



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

Order 03-30

MINISTRY OF ATTORNEY GENERAL

James Burrows, Adjudicator
July 22, 2003

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Summary: The applicant requested a copy of an accounting of legal fees the provincial government has paid on behalf 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] As indicated in Order 03-31, issued concurrently with this decision, in October 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 on legal fees for civil litigation involving a third party. The Ministry obtained clarification from the applicant as to the nature of the requested records, which were an accounting of the legal fees and copies of the fronts and backs of the cheques which had paid for the legal fees. The Ministry transferred the portion of the request for the cheques to the Ministry of Management Services. The response to this part of the request came from the Minister of Finance who had custody of the cheques. On December 11, 2002, the Ministry responded to the applicant denying access to the accounting of the legal fees under s. 14.

[2] In a letter received on January 27, 2003, 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 March 13, 2003, the third party who had been involved in the litigation was notified and, on March 17, 2003, a Notice of Inquiry was issued. A written inquiry was held on April 24, 2003. A second inquiry was also held on April 24, 2003, dealing with the request for the copies of the fronts and backs of the cheques which had paid for the legal fees and were in the custody of the Ministry of Finance. This second inquiry arises from the same request and is dealt with in Order 03-31.

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

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

3.0 DISCUSSION

[6] **3.1 Procedural Issues** – The applicant has raised procedural issues related to *in camera* documents submitted by the Ministry. Both documents are identified in the Ministry's public submission, one being the indemnity agreement between the third party and the Government of British Columbia, attached as Exhibit "F" to the affidavit of Johanna D'Argis, and the other being a transcript of the oral reasons for judgment of Mr. Justice Taylor respecting an application for an injunction as part of the civil lawsuit, attached as Appendix "A" to the initial submission of the Ministry. The applicant argues that these documents should be provided to him.

[7] The Ministry has submitted the indemnity agreement to establish the relationship between the provincial government and the third party in the civil suit. The Ministry has argued that the document is protected under s. 14 and s. 22. As the relevance of the document to this matter is simply to establish the relationship between the third party and the Province, and the existence of the document does establish that relationship, I am willing to accept the argument of the Ministry that the document should be received on an *in camera* basis.

[8] With regard to the transcript, I found that this document is not relevant to the issue at hand and so I have not considered its *in camera* status or that document.

[9] **3.2 Legal Fees and Privilege** – The Ministry argues that the document in question, an accounting of legal fees incurred in 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.

[10] The Ministry's submission states that the disputed records arise from civil litigation begun by the third party "to stop, and to otherwise seek redress in respect of, defamatory attacks made against him." The provincial government agreed "to provide funding support for [the third party's] lawsuit based on the need for deterrence of such repeated scurrilous attacks and the need to restore the integrity of the office" involved. The third party adopts the Ministry's submissions and states that he does not waive solicitor-client privilege.

[11] The applicant's submissions deal with broader concerns and not with the specific question of the application of s. 14. Although I have considered those submissions in reaching my decision, I have decided not to summarize them here.

[12] The issue of solicitor-client privilege and the withholding of records detailing legal fees has been addressed a number of times and has also been the subject of several court decisions. Most recently, the Commissioner dealt with this issue in Order 03-28, [2003] B.C.I.P.C.D. No. 28, in which he mentioned the applicable cases and principles. I have applied the approach taken in Order 03-28 without repeating it here.

[13] Consistent with Order 03-28, I conclude that the indemnity agreement mentioned above establishes that the provincial government was, in paying the third party's legal fees, 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 communications contained in the disputed records.

[14] 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. There is nothing in this case which would set it outside 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

[15] 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.

July 22, 2003

ORIGINAL SIGNED BY

James Burrows
Adjudicator