



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-540

Appeal M-9500032

Ottawa Public Library



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Ottawa Public Library (the Library) received a request for access to information pertaining to the legal and other related costs incurred by the Library in respect of certain matters. The Library identified 14 invoices as the records responsive to the request and denied access. The requester, represented by counsel, appealed the decision to deny access to the records.

Portions of the records, namely seven entries made on the invoices, were withheld by the Library on the basis that the information was not responsive to the request. The appellant confirmed that the seven entries on the records were not at issue in this appeal and, therefore, the responsiveness of these portions of the records will not be addressed in this order.

The Library relies on the following exemption to withhold access, in whole or in part, to the remaining records:

- solicitor-client privilege - section 12.

A Notice of Inquiry was provided to the appellant and the Library. Representations were received from both parties.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

Section 12 consists of two branches, which provide an institution with the discretion to refuse to disclose:

- (1) a record that is subject to the common law solicitor-client privilege (Branch 1); and
- (2) a record that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Library has claimed that the first branch of the section 12 exemption applies to the records.

In order to qualify for exemption under this branch, the Board must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication; **and**
(b) the communication must be of a confidential nature; **and**
(c) the communication must be between a client (or his agent) and a legal advisor; **and**

- (d) the communication must be directly related to seeking, formulating or giving legal advice.

OR

- 2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

The Library submits that "With the records were oral communications of a confidential nature" between client and solicitor and that these communications were directly related to the seeking of legal advice on the matters referred to in the records.

The appellant states that a legal account would only be exempt under the section 12 exemption if a review of the account would disclose the legal advice given or reveal the strategies followed. The appellant points out that even where an invoice is detailed and parts of the information do qualify for exemption, those portions should be severed and the information pertaining to the dollar amount of the fee should be disclosed.

As I have indicated previously, the records at issue consist of 14 invoices. Each invoice shows the file number, a brief description of the matter attended to and the amount charged. One invoice gives a more extensive description of services provided over a period of three days.

In Order P-624, Assistant Commissioner Irwin Glasberg undertook a detailed analysis of the application of the common law solicitor-client privilege to various legal accounts. He concluded that a legal account is no different than an invoice for services remitted to an institution by a consultant or other category of professional. The distinguishing feature of a legal account is that it is issued by a law firm to its client and it relates to the provision of legal services. In that order, Assistant Commissioner Glasberg determined that findings on the application of solicitor-client privilege to legal accounts must be based on an independent review of each record and based on the wording and intent of the Act. Therefore, for a legal account to qualify for exemption under section 12 of the Act, its contents must relate in a direct and tangible way to the seeking, formulating or provision of legal advice.

In Order P-676, Inquiry Officer Anita Fineberg elaborated on the former and found that the test will be satisfied where the disclosure of the information contained in the account would reveal the subject(s) for which legal advice was sought, the strategy used to address the issues raised, the particulars of any legal advice provided or the outcome of these investigations. This approach reflects the fact that some information contained in a legal account may relate to the seeking, formulation or provision of legal advice but also allows the principle of severance to be applied to the record in a predictable fashion.

I agree with the approaches outlined by both Assistant Commissioner Glasberg and Inquiry Officer

Fineberg and adopt them for the purposes of this appeal. On this basis, I have reviewed the records together with the representations of the parties.

I find that disclosure of those portions of 11 invoices which describe the matters attended to or the services rendered would reveal the subject matter on which legal advice was sought and/or given. In my view, this information qualifies as written communication of a confidential nature between a client and a legal advisor and relates directly to the seeking, formulating or giving of legal advice. On that basis, it is properly exempt under section 12 of the Act. I have highlighted these portions of the records in yellow on the copy of the records sent to the Library's Freedom of Information and Privacy Co-ordinator with a copy of this order. The remaining records and the non-highlighted portions of the 11 records which do not qualify for exemption under section 12 should be disclosed to the appellant.

ORDER:

1. I uphold the Library's decision not to disclose the portions of the 11 records which I have highlighted in yellow on the copy of the records provided to the Library's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Library to disclose the remaining three records in their entirety and the non-highlighted portions of the 11 records referred to in Provision 1, within twenty (20) days of the date of this order.
3. In order to verify compliance with this order, I reserve the right to order the Library to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ June 2, 1995