



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

Order 03-39

MINISTRY OF ATTORNEY GENERAL

James Burrows, Adjudicator
October 23, 2003

Quicklaw Cite: [2003] B.C.I.P.C.D. No. 39
Document URL: <http://www.oipc.bc.ca/orders/Order03-39.pdf>
Office URL: <http://www.oipc.bc.ca>
ISSN 1198-6182

Summary: The applicant requested records relating to the amount spent by the provincial government in the legal defence of a third party. Section 14 authorizes the Ministry to refuse to disclose information.

Key Words: solicitor client privilege.

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

Authorities Considered: B.C.: Order 03-28, [2003] B.C.I.P.C.D. No. 28.

1.0 INTRODUCTION

[1] On August 27, 2002, the applicant made an access request to the Ministry of Attorney General (“Ministry”) under the *Freedom of Information and Protection of Privacy Act* (“Act”). The request was for records relating to the amount spent by the Ministry on the legal defence of a third party involved in civil litigation with the applicant. On October 10, 2002, the Ministry responded to the applicant by denying access to records on the legal fees under s. 14.

[2] On October 21, 2002, the applicant requested that this Office review the decision of the Ministry in denying access to the records under s. 14 of the Act. As mediation by this Office was not successful, a written inquiry was scheduled under Part 5 of the Act. On June 9, 2003, the applicant confirmed his wish that the matter proceed to inquiry and a written inquiry was held on July 24, 2003.

[3] The third party was given notice of the inquiry but declined to make a submission.

[4] I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[5] The only issue is whether s. 14 authorizes the Ministry to refuse to disclose information.

[6] Section 57(1) of the Act provides that the Ministry has the burden of proof respecting s. 14.

3.0 DISCUSSION

[7] **3.1 Legal Fees and Privilege** – The Ministry argues that the contents of the records at issue, an accounting of legal costs arising from civil litigation involving the third party and paid for by the provincial government, is clearly protected by solicitor client privilege and is therefore protected under s. 14 of the Act.

[8] The Ministry's submission states that the disputed records arise from civil litigation between the applicant and the third party. The provincial government was required to provide the third party with a grant of indemnification under the *Financial Administration Act* and the Ministry was required to undertake the third party's defence in a lawsuit brought by the applicant.

[9] In his submissions, the applicant argues that the Ministry was not the agent of, or legal advisor to, the third party. He further argues that legal fees are not part of legal advice between solicitor and client.

[10] The Commissioner and British Columbia courts have on several occasions examined the issue of solicitor client privilege as it applies to withholding records detailing legal fees. Most recently, the Commissioner dealt with this issue in Order 03-28, [2003] B.C.I.P.C.D. No. 28. In that decision, he laid out the applicable cases and principles. I have applied the approach taken in Order 03-28 without repeating it here.

[11] I find that the provincial government was, in defending the third party against the applicant's lawsuit, acting as the third party's agent or in a role that was central to the solicitor-client relationship. I am also persuaded that the evidence establishes confidentiality respecting the disputed records.

[12] As discussed in Order 03-28, British Columbia courts have been very clear that legal fee-related records such as those in dispute here are covered by solicitor client privilege. This case unquestionably falls within the parameters of these decisions. The

third party has not waived privilege. Based on these precedents, I must find that the Ministry is authorized to withhold these records under s. 14.

4.0 CONCLUSION

[13] For the above reasons, under s. 58 of the Act, I confirm that s. 14 authorizes the Ministry of Attorney General to refuse to disclose the information it has withheld under s. 14 of the Act.

October 23, 2003

ORIGINAL SIGNED BY

James Burrows
Adjudicator