



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

Decision F05-07

**REGIONAL DISTRICT OF COMOX-STRATHCONA**

David Loukidelis, Acting Information and Privacy Commissioner  
September 26, 2005

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**Summary:** Respondent requested records for all legal costs for conduct of a court case that the RDCS initiated in a land use matter involving a third party. Requested records are clearly protected by solicitor-client privilege, 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*, ss. 14 & 56.

**Authorities Considered: B.C.:** Order 02-57, [2002] B.C.I.P.C.D. No. 59; Order 01-03, [2001] B.C.I.P.C.D. No. 3; Decision F05-03, [2005] B.C.I.P.C.D. No. 21; Order No. 5-1994, [1994] B.C.I.P.C.D. No. 5.

**Cases Considered:** *British Columbia v. British Columbia (Information and Privacy Commissioner)*, [1996] B.C.J. No. 2534.

## 1.0 INTRODUCTION

[1] This decision deals with a request by the Regional District of Comox-Strathcona (“RDCS”) 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 access applicant (“respondent”) made to the RDCS 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*

[5] The respondent made an access request to the RDCS under the Act. The request asked for all financial records respecting a specific court case, adding “How much did it cost to pursue this case?”

[4] The RDCS responded by denying access to the information under s. 14 of the Act. The RDCS’s response said the following:

I am advised that these items are the subject of current ongoing legal action. As such, these records are subject to solicitor client privilege. For this reason, the Regional District has decided to withhold access to these records under s. 14 of the Act (copy attached for your information).

[5] The respondent requested a review of the RDCS’s response and this Office referred the matter for attempted settlement under s. 55.

[6] On August 12, 2005, the RDCS wrote to this Office and asked me to exercise my discretion under s. 56 of the Act by declining to hold an inquiry.

### *The parties’ arguments*

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

At this time, we would like to request that the Information and Privacy Commissioner not hold an inquiry under section 56 of the *Freedom of Information and Protection of Privacy Act*. This request to not hold an inquiry is based on the fact that the information requested by the applicant is subject to solicitor client privilege and is protected by section 14 of the FOIPPA.

Numerous cases support our request to withhold information that is subject to solicitor client privilege. This information can include legal fees. Cases supporting our claim are from the Supreme Court (*Municipal Insurance Association of British Columbia v. Province of British Columbia (Information & Privacy Commissioner)* (October 15, 1996, B.C.S.C.)), the BC Court of Appeals (*Legal Services Society v. British Columbia (Information & Privacy Commissioner)*, 2003 B.C.C.A. 278), and from the Office of the Information and Privacy Coordinator [*sic*].

In summary, we agree and strongly support the fundamentals and intention of the *Freedom of Information and Protection of Privacy Act* to make public bodies more accountable and give the public a right of access to records. That being said, we also note the importance of upholding the sanctity of solicitor client privilege. Section 14 of the Act also supports this notion and we request the Commissioner to exercise his authority under section 56 of the Act and not hold an inquiry.

[8] In a September 12, 2005 submission, the RDCS said the following:

... All of the records being withheld in this instance are invoices from Regional District solicitors. The Supreme Court of BC, the BC Court of Appeals, and the Office of the Information and Privacy Commissioner have all agreed that legal fees and records regarding legal fees between solicitors and their clients fall within the parameters of section 14.

[9] In an August 30, 2005 submission, the respondent said this:

The Regional District of Comox-Strathcona should be held to account to the taxpayers for the gross expenditure in this case. A case that had no merit.

...

The case precedents that the RD is using to support their claim have no merit here. This case is different, very different. This case is not about criminal law as the case president [*sic*] suggests. To my knowledge, the taxpayers did not instruct the Regional District to proceed with litigation via referendum or otherwise. They acted on behalf of themselves.... Who do these people answer to? I'm told that they answer to me, the taxpayer, however I find myself writing your office for the information that should be readily available as I'm paying for it.

### ***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,<sup>1</sup> 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] The court decisions cited by the RDCS, 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. The decisions referred to in the RDCS's materials in this proceeding make it very clear that even the total amount billed by a lawyer is protected by solicitor-client privilege.<sup>4</sup> Those decisions are not irrelevant, as the respondent suggests. They clearly control the outcome here.

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<sup>1</sup> Decision F05-03, [2005] B.C.I.P.C.D. No. 21.

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

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

<sup>4</sup> *British Columbia v. British Columbia (Information and Privacy Commissioner)*, [1996] B.C.J. No. 2534.

[13] The RDCS's response to the respondent's access request seemed to suggest that denial of access was based on the fact that litigation was still under way at the time. The RDCS's s. 56 request and submission in this proceeding, however, make it clear that the RDCS is relying on legal professional privilege, not litigation privilege, to protect the fees-related confidential communications between lawyer and client.

[14] The material before me, which includes copies of the disputed records, establishes that the records consist of accounts for legal services rendered to the RDCS in the court case that the respondent mentions. I am satisfied that these records are, on their face and in light of the other material before me, protected by solicitor-client privilege and thus by s. 14 of the Act.

[15] I am satisfied from the content and tenor of the RDCS's submissions that it has decided not to exercise its discretion under s. 14 and waive privilege by disclosing the requested information.<sup>5</sup> There is, accordingly, no point in proceeding with an inquiry on that issue. It should be remembered, however, that the head of a public body must, under discretionary exceptions such as s. 14, actually consider and exercise the discretion to waive or not waive the exception's protection.<sup>6</sup>

#### 4.0 CONCLUSION

[16] As was the case in Decision F05-03, which also involved accounts for legal services, it is plain and obvious that the requested information is protected by s. 14. I have therefore 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.

[17] I will close with a passing observation related to the respondent's frustration at not being able to find out how much the RDCS-initiated lawsuit cost taxpayers. As it is entitled to do, the RDCS has chosen to assert its privilege and refuse to disclose how much the lawsuit cost, referring in doing so to "the importance of upholding the sanctity of solicitor client privilege". Yet, as the client, the RDCS had—and still has—the full authority and discretion, regardless of my decision here, to waive the privilege and disclose information to the public. The litigation is over and there is no basis in the material at hand to suppose that disclosure of at least the total cost of the lawsuit would harm the RDCS's interests. The RDCS does not have to show harm to its interests before it can stand on principle, but disclosure would certainly be consistent with the Act's goal of accountability to the public, as stated in s. 2(1).

September 26, 2005

#### ORIGINAL SIGNED BY

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David Loukidelis  
Acting Information and Privacy Commissioner  
for British Columbia

OIPC File No. F05-25208

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<sup>5</sup> Although this is not addressed explicitly in Decision F05-03, the public body's position in that case was to the same effect as this.

<sup>6</sup> See, for example, Order No. 5-1994, [1994] B.C.I.P.C.D. No. 5.