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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 151-1997
February 14, 1997**

INQUIRY RE: A Refusal by the Ministry of Finance and Corporate Relations to provide access to correspondence with a Vancouver law firm

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on December 27, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by the applicant of a decision by the Ministry of Finance and Corporate Relations (the Ministry) to apply section 14 of the Act to correspondence between the Ministry and a named Vancouver law firm.

2. Documentation of the review and inquiry process

On May 6, 1996, the Ministry received the applicant's request for: (1) a copy of the Vancouver School Board's "Self-Insured Comprehensive Liability Coverage" policy document; and (2) copies of "every record of communications, including letters, notes of telephone conversations, memos, minutes of meetings and notes taken at meetings, between the Risk Management Branch and [a named Vancouver law firm], from June 1995" to the date of the request. The Ministry treated this request as two requests.

The Ministry responded to the request for item (2) on June 4, 1996 by denying access to all records under section 14 of the *Freedom of Information and Protection of Privacy Act*. On June 7, 1996, in the case of item (1), the Ministry responded by providing a severed copy of the record and told the applicant that the remainder of the record had been withheld under sections 15 and 17 of the Act.

On July 1, 1996 the applicant requested a review of both of these decisions by my Office. On September 10, 1996 the Ministry released some records from item (2) and

told the applicant that the rest of the records remained withheld under sections 14 and 21 of the Act. The Ministry informed the applicant that this was a new decision.

On September 11, 1996 the Ministry released a re-severed version of the insurance policy record in item (1) and told the applicant that the remainder was withheld under sections 15 and 17 of the Act. The Ministry informed the applicant that this was a new decision. On September 23, 1996 the applicant requested a review of the Ministry's decisions.

On November 25, 1996 the applicant requested me to hold an inquiry into the public body's decisions on these two requests. On November 28, 1996 my Office gave notice to the applicant and the Ministry of the written inquiry to be held on December 20, 1996. The inquiry was later re-scheduled to December 27, 1996 after I granted the applicant's request for an extension to his deadline for replying.

In early December 1996 the Ministry stated that it was withdrawing the application of section 21 to the records in Item (2). A few days later, it informed this Office that a one-page record in item (2) fell under section 3(1)(c) of the Act and was therefore excluded from its scope. On December 11, 1996 the Ministry released item (1) without the dollar amounts, in accordance with an agreement between the applicant and the Risk Management Branch of the Ministry. With this release, the item (1) record was no longer in dispute in this inquiry.

3. Issue under review at the inquiry and the burden of proof

The issue under review is the Ministry's decision to apply section 14 of the Act to correspondence between the Risk Management Branch and a named Vancouver law firm from June 1995 to the date of the request, May 6, 1996, and to apply section 3(1)(c) to one of these records.

Section 14 reads as follows:

Legal advice

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

Section 3(1)(c) reads as follows:

Scope of this Act

- 3(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

- (c) a record that is created by or is in the custody of an officer of the Legislature and that relates to the exercise of that officer's functions under an Act;

....

Under section 57(1) of the Act, the burden of proof for sections 3(1)(c) and 14 is on the Ministry in this inquiry. Thus, it is up to the Ministry to prove that the applicant has no right of access to the records in dispute.

4. The records in dispute

The records in dispute include duplicate copies of a severed legal bill dated April 12, 1996 from the law firm and approximately ten fully withheld items of correspondence or fax cover sheets between the law firm and the Risk Management Branch of the Ministry. They include a fax cover page which the Ministry says is not within the scope of this inquiry.

5. The Ministry of Finance and Corporate Relations' case

The Ministry's submission canvassed the history and rationale for the concept of solicitor-client privilege incorporated in section 14 of the Act. I have not summarized this material here, because it is quite familiar from previous Orders, some of them involving the same applicant. (See Order No. 107-1996, May 29, 1996, pp. 4; Order No. 110-1996, June 5, 1996, pp. 8, 9) (Submission of the Ministry, paragraphs 5.02-5.11)

I have reviewed below the Ministry's detailed submissions on the specific records in dispute. (Submission of the Ministry, paragraphs 5.12 -5.22)

6. The applicant's case

The applicant submits that the correspondence between the Risk Management Branch and the law firm should not be protected under section 14 of the Act, because it was "used to shield the criminal activities and tortious conduct" of the Vancouver School Board. The rest of his submission consists of "new highly specific and direct evidence from the Ministry of Education disclosing fraud on the part of the Vancouver School Board." (Submission of the Applicant, pp. 1, 2) The applicant makes similar arguments about other records withheld under section 14. (See Order No. 110-1996, pp. 4, 5; Order No. 107-1996, pp. 3, 4)

7. Discussion

The records in dispute

The fax cover sheet

The Ministry sent a one-page fax cover sheet to my Office which it argues is outside the scope of the review. The argument is that this one-page fax cover sheet, internal to the Ministry of Finance, falls outside the scope of the request, which was for access to every record of communication, including letters, notes of telephone conversations, memos, minutes of meeting, and notes taken at meetings, between the Risk Management Branch and a named Vancouver law firm. I agree that the fax cover sheet is outside the scope of the request and therefore outside the scope of this inquiry.

Correspondence between the law firm and Risk Management Branch

The Ministry submits that these records “are confidential communications between solicitor and client for the purpose of obtaining legal advice. This is precisely the type of information that s. 14 is designed to protect from disclosure.” (Submission of the Ministry, paragraph 5.13) Based on my detailed review of the records, I agree with the Ministry.

The legal bill

The Ministry informs me that it has severed the legal bill from the same law firm the same way as the bill in dispute in Order No. 107-1996, p. 4. It pointed out as well that I acted similarly with respect to section 14 legal materials in two other Orders involving the same applicant. (Order No. 110-1996; and Order No. 134-1996, December 9, 1996) I agree with the Ministry that the same rationale should apply to the legal bill in dispute in this inquiry. (Submission of the Ministry, paragraphs 5.14-5.19)

The letter from the Vancouver School Board

The School Board sent a letter to the Risk Management Branch of the Ministry for the purposes of obtaining legal advice in contemplation of litigation brought by the applicant. (See Order No. 92-1996, March 15, 1996, pp. 2, 3; and Order No. 110-1996, June 5, 1996, pp. 8, 9) (Submission of the Ministry, paragraphs 5.20-5.22) I agree with the Ministry that the same scenario exists in the present inquiry and that the result should be the same.

Application of section 3(1)(c):

One of the records in dispute is a one-page *in camera* submission made to me in the context of Order No. 110-1196 involving the same applicant. I agree with the Ministry that this is a record in my custody by virtue of the exercise of my functions under the Act and thus suitably outside the scope of the Act. (Submission of the Ministry, paragraphs 5.23-5.25)

8. Order

I find that the Ministry of Finance and Corporate Relations is authorized to refuse access to the information in the records consisting of correspondence between the law firm and Risk Management Branch, the legal bill, and the letter from the Vancouver School Board under section 14 of the Act. I also find that the remaining record in dispute is outside the scope of the Act by virtue of section 3(1)(c). Under section 58(2)(b), I confirm the decision of the head of the Ministry of Finance and Corporate Relations to refuse access to the applicant. I also find that the fax cover sheet is outside the scope of this inquiry.

David H. Flaherty
Commissioner

February 14, 1997