



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

Decision F07-09

DISTRICT OF SUMMERLAND

Michael McEvoy, Adjudicator

November 2, 2007

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Summary: The public body's request that an inquiry under Part 5 of FIPPA not be held is denied. It is not plain and obvious that the solicitor-client privilege under s. 14 of FIPPA applies in this case. The respondents raise two arguments representing arguable propositions and the District did not file a response to them. In the absence of more, there is no reason why the matter should not proceed to an inquiry.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14, 56.

Authority Considered: **B.C.:** Order F07-05, [2007] B.C.I.P.C.D. No. 7; Decision F07-02, [2007] B.C.I.P.C.D. No. 4.

1.0 INTRODUCTION

[1] The District of Summerland ("District") requests under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") that an inquiry under Part 5 of FIPPA not be held with respect to an access to information request made by the respondent applicants for access to records.

[2] For the reasons given below, I have decided to deny the District's request and this matter will proceed to inquiry under Part 5 of FIPPA.

2.0 DISCUSSION

The access request

[3] The respondents requested access under FIPPA to a legal opinion, prepared for the District, which concerned whether a trip taken by elected officials was a declarable gift under the *Community Charter*.

Parties' arguments

[4] The District says that the legal opinion is protected by solicitor-client privilege and that the circumstances of this case are very similar to those in Order F07-05¹. The District says that it has released a summary of the opinion to the respondents in the interests of transparency and to explain to them the key content of the legal opinion. It argues that much like the case in Order F07-05, releasing the summary of the opinion does not waive privilege over the entire opinion.

[5] The respondents argue that, in addition to the summary of the legal opinion the District provided to them, elected District officials have orally conveyed further information to them which they argue constitutes a waiver of privilege over the entire document. They also question whether the summary of the opinion they have received is an accurate reflection of the contents of the opinion.

Discussion

[6] Section 56(1) of FIPPA reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[7] The application of s. 56(1) was aptly summarized by Adjudicator Austin-Olsen in Decision F07-02²:

Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As noted in earlier decisions, there are a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include circumstances where the principles of abuse of process, *res judicata* or issue estoppel clearly apply. Other circumstances are where it is plain and obvious that the records in

¹ [2007] B.C.I.P.C.D. No. 7.

² [2007] B.C.I.P.C.D. No. 4.

dispute are subject to an exception to disclosure or that they fall outside FIPPA's scope. In each case, however, it must be clear that there is no arguable issue which merits adjudication in an inquiry.³

[8] The legal principles of *res judicata* and issue estoppel are clearly not applicable here. Though not stated explicitly, I take the District to be arguing that it is both plain and obvious that the requested legal opinion is protected by solicitor-client privilege and that there is clearly no arguable issue which merits adjudication.

[10] Without expressing any views much less findings on the merits of this case, it is not plain and obvious that the solicitor-client privilege under s. 14 of FIPPA applies in this case. The respondents have raised two arguments that, at least on their face, represent arguable propositions in the circumstances described above. The District chose not to file a response to these arguments. In the absence of more, I cannot see why this matter should not proceed to an inquiry, where the issue of waiver of privilege will be adjudicated.

4.0 CONCLUSION

[11] This is not an appropriate case in which to decline to hold an inquiry under Part 5 of FIPPA. This matter will proceed to an inquiry.

November 2, 2007

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator

OIPC File No. F07-30703

³ Para. 9