



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

Decision F06-02

PROVINCIAL HEALTH SERVICES AUTHORITY

Celia Francis, Adjudicator
January 30, 2006

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Summary: Respondent requested costs the PHSA incurred for work performed by a named individual who conducted a human rights investigation involving the respondent. Record in dispute, a “legal account”, is 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.: Decision F05-03, [2005] B.C.I.P.C.D. No. 21; Order F05-10, [2005] B.C.I.P.C.D. No. 11; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-01, [2002] B.C.I.P.C.D. No. 1; Order 00-07, [2000] B.C.I.P.C.D. No. 7.

1.0 INTRODUCTION

[1] This decision stems from a request by the Provincial Health Services Authority (“PHSA”) that I decline, under s. 56 of the *Freedom of Information and Protection of Privacy Act* (“Act”), to hold an inquiry under Part 5 of the Act respecting a request, which I describe below, made by the respondent access applicant (“respondent”).

[2] For reasons which follow, I have decided to exercise my discretion not to proceed to an inquiry on this matter.

[3] **2.0 DISCUSSION**

The access request

[3] The respondent sent a request¹ to the PHSA requesting the following:

- details of the costs incurred by the PHSA or the Children's and Women's Health Centre for work performed by [a named individual] in regards to the harassment investigation that I was the subject of and abused in. I also request details of cost incurred by the PHSA or the Children's and Women's Health Centre for work performed by [the same individual] either prior to the aforementioned and as well after her harassment report was filed.

[4] The PHSA responded by disclosing a number of responsive records, which it described as invoices. It said it was providing all of the records except for one page, "a legal account", which the PHSA said was subject to solicitor client privilege and which it was therefore withholding under s. 14 of the Act.²

[5] The respondent requested a review of the PHSA's decision to deny access to this record, suggesting the PHSA had "suppressed information under the guise of client-solicitor privilege". He also argued that, while the individual's interactions with her legal counsel might be privileged, the amount that the PHSA had paid for those services was not.³

[6] Mediation did not resolve the issue and the respondent asked that this matter proceed to an inquiry under Part 5 of the Act. At that point, the PHSA sent a letter⁴ asking that the Information and Privacy Commissioner exercise his discretion under s. 56 of the Act not to hold an inquiry on this matter.

Parties' Arguments

[7] In its November 2005 letter, the PHSA said that the record in issue

... is a legal account from the files of [the named individual], a Human Rights investigator retained by the PHSA. The legal account is for legal advice provided to [the investigator] in relation to the Human Rights investigation. It is the position of the PHSA that the record is clearly protected from disclosure under section 14 of the *Act* as it constitutes a solicitor-client communication. This issue has been addressed in other OIPC files involving this applicant and the PHSA (Orders F05-10 and F05-03).⁵

¹ See respondent's e-mail of June 8, 2005.

² See PHSA's letter of July 14, 2005.

³ See respondent's letter of July 15, 2005.

⁴ See PHSA's letter of November 21, 2005.

⁵ In referring to "Order F05-03", the PHSA apparently means Decision F05-03, [2005] B.C.I.P.C.D. No. 21, in which the Information and Privacy Commissioner declined to exercise his discretion to proceed to an

[8] The PHSA attached a copy of the record in question to its letter. It is an invoice from a named individual, a “law corporation”, to the investigator.

[9] Much of the respondent’s submission was not relevant to the issue before me. In the portions that deal with the record in dispute, he argues that the investigator and the PHSA are separate entities and that there is no solicitor-client relationship between them. He says, among other things, that there is a conflict of interest if the PHSA is paying for the investigator’s legal counsel, that the investigator has waived privilege in submitting the legal bill to the PHSA for payment, that the investigator and lawyer have not provided affidavit evidence regarding the claim of privilege, that any information related to the investigator’s interaction with her legal counsel relates to the investigation and should be released and that not all information on a client’s interactions with a lawyer is privileged. He also makes remarks about the PHSA’s financial accountability regarding payments to contractors and alleges certain irregularities on the part of lawyers involved in matters between him and the PHSA.⁶

[10] In response, the PHSA reiterates that the record in question is a “single page legal account for legal advice provided to [the investigator] by independent counsel in relation to the Human Rights investigation involving the Applicant”. It says the solicitor-client privilege is between those two and that the PHSA could not waive privilege even if it wanted to. It rejects the respondent’s argument that the investigator has waived privilege in providing a copy of the invoice to the PHSA and points out that its obligations under the *Financial Information Act* to report its expenditures do not require it to report details of those expenditures, particularly those relating to legal accounts. It also says that the amount of the legal account in issue was disclosed to the respondent in another record.⁷

Discussion

[11] 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.

[12] Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As 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 02-57⁸ and Order 01-03.⁹

inquiry respecting “legal accounts”, involving the same applicant and the PHSA. In Order F05-10, [2005] B.C.I.P.C.D. No. 11, I found that s. 14 applied to information that the same applicant had requested from the PHSA.

⁶ See respondent’s letter of December 6, 2005.

⁷ See PHSA’s letter of December 16, 2005.

⁸ [2002] B.C.I.P.C.D. No. 59.

[13] Section 14 of the Act authorizes a public body to refuse to disclose “information that is subject to solicitor-client privilege”. It is well-established that s. 14 incorporates both branches of solicitor-client privilege.¹⁰

[14] The PHSA has accurately described the record in dispute as a legal account. The cases the PHSA cites in the passage set out above and many orders issued by this office establish beyond doubt that, in British Columbia, legal fees are protected by solicitor-client privilege and may therefore be withheld under s. 14 of the Act.

4.0 CONCLUSION

[15] 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.

January 30, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

OIPC File No. F05-25884

⁹ [2001] B.C.I.P.C.D. No. 3.

¹⁰ See Order 02-01, [2002] B.C.I.P.C.D. No. 1, and Order 00-07, [2000] B.C.I.P.C.D. No. 7, for example.