



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order F14-16

PRIVATE CAREER TRAINING INSTITUTIONS AGENCY

Ross Alexander
Adjudicator

June 2, 2014

CanLII Cite: 2014 BCIPC No. 19
Quicklaw Cite: [2014] B.C.I.P.C.D. No. 19

Summary: A journalist requested copies of legal invoices issued by Lawson Lundell to the Pacific Career Training Institutions Agency in 2012, as well as the proofs of payment by the Agency. The Agency withheld the records on the basis that they were subject to solicitor client privilege (s. 14 of FIPPA). The adjudicator determined that the records are subject to solicitor client privilege.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 14.

Authorities Considered: BC.: Order F14-15, [2014] B.C.I.P.C.D. No. 18; Order F13-15, 2013 BCIPC 18 (CanLII); Order F07-05, 2007 CanLII 9596; Order F13-10, 2013 BCIPC 11 (CanLII); Order F13-05, 2013 BCIPC 5 (CanLII).

Cases Considered: *B. v. Canada*, 1995 CanLII 2007 (BCSC), [1995] 5 W.W.R. 374 (BCSC); *Maranda v. Richer*, [2003] 3 S.C.R. 193; *Donell v. GJB Enterprises Inc.*, [2012] B.C.J. No. 589; *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner)*, [2012] B.C.J. No. 584.

INTRODUCTION

[1] This inquiry relates to an applicant journalist's request to the Pacific Career Training Institutions Agency ("Agency") for copies of invoices from, and proofs of payment to, the law firm Lawson Lundell in 2012.

[2] The Agency withheld the responsive records on the basis that they are subject to solicitor client privilege under s. 14 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[3] The applicant requested that the Office of the Information and Privacy Commissioner review the Agency’s decision to withhold the records. Mediation did not resolve the matter, and it proceeded to inquiry under Part 5 of FIPPA.

[4] This dispute is one of two similar requests for records the applicant made to the Agency. As such, this order is being released concurrently with Order F14-15,¹ which is an inquiry between the same parties on the same general matter as in this inquiry. The record at issue in Order F14-15 is an email from the Agency to Lawson Lundell, instructing the law firm to proceed with a specified legal matter and confirming the previously discussed legal fees for the work.

ISSUE

[5] The issue in this inquiry is whether the Agency is authorized to refuse to disclose the withheld information because solicitor client privilege applies pursuant to s. 14 of FIPPA.

[6] Section 57(1) of FIPPA provides that the Agency has the burden of proof to establish that s. 14 applies.

DISCUSSION

Records in Dispute

[7] The records in dispute are legal invoices issued by Lawson Lundell to the Agency in 2012, plus accompanying cover letters and the proofs of the payment by the Agency. The records themselves are not before me, but the Agency provided sworn, affidavit evidence describing the information contained in them:

- a. Invoices – these records state the total professional fees for services rendered and descriptions of the services rendered, among other information.
- b. Proofs of Payment – these records state the payee, the date of payment, the date of invoice, and the total amount of the payment, among other things.
- c. Covering Letters – these are the letters from Lawson Lundell to the Agency that enclose the invoices. They state the name of the file and the time period of the legal services.

¹ [2014] B.C.I.P.C.D. No. 18.

[8] The Agency's description of the nature and content of the records is sufficient for me to determine whether solicitor client privilege applies in this case.

Preliminary Matter

[9] The applicant has concerns about how and why the Agency retained Lawson Lundell, so, in his view, issues of transparency and accountability are particularly important in this case. His position is that the Agency should provide access to its records due to ss. 2(1)(a) and 6 of FIPPA, which respectively relate to the purposes of FIPPA and the duty of public bodies to assist applicants.

[10] While the object and purpose of FIPPA – including accountability – may assist in interpreting the legislation, the points raised by the applicant do not provide an override of solicitor client privilege, or, for that matter, other exceptions set out in FIPPA.²

Solicitor Client Privilege – s. 14

[11] Section 14 of FIPPA states:

The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

[12] Section 14 of FIPPA incorporates the common law rules for solicitor client privilege. The test for legal advice privilege is as follows:

[T]he privilege does not apply to every communication between a solicitor and his client but only to certain ones. In order for the privilege to apply, a further four conditions must be established. Those conditions may be put as follows:

1. there must be a communication, whether oral or written;
2. the communication must be of a confidential character;
3. the communication must be between a client (or his agent) and a legal advisor; and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

If these four conditions are satisfied then the communications (and papers relating to it) are privileged.³

² Section 4 of FIPPA specifies information rights. This section requires public bodies to provide access to requested records, unless it is information excepted from disclosure under Division 2, Part 2 of FIPPA. Section 14 is one of the provisions in Division 2, Part 2.

³ *B. v. Canada*, [1995] 5 W.W.R. 374 (BCSC). For example, see Order F13-10, 2013 BCIPC 11 (CanLII) or Order F13-05, 2013 BCIPC 5 (CanLII).

[13] The Agency submits that all of the records at issue are subject to solicitor client privilege because they are confidential written communications relating to the seeking, formulating and giving of legal advice, and because there is a rebuttable presumption at law that solicitor client privilege applies to billing information contained in lawyers' accounts.

[14] In the applicant's view, contractors who provide services to public bodies must have a reasonable expectation that some of their affairs will become part of the public record. In his view, a law firm is no different than any other contractor providing services and the disclosure of payment information for legal services does not infringe on solicitor client privilege.

[15] I will first address whether solicitor client privilege applies to the invoices and proofs of payment, before turning to the cover letters.

Invoices and Proofs of Payment

[16] The question of whether legal billing information is subject to solicitor client privilege has been the subject of many recent judicial decisions. These decisions consistently state there is a presumption that lawyers' invoices are subject to solicitor client privilege, as are the corresponding payments for those legal services.⁴ As stated by the Supreme Court of Canada in *Maranda v. Richer*, this is due to the connection between lawyers' bills and the nature of the relationship between lawyers and clients, as well as what transpires within that relationship.⁵ Further, as the British Columbia Court of Appeal stated in *Donell v. GJB Enterprises Inc.*, a lawyer's account "is intrinsically connected to the solicitor-client relationship and the communications inherent to it."⁶ However, this presumption may be rebutted if it is established that there is no reasonable possibility that disclosure will directly or indirectly reveal any communications protected by privilege.

[17] In this case, there is a presumption that the invoices and proofs of payment are subject to solicitor client privilege. I find that this presumption is not rebutted because the records are connected to the solicitor client relationship between the Agency and Lawson Lundell, and the inherent communications of that relationship. I therefore find that the invoices and proof of payment are subject to solicitor client privilege, and that the Agency is authorized to withhold them under s. 14 of FIPPA.

⁴ *Maranda v. Richer*, [2003] 3 S.C.R. 193 [*Maranda*] at para. 33; *Donell v. GJB Enterprises Inc.* [*Donell*], [2012] B.C.J. No. 589; *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner)*, [2012] B.C.J. No. 584.

⁵ *Maranda* at para. 32; Also *Donell* at paras. 47 and 49.

⁶ *Donell* at para. 49 (for the majority).

Covering Letters

[18] The remaining records at issue are the cover letters from Lawson Lundell to the Agency that enclosed the invoices.

[19] Legal advice privilege applies to communications of a confidential character between a client and a legal advisor that are directly related to the seeking, formulating or giving of legal advice.⁷ In my view, the letters from Lawson Lundell to the Agency meet these requirements, since the cover letters were confidential communications about legal invoices, which directly relate to the seeking, formulating or giving of legal advice. I therefore find that the Agency is authorized to withhold the covering letters because they are subject to solicitor client privilege pursuant to s. 14 of FIPPA.

CONCLUSION

[20] For the reasons given above, under s. 58 of FIPPA, I order that the Agency is authorized to withhold all of the information in dispute under s. 14 of FIPPA.

June 2, 2014

ORIGINAL SIGNED BY

Ross Alexander
Adjudicator

OIPC File No.: F13-52250

⁷ *B. v. Canada*, [1995] 5 W.W.R. 374 (BCSC). For example, see Order F13-10, 2013 BCIPC No. 11 or Order F13-05, [2013] B.C.I.P.C.D. No. 5.