ISSN 1198-6182

Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 107-1996
May 29, 1996

****** This Order has been subject to Judicial Review ******

INQUIRY RE: A request for access to a lawyer's bill paid by the Risk Management Branch of the Ministry of Finance and Corporate Relations

Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 604-387-5629
Facsimile: 604-387-1696
Web Site: http://www.cafe.net/gvc/foi

1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on April 19, 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 of the Ministry of Finance and Corporate Relations to withhold some information contained in a lawyer's bill paid by the Risk Management Branch of the Ministry of Finance.

2. Documentation of the inquiry process

The applicant requested a copy of a record revealing lawyer's fees for a certain matter. He sought the total legal costs incurred by the Ministry as liability insurer of the Vancouver School Board in connection with a particular claim against it by the applicant. The Ministry provided a copy of a bill from the relevant law firm with some information severed under sections 14 and 21 of the Act. The applicant asked for a review of that decision.

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

The relevant parts of sections 14 and 21 of the Act are 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.

Disclosure harmful to business interests of a third party

21(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal
(i) trade secrets defined in the schedule of a third party, or
(ii) commercial, financial, labour relations, scientific or technical information of a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied, ...

Section 57 of the Act establishes the burden of proof. Under that section, where access to information in a record is refused, it is up to the public body to prove that the applicant has no right of access to the record or part of the record. Thus in this inquiry the burden of proof is on the Ministry of Finance and Corporate Relations.

4. The record in dispute

The actual record in dispute is a three-page bill from a Vancouver law firm for professional services rendered to the Schools Protection Program of the Risk Management Branch of the Ministry of Finance and Corporate Relations. The applicant asked for a copy of "the record containing the current total of the legal costs incurred" in a certain matter in which he was the potential source of the liability for which the legal services were sought. The severed record provided to the applicant reveals the date of each service as well as the total dollar amount of the bill, including disbursements. It does not disclose the name of the lawyers who provided the services, nor the duration in minutes and the nature of the service rendered. The Ministry has also severed the address of the client and the client file number and matter number. (See Submission of the Ministry, paragraph 5.7)

5. The Ministry of Finance and Corporate Relations' case

The Ministry emphasizes that it retained the law firm in question directly and has a solicitor-client privilege with it: "The legal bill is the result of the solicitor-client relationship." (Submission of the Ministry, paragraphs 4.2, 5.3) The applicant requested the total legal costs in question and has received that information. (Submission of the Ministry, paragraphs 5.3 and 5.4)

I have discussed below, as appropriate, the Ministry's submissions on particular sections of the Act.

6. The applicant's case

The applicant argues that the severed record in dispute is not covered by solicitor-client privilege. He also believes that a lawyer acting for the Ministry carried out work for certain employees of the Vancouver School Board that he was not hired to do, which "raises the issue of fraud." The applicant charges that non-disclosure in this case is "in furtherance of a criminal enterprise" and comprises "fraudulent and criminal conduct...." (Submission of the Applicant, paragraphs 3-6, 23)

The applicant is of the view that the Ministry has failed to meet its burden of proof under sections 14 and 21 of the Act. I have discussed his detailed submissions below as I found it appropriate to do so.

7. Discussion

For purposes of establishing a context for this inquiry, it is useful to note that the applicant is concerned about the activities of a lawyer acting for the Ministry and that the applicant has filed a "complaint alleging harassment, victimization, slander and racial discrimination against four staff members of the Carnegie Learning Centre.... " (Submission of the Applicant, p. 13)

The applicant has also raised some very serious allegations about criminal behaviour by the Vancouver School Board and the Ministry. While his concern about the appropriate expenditure of taxpayer funds may be admirable, this is not a matter for me to determine under the Act but for the police, who may obtain access to any information they need for law enforcement purposes. Moreover, the provisions of the Act cannot be used solely to produce evidence of alleged criminal behaviour simply because an applicant suspects that such may have occurred. Such a concerned individual would have to persuade responsible Ministry officials to conduct their own investigations of his or her allegations and/or persuade the police to investigate. In this case, the Ministry has certainly become aware of the charges of the applicant and is free to investigate them further.

The applicant made the following statement ostensibly in support of his argument that the Ministry cannot rely on section 21 of the Act:

It is not a secret that some lawyers charge for work that was not actually done; some recreate a diary from memory; some lawyers bill for billing; some do not add correctly, and so on. Disclosure of the severed information is desirable in this case for the purpose of subjecting the activities of the Ministry as liability insurer of public bodies to meaningful scrutiny. (Submission of the Applicant, paragraph 28)

However public-spirited the applicant may be, it is the obligation of public bodies to audit bills received from consultants and lawyers for appropriateness. With respect to provincial public bodies, such as the Ministry, the Comptroller General and the Auditor General have additional oversight responsibilities on behalf of the government and the Legislature respectively. (See Order No. 64-1995, November 21, 1995, p. 10)

The Ministry states that the various allegations made by the applicant are spurious, completely unfounded, unsubstantiated, false, and malicious: "In response to the whole of the Submission by

the Applicant, the Public Body responds that the Submission is filled with assumptions, false allegation, and completely unfounded malicious attacks on both the Vancouver School Board, the law firm in Vancouver, and the Public Body itself." (Reply Submission of the Ministry, paragraphs 1, 2, 10)

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

The Ministry believes that the entire record could have been protected under this section, but it "acted in the spirit and intent of the Act and has released the information that was specifically requested." (Submission of the Ministry, paragraph 5.6) In support of its position, the Ministry relied on the language of my Order No. 61-1995, November 1, 1995, pp. 5, 6 and the cases cited therein in order to protect a description of services rendered to a client from disclosure. (Submission of the Ministry, paragraphs 5.8-5.12) The Ministry further argued that the decision of Mr. Justice Thackray in The Minister of Environment, Lands and Parks et al v. The Information and Privacy Commissioner (December 12, 1995, unreported decision of the Supreme Court of British Columbia, Vancouver Registry No. A943843) "is in fact binding in this matter and is directly relevant." (Submission of the Ministry, paragraphs 5.9-5.16)

The applicant has sought to argue that the Ministry is not the client of the law firm, which in fact represents the Vancouver School Board in defending against allegedly defamatory remarks made by two persons associated with it that were published in two newspapers. (Submission of the Applicant, paragraphs 13, 14, 16) In his view, the role of the Ministry is as an agent or benefactor, not a client. The Ministry's response, which I accept, is that even if the relationship were one of agency, a solicitor and client relationship still prevails. (Reply Submission of the Ministry, paragraph 5)

The applicant also submits that he is "seeking to displace solicitor-client privilege on the fraud/crime/tort exception."

In the case at hand there is ample evidence that the Vancouver School Board acted criminally, fraudulently and tortuously. [The lawyer for] the law firm of [name of law firm], among other things, aided and abetted a cover up that prevented justice and fairness being done in addition to billing the Ministry of Finance for work which was not authorized. (Submission of the Applicant, pp. 16-20)

The applicant added further specifics of alleged fraudulent and criminal conduct in connection with the operation of the Carnegie Learning Centre. As noted above at the beginning of this discussion, I find nothing in these allegations that would justify the kind of exception to solicitor-client privilege advanced by the applicant. The cases cited by the applicant are irrelevant to the scenario he has advanced in this inquiry.

I agree with the Ministry, on the basis of Order No. 61-1995, that the description of legal services rendered to a client in a legal bill is subject to solicitor-client privilege and thus protected from disclosure under section 14 of the Act.

Section 21: Disclosure harmful to business interests of a third party

The Ministry has sought to argue that some of the information severed from the record in dispute is confidential business information of the law firm, which meets the three-part test set out in this section. (See Submission of the Ministry, paragraphs. 5.23-5.28)

Since I agree with the Ministry that "this inquiry turns primarily on the application of section 14" and that "the stronger, more applicable argument is section 14," I see no reason to address any of the section 21 arguments advanced by either party in the context of this case. (Submission of the Applicant, pp. 11-15)

Post-inquiry submissions

After the completion of this inquiry in terms of submissions received, the applicant continued to send materials to my Office. Six late submissions were received in connection with this and another inquiry. At my direction, my Office subsequently informed the applicant that he should stop sending them and that additional ones would not be accepted. The Ministry received notice of what was occurring and objected strenuously to the receipt of more submissions as contrary to the policies and procedures established by my Office.

I agree with the Ministry that submissions should not be accepted after the close of an inquiry, except perhaps in extraordinary circumstances. The Legislature has provided direction that matters under review should be dealt with quickly. The Act requires that reviews under Part 5 be resolved, either by settlement or by an inquiry, within ninety days after receiving the request for review. Thus I discourage any re-opening of inquiries after this period of time, unless all parties consent and the circumstances are extraordinary enough to justify such an extension. In this case, the applicant wished to submit a rebuttal to the Ministry's reply submission, and he also wished to bring to my attention other documents which "recently became available."

I have reviewed the late materials submitted by the applicant. Under my Office's policies and procedures, there is no right to make rebuttal arguments to a reply. The documents he says have recently become available are not, in my view, central to the issues raised in this inquiry. Thus I have not relied on these late materials in reaching a decision in this inquiry, because I decided they were not relevant.

8. Order

I find that the Ministry of Finance and Corporate Relations was authorized to refuse access to the information in the record in dispute under section 14 of the Act. Under section 58(2)(b), I confirm the decision of the head of the Ministry to refuse to give the applicant access to the record.

May 29, 1996

David H. Flaherty
Commissioner