

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 119-1996
August 29, 1996**

INQUIRY RE: A request for records that the Ministry of Social Services provided to the Ministry of Attorney General for purposes of litigation

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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 June 24, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request by the applicant for records that the Ministry of Social Services had provided to the Ministry of Attorney General for use in civil litigation proceedings.

2. Documentation of the inquiry process

On November 19, 1995 in a letter addressed to the Honourable Ujjal Dosanjh, Attorney General, and the Honourable Joy MacPhail, then Minister of Social Services, the applicant requested that the two Ministries provide him with a list of all records that the Ministry of Social Services had sent to the Ministry of Attorney General.

On December 21, 1995 the Ministry of Attorney General responded by stating that such a list did not exist. On December 22, 1995 the Ministry of Social Services informed the applicant that access to the requested material had been provided through the court process and that any other material would be subject to solicitor-client privilege.

On January 3, 1996 the applicant requested the Ministry of Attorney General to disclose records provided by the Ministry of Social Services to the Ministry of Attorney General in relation to civil actions brought by the applicant against the Ministry of Social Services. In his request for review, the applicant indicated that the Ministry of Attorney General could either create a list or provide him with copies of the records it had received from the Ministry of Social Services. On February 15, 1996 the Ministry of Attorney General responded to the applicant by withholding all records under section 14 of the Act (solicitor-client privilege).

On March 25, 1996 the applicant wrote this Office and requested a review of the Ministry of Attorney General's response to his request.

3. Issue under review at the inquiry

The applicant raised two issues in his request for review:

(1) the requirement of public bodies to create lists of records where no list exists at the time of the request for records.

(2) the application of section 14 (solicitor-client privilege) to records that relate to on-going civil litigation proceedings.

Issue number one was considered and disposed of in Order No. 105-1996, May 27, 1996, pp. 3, 4.

The only issue under review in this inquiry is issue number two. Section 14 reads as follows:

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

4. The burden of proof

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under that section, where access to information in the records has been refused, it is up to the public body to prove that the applicant has no right of access to the records or part of the records. In this inquiry, the Ministry of Attorney General has the obligation to prove why this applicant has no right of access to the records in dispute.

5. The Ministry of Attorney General's case

The Ministry emphasizes, as it did in Order No. 105-1996, that it received documents from the Ministry of Social Services to defend court actions commenced by the applicant against the Ministry of Social Services. (Submission of the Ministry, paragraph 2.4) The records in dispute consist of over three vertical feet of material assembled to defend four judicial reviews and other Supreme Court actions commenced by the applicant. (Submission of the Ministry, paragraphs 4.1, 5.4-5.7)

I have discussed below the Ministry's submissions on the application of section 14.

6. The applicant's case

The applicant's submission to me stated that I am biased against him and that I should not be involved in reviews involving him. He claims that my forms of "illegal procedure" against

him allegedly include filing four false affidavits, lying before a judge through legal counsel, being in collusion with two Ministers of the Crown, and violating his Charter rights.

7. Discussion

This inquiry concerns the same applicant and the same records as were dealt with in Order No. 105-1996, May 27, 1996.

I agree with the Ministry that the applicant should also be applying under the Supreme Court Rules to obtain the documents he wants. (Submission of the Ministry, paragraphs 4.2, 5.23-5.25, 5.8-5.11) (See Order No. 2-1994, February 7, 1994 p. 2; Order No. 105-1996, p. 3) However, I do not accept its premise that having rights under the Supreme Court Rules should preclude an applicant from also making a request under the Act. These are separate processes which can be pursued simultaneously.

Section 14: Legal Advice

The Ministry's position is quite simple:

It is the Public Body's submission that all communications, verbal or written, of a confidential character between a client and a legal adviser directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal adviser's working papers, directly related thereto) are privileged. (Submission of the Ministry, paragraph 5.12, and paragraphs 5.13-5.21 passim)

Although I have reviewed the applicant's submission, I have found nothing in it addressing the application of section 14 in this particular inquiry.

In the circumstances of this case, I agree with the position of the Ministry that all of the records in dispute are currently protected from disclosure under section 14, because they were assembled for purposes of defending litigation brought by the applicant against the Ministry of Social Services, and because of the uncertainty of the nature of this litigation. (See Submission of the Ministry, Affidavit of Betty Down, Exhibit A) (See also Order No. 110-1996, June 5, 1996, pp. 8, 9; and Order No. 92-1996, March 15, 1996 pp. 2, 3) However, counsel for the Ministry will have an opportunity under the Rules of Court to prepare a list of documents over which privilege is actually being claimed in this case.

8. Order

In respect of the records requested by the applicant, I find that the Ministry of Attorney General was authorized to refuse access under section 14 of the Act. Under section 58(2)(b), I confirm the decision of the head of the Ministry to refuse access.

David H. Flaherty
Commissioner

August 29, 1996