

On Thu, May 31, 2012 at 7:20 PM, Sion Richards <SRichards@jonesday.com> wrote:

Dear Sir

We refer to your email to Daniel Hennis. We confirm that Jones Day acts for ENRC PLC and that we are instructed to write to you. ENRC has made it clear that it does not seek to prevent appropriate investigative reporting and we have made that clear in our communications. It does however object to journalists referring to or printing the content of suspicious activity reports (SARs) which parties in the regulated sector (including solicitors) are obliged by statute to file. For obvious reasons (which we detail below) these reports are strictly confidential in particular so as not to prejudice any investigation which might follow and also to protect the filer. By publishing material derived from a SAR a journalist is not only risking committing an offence under the Proceeds of Crime Act but is also risking potential harm to those obliged to make such reports. If journalists were free to report in such circumstances it could undermine the SAR regime and put filers at risk. ENRC is extremely concerned to note that despite these obvious issues you have chosen to refer to a SAR which you say was filed by a solicitor engaged by ENRC. We therefore ask that you forthwith remove reference to the Report from your article on all sites where it has been published. We do not seek to restrict your other reporting so long as it is legally justified.

Your article published on the website "100r.org" on 29 May 2012 has just come to our attention. In the article you have referred directly to a SAR which you say was filed with the Serious Organised Crime Agency ("SOCA") by Herbert Smith in August 2010 (the "Report"). You have done so despite confirming its highly confidential nature evident not least from the fact that such documents are headed "Restricted" and are filed with SOCA which is the UK Government Agency responsible for dealing with SARs. You have expressly recognised this confidentiality in your article when you referred to the Report as "a confidential British government document" and you state that from ENRC's point of view "the document was intended to be confidential". Despite this, and despite seeming to be in possession of copies of our previous correspondence to other media outlets, you chose to go ahead and publish your article.

As set out above, it will have been obvious to you that SARs are highly confidential documents and that any such Report (or extracts from it) must have been obtained wrongfully. Section 330 of POCA imposes a statutory obligation on parties in the "regulated sector" to file a SAR whenever they have suspicions (for which there is a low threshold) that any other party is engaged in money laundering. Those who are not in the "regulated sector" are not compelled, but are strongly incentivised, to report their suspicions to SOCA in like manner.

The confidentiality of SARs is recognised by the regulatory scheme itself (and we understand from our Washington office that the same is the case in the US). Section 333A of POCA makes it an offence for anyone in the "regulated sector" to tip someone else off about the making of a SAR where this is likely to prejudice any ensuing investigation. You could potentially be aiding or abetting the person who leaked the Report in committing a tipping off offence.

The confidentiality of SARs is set out in numerous government and academic publications, including the Home Office circular (Circular 53/2005) entitled "Money Laundering: The Confidentiality and Sensitivity of SARs and the Identity of those who make them". The circular makes repeated reference to the sensitive and confidential nature of SARs. Also the relationship between a filer of a SAR and SOCA is materially indistinguishable from that of an informant and the police/a criminal enforcement authority which receives the information. It attracts the same protection of public interest immunity, which is clearly established in case law (see *R.v Chief Constable of West Midlands ex parte Wiley* [1995] 1 AC 274 at 286F-G, 290D and 297D; see also *Commissioner of Police for the Metropolis v. Times Newspapers* [2011] EWHC 2705 at para 42, where Judge Tugendhat observed in that case, "The protection of the identity of informants is at least as important, if not more important, for law enforcement agencies... as it is for journalists and other publishers...").

The corollary of this source relationship is that there is a strong public interest in keeping confidential the identity of any SAR filer. This is because it is an important matter of public interest to encourage and protect the reporting of suspicious activities to SOCA pursuant to the POCA SAR regime. In addition,

there is a real risk of prejudice to that public interest if filers to SOCA (or potential filers) fear that their identity may be disclosed and are thereby dissuaded from making SARs or from making them as fully and candidly as possible.

It follows that the Report is highly confidential, indeed is covered by public interest immunity in view of its particular character. By choosing to include in your article references to the existence of the Report and the content of the Report you may, under UK law, have committed a breach of confidence (giving rise to a claim for damages), you are potentially aiding and abetting a criminal offence of "tipping off" under POCA and you are in contravention of the public interest by disclosing the identity of a filer of a SAR (which as set out above is analogous to a police source). No public interest argument has been deployed by you and nor is there any public interest justifying disclosure of the Report, particularly in circumstances where ENRC's solicitors would have been acting entirely properly and in accordance with the dedicated statutory scheme in reporting any suspicions (in relation to which there is a very low threshold) to SOCA.

We therefore request that you immediately remove any reference to the Report from your article and to destroy all copies of the Report. We repeat, ENRC does not take issue with investigative journalism but journalists should not publish or refer to SARs. We have taken the advice of Anthony Peto QC on the above who has confirmed the legal position as regards English Law. We therefore hope that you will respect the public interest in maintaining the confidentiality in SARs and remove that aspect from your article.

Yours faithfully
Jones Day