal Services Consumer Panel
3rd floor, The Rookery, 2 Dyott Street | London | WC1A 1DE | [REDACTED]

[Website](http://www.legalservicesconsumerpanel.org.uk) www.legalservicesconsumerpanel.org.uk | [Twitter](https://twitter.com/LegalservicesCP) @LegalservicesCP
[LinkedIn](https://www.linkedin.com/company/lscp) www.linkedin.com/company/lscp

From: Steve Brooker <Steve.Brooker@legalservicesboard.org.uk>
Sent: Thursday, May 14, 2020 4:59:03 PM
To: Matthew Hill <Matthew.Hill@legalservicesboard.org.uk>; Holly Perry <Holly.Perry@legalservicesboard.org.uk>
Cc: Toakase Tonga <Toakase.Tonga@legalservicesboard.org.uk>; Chris Nichols <Chris.Nichols@legalservicesboard.org.uk>
Subject: RE: SDT's Dismissive & Unremarkable Response To Consultation on Disclosure To 3rd Parties.

Matthew

We did not respond to the consultation. There is a long-standing convention that we do not respond to consultations issued by organisations which we oversee.

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

Steve

From: Matthew Hill <Matthew.Hill@legalservicesboard.org.uk>
Sent: 14 May 2020 07:08
To: Steve Brooker <Steve.Brooker@legalservicesboard.org.uk>; Holly Perry <Holly.Perry@legalservicesboard.org.uk>
Cc: Toakase Tonga <Toakase.Tonga@legalservicesboard.org.uk>; Chris Nichols <Chris.Nichols@legalservicesboard.org.uk>
Subject: Fw: SDT's Dismissive & Unremarkable Response To Consultation on Disclosure To 3rd Parties.

Steve

Would you be able to offer me a view on Helen's question please?

Holly - please could you advise on Board handling.

Thanks

M

Matthew Hill | Chief Executive | Legal Services Board
3rd Floor | The Rookery | 2 Dyott Street | London | WC1A 1DE

T 020 7271 0057

E matthew.hill@legalservicesboard.org.uk

From: Helen Phillips <Helen.Phillips@legalservicesboard.org.uk>
Sent: 13 May 2020 19:20
To: Matthew Hill <Matthew.Hill@legalservicesboard.org.uk>
Subject: Fwd: SDT's Dismissive & Unremarkable Response To Consultation on Disclosure To 3rd Parties.

He raises some interesting points.

Did we respond to the consultation and/or take a view on the matters in which the SDT were consulting?

H

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: 13 May 2020 at 18:44:36 BST
To: [REDACTED]
Cc: Chair <Chair@legalservicesconsumerpanel.org.uk>, Sarah Chambers <Sarah.Chambers@legalservicesconsumerpanel.org.uk>, [REDACTED]
[REDACTED]
Marina Gibbs <Marina.Gibbs@legalservicesboard.org.uk>, Helen Phillips <Helen.Phillips@legalservicesboard.org.uk>, Michael Smyth <michael.smyth@legalservicesboard.org.uk>, Matthew Hill <Matthew.Hill@legalservicesboard.org.uk>, Chris Nichols <Chris.Nichols@legalservicesboard.org.uk>, Catharine Seddon

<catharine.seddon@legalservicesboard.org.uk>, Catherine Brown
<Catherine.Brown@legalservicesboard.org.uk>, Jemima Coleman
<Jemima.Coleman@legalservicesboard.org.uk>, Steve Brooker
<Steve.Brooker@legalservicesboard.org.uk>, Holly Perry <Holly.Perry@legalservicesboard.org.uk>,
David Eveleigh <David.Eveleigh@legalservicesboard.org.uk>, Ian Hamer
<ian.hamer@legalservicesboard.org.uk>, [REDACTED]

Subject: SDT's Dismissive & Unremarkable Response To Consultation on Disclosure To 3rd Parties.

Dear [REDACTED]

I have just read the SDT's response to the consultation on disclosure of documentation to 3rd parties and have to say I'm extremely disappointed at the lack of attention the SDT has paid to serious concerns raised in responses to the consultation - the SDT has paid little heed to the practicalities facing lay people wishing to make document applications, especially given their limited means and comprehension of the intricacies of open justice.

[SDT Response To Consultation on 3rd Party Disclosure \(click\)](#)

The SDT suggest that they will make granting documentation their default position, but then place an unreasonable onus on applicants to answer a plethora of pedantic questions, such as how granting the application would promote open justice - how completely ridiculous. This is nothing more than a deliberate ploy to obstruct disclosure and dissuade 3rd parties from making applications for disclosure.

From skimming through the SDT response it appears that :-

1. The respondents against whom documents are sought are still permitted to bring an order to oppose an application for disclosure. The respondents would not have appeared before a hearing if they hadn't behaved unethically, negligently, fraudulently or failed to observe SRA principles with sufficient diligence. They do NOT deserve an escape route from being held accountable for their infidelities and betrayal of their clients - it shouldn't matter how important the respondent individual is or how influential the law firm involved - privilege should not come into it. Nobody should be above the law or being subject to "Due process".
2. Applicants could still be subject to legal costs if a respondent defended their position and appointed a barrister for instance. This is not reasonable nor fair. Most applicants would not be aware that they might be subject to legal costs further down the line as a respondent attempted to conceal information that a 3rd party should be entitled to by default under open justice.
3. The SDT believes that a judicial review costing ~£20,000 is a reasonable means to challenge a disclosure refusal. It is scandalous to suggest that it is reasonable to continue with this grossly unacceptable route to challenge an unfair refusal of disclosure. There must be more straight-forward routes to challenge the SDT illicitly refusing to grant disclosure. Perhaps the LSCP could conduct an independent review of the application and whether they deemed that the SDT panel decision was fair for a given case - at least that might prevent the SDT from subverting the disclosure rules.
4. The SDT have ignored requests to remove the imposition of requesting applicants to explain why they think requesting a document will promote the principle of open justice. They are basically asking applicants to write an "Essay" - which is how I described it in my consultation response.
5. The SDT is still presenting a long list of justifications under which an application / disclosure can be denied. These should reasonably be regarded as exceptional reasons, as opposed to justifications, for refusing disclosure. Many of the points listed are completely subjective and

there is too much scope for these justifications to be abused, much like the SDT has abused its position in relation to illicitly dismissing just about every lay application that has been made over the last 4 years. How does the SDT possibly consider that such deplorable bias and refusal to act in the best interests of legal service consumers promotes open justice ? All it achieves is to permit the SRA to subvert justice and for there to be no recourse to justice via any other route.

Through non disclosure to 3rd parties and dismissal of lay applications the SDT is effectively blocking off any route to alternative justice. This route is needed in light of the regulatory system being dysfunctional and failing systemically to :-

- a. Protect legal service consumers against a glut of serious misconduct in the solicitor profession.
- b. Make the appropriate allegation of dishonesty where it patently applies in cases of solicitor contrived fraud.
- c. Protect legal service consumers by intervening against fraud when the SRA is fully aware that fraud or money laundering is taking place.
- d. Deliver justice against unethical dishonest solicitors.
- e. Remove unscrupulous solicitors from the profession in order to prevent further harm to clients and to prevent confidence in the profession from being undermined.
- f. Revisit justice in situations where fraudulent behaviour is proven but the offending solicitors have not been struck off.
- g. Deliver redress in patent cases of unethical and dishonest solicitor behaviour through the SRA resorting to using baseless reasoning such as "The solicitors were not providing a legal service at the time", the SRA knowing full well that any notion of the solicitors providing the legal service agreed with clients was swiftly forgotten as a consequence of the solicitors dishonest and deliberate choice to betray their clients in order to profit from aiding and abetting a fraud.

Apart from deciding not to charge for copies in the new policy and agreeing to finally provide electronic copies at no cost, I cannot see that much has changed at all in the SDT's new policy for disclosing documents to 3rd parties. It leaves me wondering what the purpose of the consultation was if the SDT is unprepared to act positively upon the recommendations and suggestions of those that have real life experience of being cheated by both the SRA and the SDT ? Clearly the SDT does not want to correct this matter.

The SDT, in refusing to react to the recommendations of those that the regulatory and justice system has failed, and is for all intents and purposes acting as an accomplice to the SRA's deliberate malfeasance. I am very much aware of the SRA's malfeasance in the Ecohouse case, but through the SRA's refusal to disclose information under its Transparency Code, the SRA prohibits any possibility of victims of injustice from holding the unscrupulous and immoral regulator to account for its treachery towards them. This is a regulator that purports to act in the public interest, but nothing could be further from the truth.

The new proposed policy from the SDT solves very little. Applicants will find it obstructive and would be put off from making an application because of the unreasonable onus on them to write an essay to explain why it would promote the principle of open justice. The SDT disclosure application form for 3rd parties is more like a short exam paper - I'm surprised there is no mention of the need for applicants to show their workings and quote any relevant test case law or relevant regulatory principles to support their application ! All the lay applicants seek, for goodness sake, is documentary evidence and facts that have been concealed from them in the first place by the SDT respondents or by the SRA itself, the disclosure of which might assist applicants with proving the respondents and / or the SRA negligent, incompetent or malfeasant. It is clear that the SDT would not want to force transparency on the SRA, no matter how immorally the misguided regulator or its

CEO had behaved in cases like Ecohouse.

Virtually nothing has changed as a result of the consultation and under open justice the SDT really ought to be releasing the consultation responses into the public domain so that the public can witness exactly how dysfunctional and dishonest the SRA is and why there has to be a route to hold the SRA to account when it conceals evidence of fraud and dishonesty from tribunal in order to protect unscrupulous solicitors and its superfluous compensation scheme funds.

I would like my response to the SDT consultation to be published in the public domain under open justice and I grant you my express permission to do so. Under the principles of open justice I believe that the SDT should be publishing ALL responses submitted by other respondents - you cannot simply opt to conceal the information from the public. I strongly urge you to publish every consultation response on your website and to also provide each response in electronic form to all respondents, unless consultation respondents specifically opted not to have their responses divulged in public.

I have to say that I think it is farcical how the SDT has handled this consultation, practically ignoring all concerns presented to them over their obstructive policy on disclosing documents to 3rd parties. Unfortunately the policy still represents a significant barrier to open justice through disclosure and a significant risk of applicants being subject to unforeseen costs that simply wouldn't be anticipated for merely requesting a document - that is NOT reasonable nor fair.

In light of my disappointment I have provided a link to my consultation response for the benefit of around 20 legal press outlets that are copied in on this email. I have also copied the LSCP, Law Society, the Shadow Justice Secretary, and blind copied the LSB.

[CAR Response To SDT Consultation On 3rd Party Disclosure \(click\)](#)

It really is time that the SDT and SRA started behaving in an open and transparent manner towards legal service consumers and the public - anything else does not represent a level playing field, especially where battles against large unscrupulous biased regulators like the SRA are concerned.

Yours Sincerely,

[Redacted signature block]