



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

Order F06-08

PROVINCIAL HEALTH SERVICES AUTHORITY

Celia Francis, Adjudicator
May 24, 2006

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Summary: The applicant requested a particular letter. The PHSA denied access under s. 14. The letter is protected by solicitor-client privilege and s. 14 applies to it.

Key Words: solicitor-client privilege.

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

Authorities Considered: B.C.: Order 04-38, [2004] B.C.I.P.C.D. No. 39; Order 02-01, [2002] B.C.I.P.C.D. No. 1; F05-10, [2005] B.C.I.P.C.D. No. 11; Decision 05-04, [2005] B.C.I.P.C.D. No. 22.

1.0 INTRODUCTION

[1] This inquiry concerns a record which the applicant requested under the *Freedom of Information and Protection of Privacy Act* (“Act”) from the Provincial Health Services Authority (“PHSA”). His request asked for a letter of April 27, 2000 between the Children’s and Women’s Health Centre (“CWHC”, part of the PHSA) and the BC Health Care Risk Management Society (“BCHCRMS”), noting that it was not an issue in Order 04-38.¹

¹ [2004] B.C.I.P.C.D. No. 39.

[2] The PHSA responded by denying access to the letter under s. 14 of the Act, on the grounds that the letter was a confidential communication prepared for the purpose of providing legal advice to the CWHC and was therefore protected by solicitor-client privilege. The applicant requested a review of the PHSA's decision. Because the matter did not settle in mediation, a written inquiry took place under Part 5 of the Act. The office invited representations from the applicant, the PHSA, a third party and the Ministry of Finance ("Ministry"), as the records of the body which issued the letter are now with the Ministry. All except the third party made submissions.

2.0 ISSUE

[3] The issue before me in this case is whether the PHSA is authorized by s. 14 to withhold the letter in dispute. Under s. 57(1) of the Act, the PHSA has the burden of proof regarding s. 14

3.0 DISCUSSION

[4] **3.1 Solicitor-Client Privilege**—The PHSA applied s. 14 to the record in dispute. 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.

[5] The Information and Privacy Commissioner has considered the application of s. 14 in numerous orders and the principles for its application are well established. See, for example, Order 02-01.² I will not repeat those principles but apply them here.

[6] The applicant reminded me that this matter arose out of Order 04-38. That case concerned a request by the same applicant to the PHSA, in which he asked for records related to interactions between the PHSA and the BCHCRMS. The PHSA said it had no such records and the issue in Order 04-38 was whether the PHSA had complied with its s. 6(1) duty to assist the applicant in conducting a search for responsive records. Evidence in that case confirmed that the PHSA had no responsive records but revealed that the letter in dispute in this inquiry had turned up in the files of the BCHCRMS.³ The PHSA argued that the letter was protected by solicitor-client privilege and thus fell under s. 14. I said that the s. 14 issue was not before me, hence the applicant's request for the letter now in dispute.

² [2002] B.C.I.P.C.D. No. 1.

³ The BCHCRMS was dissolved in 2003 and its records are now with the Health Care Protection Program, Ministry of Finance.

[7] The applicant explained his view of situations in which solicitor-client privilege applies and does not apply. He took issue with the PHSA's application of s. 14 to the record in dispute and said that the PHSA "strenuously attempted to deny the Inquiry altogether. See the deliberations in this regard under decision F05-04".⁴ Among other things, the applicant also made a number of allegations about the actions of various individuals involved in his case and suggested that these actions negate any privilege.⁵

[8] The PHSA provided most of its initial submission on an *in camera* basis,⁶ appropriately so in my view. I am therefore unable to discuss it in any detail, although I can say that it discusses the record in dispute and the reasons for its creation. The PHSA also said that the privilege is not solely its own and agrees with the Ministry that it cannot exercise discretion to waive privilege over the letter as the privilege belongs in part to other parties.⁷

[9] The Ministry also discussed the situations in which solicitor-client privilege applies, including the terms of a legal retainer, where there is a common interest and where an agent is involved in communications between client and solicitor. It then provided further argument and evidence,⁸ primarily on an *in camera* basis, regarding the contents of the letter, the reasons for which it came into existence and the nature of a particular legal retainer, agency relationship and common interest behind the letter's creation. In an open part of its submission, the Ministry argued that the record in question "constitutes direct communications between two clients of a common solicitor, who are communicating for the purpose of sharing information on a matter of common interest".

[10] I have carefully reviewed the argument and evidence before me and am satisfied that the record in question is protected by solicitor-client privilege, as it relates to the terms of a legal retainer.⁹ I therefore find that s. 14 of the Act applies to the record in dispute.

⁴ Paras. 3 & 10-14, initial submission; reply submission. Decision 05-04, [2005] B.C.I.P.C.D. No. 22, flowed from the PHSA's request that the Information and Privacy Commissioner exercise his discretion under s. 56 of the Act not to hold an inquiry regarding the same letter. The Commissioner rejected the PHSA's request and directed that this matter proceed to an inquiry.

⁵ Paras. 18-20, initial submission. The PHSA said the applicant had not provided any evidence of these allegations and that it would not respond to them; see paras. 1-2, reply submission.

⁶ The applicant objected to the submission of *in camera* material by the PHSA and the Ministry; see para. 9 of his reply submission.

⁷ Para. 3, reply submission.

⁸ Paras. 9-31, initial submission; paras. 2-13, Webster-Evans Affidavit.

⁹ See Order F05-10, [2005] B.C.I.P.C.D. No. 11, where I made a similar finding.

4.0 CONCLUSION

[11] For the reasons given above, under s. 58 of the Act, I confirm that the PHSA is authorized by s. 14 to withhold the record in dispute, a letter of April 27, 2000 from the BCHCRMS to the CWHC.

May 24, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

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