



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

Order F05-15

**DISTRICT OF NORTH VANCOUVER**

Celia Francis, Adjudicator  
May 2, 2005

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**Summary:** The applicant requested records, including legal opinions, related to the District's agreement with a company to build and operate an ice facility. The District provided access to some records and withheld others under ss. 13, 14 and 17. The District has not waived privilege over the disputed records and is authorized by s. 14 to withhold them.

**Key Words:** solicitor-client privilege – waiver.

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

**Authorities Considered: B.C.:** Order 00-07, [2000] B.C.I.P.C.D. No. 7, Order 01-10, [2001] B.C.I.P.C.D. No. 11; Order 02-01, [2002] B.C.I.P.C.D. No. 1.

## 1.0 INTRODUCTION

[1] The District of North Vancouver (“District”) made an agreement a few years ago with a company to build an ice facility. The applicant requested access under the *Freedom of Information and Protection of Privacy Act* (“Act”) to material presented to Council in support of the original deal, including formal reports, legal opinions and other material provided to council before and after the deal was approved, as well as material related to tax relief sought after the original deal was approved.

[2] The District responded by providing access to 160 pages of records and withholding approximately 260 pages under ss. 13, 14 and 17 of the Act. The applicant asked that this Office review the District's decision to deny access to legal opinions respecting the deal, saying, among other things, that the mayor of the District had stated publicly that the legal opinions assured the District that the deal was legal and that the

mayor had waived privilege over the same legal opinions in having “divulged a summary” of them.

[3] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. 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**

[4] The issue before me in this case is whether the District is authorized by s. 14 of the Act to refuse access to information. Under s. 57(1) of the Act, the District has the burden of proof regarding s. 14.

[5] The District’s decision letter cited ss. 13, 14 and 17 as authority for denying access to records. The applicant’s request for review questioned the withholding of legal opinions, but did not specify the exceptions he wanted this Office to review.

[6] The notice for this inquiry listed all three exceptions as issues, although the parties provided arguments only on s. 14. The Information and Privacy Commissioner pointed this out to the parties, saying that the adjudicator would therefore consider only s. 14, and offered the parties the opportunity to object to this.

[7] The applicant responded that, in his view, s. 13(2)(m) applies to the legal opinions. The District replied that it had understood all along that only s. 14 was in issue and that it had prepared its submissions accordingly. However, it said it continued to rely on ss. 13 and 17 and that it rejected the applicant’s view that s. 13(2)(m) applies. In view of my finding on s. 14, it is not necessary for me to consider any other exceptions.

## **3.0 DISCUSSION**

[8] **3.1 Are the Records Protected by Solicitor-Client Privilege?**—The Information and Privacy Commissioner has considered the interpretation of solicitor-client privilege, and waiver of privilege, in many, many orders and the principles for its application are well-established.<sup>1</sup> Without repeating them, I have applied here the principles from those orders.

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.

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<sup>1</sup> See, for example, Order 00-07, [2000] B.C.I.P.C.D. No. 7, Order 01-10, [2001] B.C.I.P.C.D. No. 11, and Order 02-01, [2002] B.C.I.P.C.D. No. 1.

[9] The District says that the records in question, three legal opinions from its solicitors, are protected by solicitor-client privilege. (The District’s decision letter lists a larger number of withheld records but only three are in issue in this inquiry.) It refers to Order 00-07 in this regard (pp. 1-2, initial submission). The applicant argues that the District is using its “claim of privilege to protect certain officials” and that privilege is therefore inapplicable (p. 1, reply submission).

[10] I have reviewed the three records in question. They are clearly legal opinions and I am satisfied that they are protected by solicitor-client privilege.

[11] The applicant says that the District entered into a deal with the company that, in his view, contravened the *Municipal Act* and was thus invalid, although he says the agreements were later revised and, “after a counter petition, put into force in a legal fashion” (p. 2, initial submission). He says that at one point the mayor wrote to a local newspaper claiming to have received legal advice to the effect that the deal was legal and that the District’s council had authority to proceed. He argues that, in making public the “gist” of the legal advice, or at least the mayor’s interpretation of it, the District has waived privilege over the underlying legal opinions. He also suggests that fairness and consistency require disclosure of the entire legal opinions, referring to *Hunter v. Rogers*, [1982] 2 W.W.R. 189, 34 B.C.L.R. 206 (S.C.), for support (pp. 1-5, initial submission).

[12] The District says that it has not taken any action that could be construed as either expressly or impliedly waiving privilege over the legal opinions (at pp. 2-3, initial submission). It refers to the Commissioner’s discussion of this point in Order 00-07 and says that the mayor’s public comments and his comments to the District Council do not constitute an express or implied waiver of privilege. It continues at pp. 2-3 as follows:

Essentially the mayor simply stated that the District acted on legal advice when it entered into agreements with Canlan Investments with respect to a new ice arena. The District is not aware of any other statements that the Mayor has made that could possibly constitute a waiver of privilege ...

[13] The District also said that the mayor had not disclosed any information from the legal opinions, had not summarized them and had not even gone as far as disclosing the “gist” of the legal opinions.

[14] I agree with the District’s characterization of the mayor’s comments in the letter to which the applicant refers (a copy of which he attached to his initial submission). The comments do not even come close to being the gist of the legal advice in the disputed records, still less a summary. Nor is there any indication of an intention on the part of the District to waive privilege over the legal advice itself. Nothing in the material before me indicates that the District, knowing of the privilege, intended to waive it, expressly or impliedly. Nor do I consider fairness and consistency require the District to disclose the disputed records. I find that s. 14 applies to the records in dispute in their entirety.

#### **4.0 CONCLUSION**

[15] For the reasons given above, under s. 58 of the Act, I find that the District is authorized to refuse the applicant access to the records in dispute.

May 2, 2005

#### **ORIGINAL SIGNED BY**

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Celia Francis  
Adjudicator