



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Decision F05-03

**PROVINCIAL HEALTH SERVICES AUTHORITY**

David Loukidelis, Information and Privacy Commissioner  
May 27, 2005

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**Summary:** Respondent requested costs of services performed by a named lawyer in assisting the public body to respond to the respondent's access requests. Requested records are clearly protected by solicitor-client privilege and may be withheld under s. 14, as many orders and court decisions have established. No inquiry to take place.

**Key Words:** solicitor-client privilege—legal bills.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 56.

**Authorities Considered: B.C.:** Order 00-08, [2000] B.C.I.P.C.D. No. 8; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Order 01-03, [2001] B.C.I.P.C.D. No. 3.

## 1.0 INTRODUCTION

[1] This decision deals with the PHSA's request that I decline, under s. 56 of the Act, to proceed with an inquiry under Part 5 of the Act in relation to an access to information request, described further below, that the respondent applicant ("respondent") made to the PHSA under the *Freedom of Information and Protection of Privacy Act* ("Act").

[2] For the reasons given below, I have decided to exercise my discretion, under s. 56 of the Act, not to proceed with an inquiry in this matter.

## 2.0 DISCUSSION

### *The access request*

[3] On December 23, 2004, the respondent made an access request to the PHSA under the Act. The request was for "details of the costs incurred...for work performed" by a named lawyer in assisting with the handling of access requests by the applicant.

[4] The PHSA responded on January 6, 2005 by denying access to information under s. 14 of the Act, on the basis that the responsive records “are legal accounts” between the PHSA and its lawyers. The PHSA said it was exercising its discretion under s. 14 to refuse access to these “solicitor-client communications”.

[5] The respondent requested a review of the PHSA’s response under Part 5 of the Act and this office referred the matter for attempted settlement under s. 55.

[6] On April 5, 2005, the PHSA wrote to this office and asked me to exercise my discretion under s. 56 of the Act by declining to hold an inquiry.

### *Parties’ arguments*

[7] In its s. 56 request, the PHSA said the following:

The PHSA has refused to disclose the requested records on the grounds that they are protected by solicitor/client privilege and are therefore protected from disclosure under Section 14 of the *Act*. The position of the PHSA is well supported in various Orders from the Commissioner and decisions of the Supreme Court of British Columbia and the British Columbia Court of Appeal: *Legal Services Society v. British Columbia (Information & Privacy Commissioner)*, 2003 B.C.C.A. 278; *Legal Services Society v. Province of British Columbia (Information & Privacy Commissioner)*, (September 25, 1996, B.C.S.C.); *Municipal Insurance Association of British Columbia v. Province of British Columbia (Information & Privacy Commissioner)* (October 15, 1996, B.C.S.C.).

It is the position of the PHSA that the records sought by the Applicant in this matter are clearly subject to solicitor/client privilege and are therefore clearly within Section 14 of the *Act*. The PHSA requests that the Commissioner exercise his jurisdiction under Section 56(1) of the *Act* and refuse to proceed to an inquiry in this matter.

[8] In a May 9, 2005 submission, the PHSA took the position that there is nothing unusual in a public body seeking legal advice respecting compliance with the Act, including advice on responding to access requests and representation of the public body in proceedings under the Act. It noted the existence of a “number of legal proceedings” involving the PHSA, one of its constituent institutions, various physicians and employees.

[9] The respondent was given an opportunity to respond to the PHSA’s request. In his May 3, 2005 response, the respondent dealt in some detail with the merits of the PHSA’s s. 14 decision. He argued that, although the work was done by the identified lawyer, that “work is not subject to solicitor client privilege” (p. 4). Referring to Order 00-08<sup>1</sup>, and the principles of solicitor-client privilege discussed there, the respondent argued that the identified lawyer’s “work does not relate to the provision of legal advice” (p. 5). In a similar vein, he argued that the “work does not relate to the seeking, formulating, or giving of legal advice” (p. 5). He did not explain why he takes this view.

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<sup>1</sup> [2000] B.C.I.P.C.D. No. 8.

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***Discussion***

[10] Section 56(1) of the Act reads as follows:

**Inquiry by Commissioner**

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[11] As several previous decisions have indicated, s. 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As I have noted in earlier decisions, there may be a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include the factors expressed in Order 02-57<sup>2</sup> and Order 01-03<sup>3</sup>.

[12] It is evident that the lawyer in question worked on access to information matters for the PHSA, as described above. This work clearly entailed the exercise of legal skill and training and any communications that occurred in that respect would be related to the seeking and giving of legal advice.

[13] The cases cited by the PHSA in the passage quoted above, and many orders issued by this office, establish beyond doubt that, in British Columbia, legal fees billed to a public body are protected by solicitor-client privilege and may therefore be withheld under s. 14 of the Act. I am satisfied on the basis of the material before me that the information in issue is protected under s. 14.

**4.0 CONCLUSION**

[14] In these circumstances, where it is plain and obvious that the requested information is protected by s. 14, I have decided that no inquiry should be held under Part 5 of the Act respecting the applicant's request for access to information. This office's file for the respondent's access request will be closed.

May 27, 2005

**ORIGINAL SIGNED BY**

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia

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<sup>2</sup> [2002] B.C.I.P.C.D. No. 59.

<sup>3</sup> [2001] B.C.I.P.C.D. No. 3.