



OFFICE OF THE
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Order F17-55

CITY OF WHITE ROCK

Lisa Siew
Adjudicator

November 30, 2017

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Summary: The applicant requested copies of invoices issued to the City of White Rock (City) for legal services obtained in 2015 and part of 2016. The City provided records to the applicant, but withheld most of the information on the basis it was protected by solicitor client privilege under s. 14 of FIPPA. The adjudicator determined the City was authorized under s. 14 to refuse to disclose some of the information in the invoices, including a description of the legal services. However, the adjudicator found that s. 14 did not apply to other withheld information, including the total amount of legal fees.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14 and 44.

Authorities Considered: **BC:** Order 03-28, 2003 CanLII 49207 (BCIPC); Order F09-23, 2009 CanLII 66962 (BC IPC); Order F13-03, 2013 BCIPC 3; Order F15-15, 2015 BCIPC 16; Order F15-16, 2015 BCIPC 17; Order F15-25, 2015 BCIPC 27; Order F15-31, 2015 BCIPC 34; Order F15-64, 2015 BCIPC 70; Order F16-34, 2016 BCIPC 38; Order F17-17, 2017 BCIPC 18; Order F17-18, 2017 BCIPC 19; Order F17-42, 2017 BCIPC 46; Order F17-43, 2017 BCIPC 47. **AB:** F2007-014, 2008 CanLII 88778 (AB OIPC). **ON:** Order PO-2483, 2006 CanLII 50826 (ON IPC).

Cases Considered: *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665; *Maranda v. Richer*, 2003 SCC 67; *Legal Services Society v. Information and Privacy Commissioner of British Columbia*, 2003 BCCA 278; *Donell v. GJB Enterprises Inc.*, 2012 BCCA 135; *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, 2005 CanLII 6045 (ONCA); *School District No. 49 (Central Coast) v. British Columbia (Information and Privacy Commissioner)*, 2012 BSCS 427 (CanLII); *Alberta (Information and Privacy*

Commissioner) v. University of Calgary, [2016] 2 SCR 555; *Richmond (City) v. Campbell*, 2017 BCSC 331.

INTRODUCTION

[1] A citizen of White Rock (Applicant) requested copies of legal invoices from the City under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Applicant sought the amounts paid by the City for legal services related to freedom of information (FOI) requests for the entire 2015 year and for the months of January and February 2016.

[2] The City provided the Applicant with copies of legal invoices and email correspondence, but withheld some information from them under s. 14 of FIPPA on the basis solicitor client privilege applied. The City also created a written summary of the legal costs for some of the requested months and provided this record to the Applicant.¹

[3] The Applicant was dissatisfied with the City's response and asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision to withhold information under s. 14 of FIPPA. Mediation did not resolve the matter and it proceeded to a written inquiry under Part 5 of FIPPA. Both parties provided submissions for this inquiry.

ISSUES

[4] The main issue in this inquiry is whether the City is authorized to refuse to disclose the information at issue under s. 14 of FIPPA because the information is subject to solicitor client privilege. Where access to information has been refused under s. 14 of FIPPA, s. 57(1) places the burden on the public body to prove that the applicant has no right of access to all or part of the records in dispute.

[5] Although not identified as an issue in the Investigator's Fact Report or the Notice of Inquiry, the City submits that some of the records are unrelated to the Applicant's access request; therefore, this issue will also be addressed below.

DISCUSSION

[6] ***The scope of this inquiry*** - The Applicant's submissions for this inquiry include facts and arguments that touch on the adequacy of the City's search and response. The Applicant previously made a complaint to the OIPC that the City failed to conduct an adequate search for records under s. 6 of FIPPA. That complaint was the subject of a separate OIPC file (F16-67356), which has been closed. The City states in its submissions that the issue of its duty to assist the

¹ After mediation ended, the City obtained and added more information to the summary of legal costs and provided a copy to the Applicant, but this did not resolve the matter.

Applicant and the adequacy of its search and response does not form part of this inquiry.²

[7] I find the adequacy of the City's search and response is not within the scope of this inquiry. This inquiry only deals with whether the City was authorized to withhold information under s. 14 of FIPPA. I will not revisit or address the adequacy of the City's search for records as that complaint has already been dealt with by the OIPC complaint process.

[8] **Records in dispute** – The Applicant requested the following records from the City:

...invoices showing the dollar value of legal costs incurred by the city in the year 2015 that were related to FOI requests, responses and in any way related such as telephone and face to face conversations...invoices showing the same information for legal costs that are FOI related for January and February of 2016.³

The records provided by the City to the Applicant consist of invoices, emails and a summary of legal costs for some months.

Emails

[9] The City submits the emails are not responsive to the Applicant's access request since these emails do not contain invoices or information on legal costs paid by the City.⁴ The City does not explain why it previously identified the emails as responsive to the Applicant's access request. However, it does provide a sworn affidavit from its City Clerk who was directly involved in most of the email exchanges. She states that she has reviewed the emails and found "[they do] not include or contain invoices, billing information or information related to legal costs incurred by the City."⁵

[10] In my view, the emails are clearly not the type of record the Applicant requested because they are not "invoices."⁶ Further, I am satisfied by the City Clerk's evidence that the content of the emails are not related or responsive to the Applicant's access request. As a result, I find the City appropriately identified these emails as records which are non-responsive and it may withhold these records on that basis.⁷ It is important to note that this is different from when a

² City's initial submission at para. 10.

³ Applicant's submission - Appendix B at 3.

⁴ City's initial submission at paras. 36-37.

⁵ Affidavit of City Clerk at para. 21, located within City's initial submission.

⁶ There is also no evidence before me which indicates the Applicant expanded his access request to include these emails.

⁷ A similar conclusion was reached in Order F15-25, 2015 BCIPC 27 at para. 32 and Order F09-23, 2009 CanLII 66962 (BC IPC) at para. 11.

public body is resisting disclosure of information in a *responsive* record.⁸ In those circumstances, a public body cannot refuse to disclose part of a responsive record on the basis it is non-responsive or outside of the scope of the access request.⁹

Legal cost summary

[11] The City also created and provided to the Applicant a written summary of the dollar amounts spent on legal costs for the requested time period.¹⁰ No information was severed from the summary. Therefore, I conclude this document is not a record in dispute for this inquiry since the Applicant has all the information contained in the summary.

Legal invoices

[12] Based on my findings above, the only records in dispute for this inquiry are the 10 invoices (totalling 17 pages). The City has withheld some information from all of the invoices.

Section 14 - Solicitor client privilege

Is it necessary to order production of the records?

[13] The City did not give the OIPC access to an un-redacted copy of the invoices for the purposes of making a decision in this inquiry. Instead, the City relies on the redacted invoices and the affidavit of a City employee to establish that the invoices are subject to solicitor client privilege. The City says all the evidence it has provided contains the necessary information to make a determination of privilege, such as page numbers, date of the record, parties to the communications, description of the type of document and FIPPA provision applied to the withheld information.¹¹

[14] The Applicant requests I exercise my discretion to order production of the records in order to “properly adjudicate the City’s claim of privilege.”¹² He says the City’s evidence is unreliable, contains inconsistencies and does not provide sufficient details to make a determination.¹³ He also alleges that he has proof the City falsely claimed privilege for one of the emails.¹⁴ This is one of the emails that

⁸ Order F15-23, 2015 BCIPC 25 notes at para. 34 that “the process of identifying and finding requested records may be understood to involve identifying and compiling ‘responsive records.’”

⁹ For a full discussion on this issue see Order F15-23, 2015 BCIPC 25.

¹⁰ For example, the initial entry for January 2016 has the following three dollar amounts listed: \$118.00, \$22.00 and \$66.00.

¹¹ City’s reply submission at paras. 3-5.

¹² Applicant’s submission at para. 79.

¹³ Applicant’s submission at paras. 46-85.

¹⁴ The Applicant obtained an un-redacted copy of the email through another access request.

I found was not responsive to his access request. His point, as I understand it, is that a review of this email clearly indicates this is not privileged communication; therefore, this is proof that the City may be falsely claiming privilege over the invoices. The Applicant states that production of the records is necessary when it has been proven the City has incorrectly applied s. 14 to some of the records.¹⁵

[15] Section 44 of FIPPA gives the Commissioner, and his or her delegate, the power to order production of records over which solicitor client privilege is claimed.¹⁶ However, the OIPC will only order production of the records if it is necessary to fairly decide the issue, such as when the evidence describing the records is not sufficient to make a determination about the privilege claim.¹⁷

[16] In determining what evidence is sufficient to describe the records, the Supreme Court of Canada held that the Commissioner, and his or her delegate, should not impose a more onerous standard than that applicable in civil litigation before the courts.¹⁸ According to British Columbia's civil court rules, a party claiming privilege over a record must list each document separately and provide the date and a description of the documents.¹⁹ This description should identify the nature of the communication (e.g. email or letter) and the author and recipient.²⁰ Further, courts may rely on sworn affidavit evidence provided by legal counsel and will generally order production "where there is some evidence that the party claiming privilege has done so inappropriately or incorrectly."²¹

[17] I adopt the above approach and have reviewed the redacted invoices and the affidavit evidence provided by the City. It is clear from the information the City has not severed that the invoices are issued by two law firms and I am able to distinguish between one invoice and another. Further, the sworn affidavit of the City's Clerk deposes as to the contents of the invoices and describes the severed information. While the City Clerk is not legal counsel, I find her review and description of this information is satisfactory given the nature of the records.

[18] Therefore, I find the evidence provided by the City is sufficient for me to determine whether s. 14 applies to the information in the invoices. Further, the Applicant's submission about how the City may have improperly claimed privilege

¹⁵ Applicant's submission at paras. 54-69 and 85.

¹⁶ Section 44(1)(b) of FIPPA states the Commissioner may order the production of a record, and s. 44(2.1) reinforces that such a production order may apply to a record that is subject to solicitor client privilege.

¹⁷ Order F17-42, 2017 BCIPC 46 (CanLII) at para. 11.

¹⁸ *Alberta (Information and Privacy Commissioner) v. University of Calgary*, [2016] 2 SCR 555, 2016 SCC 53 (CanLII) at para. 70 (majority reasons) and paras. 127 and 137 (dissenting reasons by Cromwell J. and Abella J., but not on this point).

¹⁹ Order F17-43, 2017 BCIPC 47 at para. 32 quoting Supreme Court Civil Rules, BC Reg. 168/2009, Rule 7-1 and Form 22.

²⁰ Order F17-43, 2017 BCIPC 47 at para. 32.

²¹ *Ibid* at paras. 32-33.

over one of the non-responsive emails does not persuade me that this applies to the invoices. As a result, I do not find it necessary to exercise my authority, under s. 44 of FIPPA, to order the City to produce an un-redacted version of the invoices for my review.

Position of the parties on the application of s. 14

[19] Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor client privilege. The law is well established that s. 14 encompasses both types of solicitor client privilege found at common law: legal advice privilege and litigation privilege.²² The City is claiming legal advice privilege over the information it has withheld in the invoices. Legal advice privilege applies to confidential communications between solicitor and client for the purposes of obtaining and giving legal advice.²³

[20] The City cites court decisions and previous OIPC Orders which have determined that there is a rebuttable presumption that information in legal invoices is privileged.²⁴ It states that this presumption will commonly prevail, but recognizes that the determination regarding whether the presumption of privilege is rebutted will depend on the specific facts of a case.²⁵ In this case, the City submits that disclosing some of the information in the legal invoices will reveal privileged information. It says as follows:

The descriptions of services contained in the Legal Invoices could reveal or allow a person to deduce privileged information such as instructions received by legal counsel, when and how often the City communicated with its legal counsel, legal issues considered by staff and legal counsel, and advice provided to the City by its legal counsel.²⁶

[21] The City states that the presumption has not been rebutted in this case and says “revealing the extent of the City’s expenditure on a specific matter could allow an assiduous inquirer to deduce the City and its legal counsel’s strategy or assessment of the complexity and significance of the matter.”²⁷

[22] The Applicant submits that the City has failed to establish that the information in dispute is subject to solicitor client privilege. He states the City has failed to supply sufficient evidence to support its position.²⁸ The Applicant also states that the information he has requested is “neutral information” which would

²² *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 26.

²³ *Ibid* at paras. 26-31 and see Order F15-31, 2015 BCIPC 34 at para. 10.

²⁴ City’s initial submission at paras. 15-17.

²⁵ *Ibid* at paras. 18-19.

²⁶ *Ibid* at para. 22.

²⁷ *Ibid* at para. 25.

²⁸ Applicant’s submission at para. 87.

not reveal or allow him to deduce or otherwise acquire privileged communications.²⁹ He relies on the legal cost summary to prove that the dollar amounts in the invoices are not covered by privilege since the City released the summary information.³⁰ In response, the City submits that the cost summary is neutral information because it contains “unspecific, aggregate fee amounts for freedom of information related legal costs incurred by the City on a monthly basis in the absence of any other billing information.”³¹

Rebuttable presumption of privilege

[23] Previous OIPC orders and court decisions have established there is a rebuttable presumption that billing information in a lawyer’s statements of account or other documents is subject to solicitor client privilege.³² The Supreme Court of Canada noted this presumption recognizes the importance of privilege, as well as the inherent difficulties in determining the extent to which the information contained in a lawyer’s bill of account discloses communications protected by privilege as opposed to “neutral information” (i.e. information that does not reveal anything in the nature of a privileged communication).³³

[24] In her sworn affidavit, the City Clerk deposes as to the contents of the invoices.³⁴ The City also provided redacted copies of the invoices. The information in dispute is found in six invoices from one law firm and four invoices from another law firm. Based on the City Clerk’s sworn affidavit and my own review of the redacted invoices, I find the invoices contain the following information:

- The date of the invoices;
- The City’s name and mailing address;
- The name and position of the City employee to whom the invoice is directed;
- The file number;
- The invoice number or statement of account number;
- The “RE” line regarding the subject of the invoice;
- The name and description of the relevant file;
- A description of the legal services provided;
- The total fees charged; and

²⁹ Applicant’s submission at para. 3.

³⁰ *Ibid* at para. 52.

³¹ City’s initial submission at paras. 27-30 and reply submission at para. 25.

³² See *Maranda v. Richer*, 2003 SCC 67; *School District No. 49 (Central Coast) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427 (CanLII) at paras. 96-106; *Richmond (City) v. Campbell*, 2017 BCSC 331 at paras. 74-93; Order F15-64, 2015 BCIPC 70; Order 03-28, 2003 CanLII 49207 (BCIPC) at para. 15.

³³ *Maranda v. Richer*, 2003 SCC 67 at paras. 32-33.

³⁴ Affidavit of City Clerk at para. 14, located within City’s initial submission.

- The name and contact information for the law firms issuing the invoices.

[25] The City withheld the name and description of the file, the description of the legal services rendered and the total fees charged on all the invoices. For some of the invoices, the City severed the name of the law firm,³⁵ the intended recipient,³⁶ the “RE” line³⁷ and the file number.³⁸

[26] Based on previous OIPC orders and court decisions, it is clear that information of this kind raises a presumption of privilege since a lawyer’s fee account “is intrinsically connected to the solicitor-client relationship and the communications inherent to it.”³⁹ I find the severed information in the invoices is presumptively privileged as this information is legal billing information or information contained in a lawyer’s bill of account.

[27] However, the presumption that information in a legal invoice is protected by privilege may be rebutted if the following two questions are answered in the negative:

1. Is there any reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege?
2. Could an assiduous inquirer, aware of background information, use the information requested to deduce or otherwise acquire privileged communications?⁴⁰

[28] The burden is on the party seeking the release of the information to prove disclosure will not reveal privileged information.⁴¹ Further, the court in *Central Coast*, said the nature of the information and the circumstances and context of the case must be considered to determine whether the presumption is rebutted as “the nature and context of records and information will almost always have

³⁵ Invoice located at page 23 in the copy of the records provided by the City in its initial submission. The name of the law firm has been withheld, but the firm’s contact information is disclosed.

³⁶ The City severed the intended recipient information for invoices dated October 14, 2015, December 17, 2015, December 30, 2015 and January 31, 2016 (Invoice #12273).

³⁷ For invoices dated March 31, 2015, September 30, 2015, two invoices dated January 31, 2016 and an invoice dated February 23, 2016.

³⁸ For invoice #12273 dated January 31, 2016.

³⁹ *Donell v. GJB Enterprises Inc.*, 2012 BCCA 135 at paras. 49 and 59 quoting *Maranda v. Richer*, 2003 SCC 67 and see Order F15-15, 2015 BCIPC 16 at para. 20.

⁴⁰ *Central Coast*, *supra* note 32 at para 104; *Legal Services Society v. Information and Privacy Commissioner of British Columbia*, 2003 BCCA 278 (CanLII), adopted by the Ontario Court of Appeal in *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, 2005 CanLII 6045 (ONCA).

⁴¹ *Central Coast*, *supra* note 32 at para. 100 quoting *Maranda v. Richer*, 2003 SCC 67 at paras. 33-34.

evidentiary value when considering claims of privilege.”⁴² Applying these principles, I will now consider whether the presumption of privilege has been rebutted for the information withheld in the invoices.

(a) *Name and description of file and legal services rendered and “RE” line*

[29] For all ten invoices, the City has severed information which describes the file and the legal services provided by the law firms to the City on specific dates.⁴³ The sworn affidavit of the City Clerk deposes that disclosing this information “could reveal instructions that City staff provided to legal counsel, when and how often the City communicated with legal counsel, legal issues considered by staff and legal counsel, and advice provided to the City by its legal counsel.”⁴⁴ The City also severed the “RE” line of five invoices.⁴⁵ The City Clerk does not describe the severed “RE” lines. However, there are several invoices where the “RE” line was not severed, for instance, “Sundry – Corporate Officer Enquiries” or “Privacy FOI.”⁴⁶ I conclude that if the severed “RE” lines were equally neutral, the City would have followed the same pattern and disclosed them.

[30] In my view, there is a reasonable possibility that disclosure of information which describes the file and the legal services and the “RE” line in the five invoices would directly or indirectly reveal communications protected by solicitor client privilege, such as the subject matter or details of legal advice sought and given. Therefore, I find the presumption that this information is protected by solicitor client privilege has not been rebutted. I conclude the City is authorized under s. 14 of FIPPA to refuse to disclose this information to the Applicant.

(b) *Legal fees*

[31] For all invoices, the City has severed the total amount of fees charged. In her sworn affidavit, the City Clerk deposes that the legal invoices include “the total fees for all services rendered for the file during the period covered by the invoice.”⁴⁷ The City submits that revealing this fee information “could allow an assiduous inquirer to deduce the City and its legal counsel’s strategy or assessment of the complexity and significance of the matter.”⁴⁸ The Applicant states that this information is “neutral information” and alternatively, whatever

⁴² *Central Coast*, *supra* note 32 at para. 113.

⁴³ Affidavit of City Clerk at para. 14, located within City’s initial submission.

⁴⁴ *Ibid.*

⁴⁵ Invoices dated March 31, 2015, September 30, 2015, February 23, 2016 and for two invoices dated January 31, 2016.

⁴⁶ Invoices located on page 11, 21, 28, 29 and 31 of the records found in City’s initial submission.

⁴⁷ Affidavit of City Clerk at para. 14 found in City’s initial submission.

⁴⁸ City’s initial submission at para. 25.

privilege was attached to this information was waived by the City when it provided the legal cost summary.⁴⁹

[32] Although it is common for legal invoices to include a breakdown of fees as well as the amount charged for disbursements and tax, there is no evidence to suggest that this level of detail is included in these ten invoices. In this case, the information that has been severed is the total dollar amount charged for each invoice and not a breakdown of fees. Therefore, the fee information sought by the Applicant is in an aggregate amount.

[33] I also take note that the City Clerk's sworn affidavit deposes as to the large volume and range of access requests it has received for the period requested by the Applicant:

During this period, the City regularly sought legal advice on issues relating to specific access requests as well as in relation to freedom of information processes generally. As a result, legal fees related to freedom of information in any given month during 2015 and 2016 would typically pertain to a wide range of matters.⁵⁰

[34] In my view, it would be difficult to acquire or deduce privileged communications based on the disclosure of this limited legal fee information which is in an aggregate amount. No detailed information about the legal services provided will be disclosed to the Applicant since I have already determined that this information is protected by privilege and the City's own evidence establishes that the legal advice sought during this period pertains to a wide range of freedom of information matters.

[35] A series of OIPC orders and court decisions have considered whether the disclosure of legal fees would reveal privileged communications. The presumption of privilege was rebutted when the legal fee information was a total or aggregate amount and no other detailed billing information had been disclosed.⁵¹ Other OIPC orders and court decisions have found that the presumption of privilege was not rebutted when the access applicant had in depth knowledge as a former employee and had some legal training⁵² or when he or she had background information about the specific dispute for which legal advice was sought.⁵³

⁴⁹ Applicant's submission at paras. 43 and 51.

⁵⁰ Affidavit of City Clerk at para. 16 in City's initial submission.

⁵¹ Order F15-16, 2015 BCIPC 17 (CanLII) at para. 23; Order F15-64, 2015 BCIPC 70 (CanLII) at paras. 24-25; F2007-014, 2008 CanLII 88778 (AB OIPC); *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, 2005 CanLII 6045 (ONCA).

⁵² Order F13-03, 2013 BCIPC 3 (CanLII).

⁵³ Order F16-34, 2016 BCIPC 38 (CanLII) and *Richmond (City) v. Campbell*, 2017 BCSC 331 at paras. 74-93.

[36] In this case, there is evidence the Applicant has some familiarity or access to publicly available information regarding freedom of information requests submitted to the City during the requested time period.⁵⁴ However, the Applicant is not being given access to a description of the legal services provided or pricing breakdowns or specific date ranges for the legal services.⁵⁵ Further, even though the Applicant has some general knowledge about freedom of information requests dealt with by the City during the requested time frame, I find there is no reasonable possibility that he would be able to deduce for which specific matters the City sought legal advice since the City sought advice for a wide range of freedom of information matters during this time.⁵⁶

[37] Based on the above, I find there is no reasonable possibility that the Applicant or an assiduous inquirer would be able to acquire or deduce privileged communications from the total amount of the invoice. As a result, I find the presumption that the total fee amounts are protected by solicitor client privilege is rebutted. I conclude that the City is not authorized under s. 14 of FIPPA to refuse to disclose this information to the Applicant.

[38] The Applicant also submits that the City waived privilege over the total fee amounts in the invoices when it provided the legal cost summary. Since I have determined that the presumption of privilege over the total fee amounts has been rebutted, I do not need to consider whether the City waived privilege over this information in releasing the legal cost summary.⁵⁷

(c) *Name of law firm in letterhead*

[39] The City withheld the name of the law firm in the letterhead of the September 30, 2015 invoice, but it disclosed the firm's contact information. The City disclosed the very same contact information as well as the name of the law firm in the other invoices. It is unclear why the City severed the name of the law firm in this inconsistent fashion. Regardless, the disclosure of this information would only confirm what the City has already disclosed to the Applicant (i.e. the City sought legal advice regarding freedom of information matters from a particular law firm). In this case, I conclude that there is no reasonable possibility that disclosing the name of the law firm in the September 30, 2015 invoice will

⁵⁴ This is not the first inquiry involving the Applicant and the City (see Order F17-17, 2017 BCIPC 18) and the City has also been subject to a number of access requests in 2016 (See Order F17-18, 2017 BCIPC 19 and Order F17-17, 2017 BCIPC 18 at para. 9).

⁵⁵ See Order F15-16, 2015 BCIPC 17, where the adjudicator determined that the presumption had been rebutted because the access applicant would not be given access to this type of information, which is described at para. 23.

⁵⁶ This is in contrast to *Richmond (City) v. Campbell*, 2017 BCSC 331 at paras. 74-93 where the court determined the presumption had not been rebutted because the aggregated amount of legal fees was for two specific employment harassment claims.

⁵⁷ In any event, I note that I would have requested further submissions and evidence from the parties in order to make a determination regarding waiver.

reveal, or allow an assiduous inquirer to deduce or acquire, privileged communications.⁵⁸

(d) *Invoice recipient*

[40] The City has refused to disclose the name, job title and mailing address of the City employee who was the recipient of some of the invoices.⁵⁹ However, the City disclosed some of this information in the other invoices. Further, the Applicant already knows that the legal invoices are directed to the City and relate to FOI matters since the City provided the invoices as responsive records. I am satisfied that disclosing this information would not allow the Applicant to acquire or deduce privileged communications. It would only reveal that the legal invoices were sent to the City and directed to a City employee for payment. I therefore find there is no reasonable possibility that disclosing this recipient information would reveal or allow the Applicant or an assiduous inquirer to deduce or acquire privileged communications between the City and its legal counsel.

(e) *File number*

[41] For one invoice, the City severed the file number assigned by the law firm,⁶⁰ but it left this type of information intact for the other invoices. Considering the nature of this type of information, I am satisfied that disclosing it would not reveal or allow the Applicant to acquire or deduce privileged communications. While in other situations, this kind of information might reveal privileged information, I find that it does not do so in this case. Given my findings above, the Applicant will not receive information relating to the legal services provided or information which ties the file number to a specific matter; therefore, the file number remains neutral information from which the Applicant will be unable to glean or acquire privileged communications. I therefore find there is no reasonable possibility that disclosing this information would reveal or allow the Applicant or an assiduous inquirer to deduce or acquire privileged communications between the City and its legal counsel.

Summary of findings on s. 14 – solicitor client privilege

[42] To summarize, I find that the City is authorized under s. 14 of FIPPA to withhold the name and description of the file and the description of the legal services for all the invoices and the “RE” line in the invoices dated March 31, 2015, September 30, 2015, January 31, 2016 and February 23, 2016.

⁵⁸ For a similar conclusion, see F2007-014, 2008 CanLII 88778 (AB OIPC) and Order PO-2483, 2006 CanLII 50826 (ON IPC) where the senior adjudicator also noted that “the identity of one’s lawyer is generally not privileged.”

⁵⁹ Invoices dated October 14, 2015, December 17, 2015 and December 30, 2015 and for the January 31, 2016 invoice (#12273) the name of the public body was also severed.

⁶⁰ Invoice dated January 31, 2016, located on page number 35 in the copy of the records provided by the City in its initial submission.

[43] However, I find that the City is not authorized under s. 14 of FIPPA to refuse to disclose to the Applicant the following information:

- (a) the total amount of the fees charged on each invoice;
- (b) the name of the law firm on the September 30, 2015 invoice;
- (c) the name, job title and mailing address of the intended recipient for the invoices dated October 14, 2015, December 17, 2015, December 30, 2015 and January 31, 2016 (Invoice #12273); and
- (d) the file number for invoice #12273, dated January 31, 2016.

[44] For the reasons previously given, I am satisfied that disclosing this information in (a) to (d) would not reveal or allow the Applicant or an assiduous inquirer to acquire or deduce privileged communications.

CONCLUSION

[45] For the reasons stated above, pursuant to s. 58(2) of FIPPA, I make the following order:

1. I confirm that the City is authorized under s. 14 of FIPPA to refuse to disclose the information in the invoices, subject only to paragraph #2 below.
2. The City is not authorized under s. 14 to refuse to disclose to the Applicant the information noted above in paragraph 43(a) to (d). I require the City to give the Applicant access to this information by January 16, 2018. The City must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the Applicant, together with a copy of the records.

November 30, 2017

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F16-66662