



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2094

Appeal PA-020164-1

Centennial College of Applied Arts and Technology



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NATURE OF THE APPEAL:

The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Centennial College of Applied Arts and Technology (the College) for access to:

Details of expenses of all legal fees incurred by the college for the fiscal year ending 31 March 2002. Such list shall detail the purpose of the expense by broad categories such as labour relations, property/real estate, civil, human rights, etc. Such list shall also specify the name of the legal firm contracted.

In response, the College stated:

[O]ur search has indicated that there are responsive records that appear to contain information which falls within sections 17 (third party information) and 21 (unjustified invasion of privacy) of [the *Act*]. We are therefore providing notice to the affected parties in accordance with section 28(1) of the *Act*. We will thereafter make a final decision on this matter within the thirty (30) days time frame stipulated in the *Act*.

The College then notified five law firms (the affected parties) of the request, and sought their submissions concerning the disclosure of the records. Only one of the affected parties made submissions to the College. That affected party submitted that the records relating to it were exempt under section 17.

The College then notified the affected parties and the appellant that it had made a final decision to deny access to the records on the basis of section 17, as well as section 19 (solicitor-client privilege) of the *Act*. The College decided to discontinue its reliance on the section 21 exemption.

The appellant appealed the Ministry's decision to this office.

Mediation was not successful in resolving the issues in the appeal, so the matter was moved to the adjudication stage.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the College and the five affected parties, seeking representations by a November 15, 2002. I received representations from one affected party on November 14, on the section 17 issue only. On November 15, the College contacted this office seeking an extension of the representations due date, to November 22. The College did not submit representations by the extended due date. After November 22, staff from this office left four telephone messages for College staff, but the calls were not returned. As a result, on December 2, I decided to send a Notice of Inquiry to the appellant, seeking representations. The appellant provided his representations on December 13. Later, on December 16, I received representations from the College. Since the College made no submissions as to why I should consider its representations at such a late stage in the inquiry, I have decided that I will not consider them.

RECORDS:

There are 23 records at issue in this appeal, consisting of statements of account from the five affected parties.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

Introduction

The College claims that all of the records qualify for exemption under section 19.

Section 19 of the *Act* reads:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

Section 19 encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. It appears that the only aspect of section 19 which could apply in these circumstances is solicitor-client communication privilege.

Solicitor-client communication privilege

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

This privilege has been described by the Supreme Court of Canada as follows:

... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ... [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

This office has found in previous appeals that a solicitor's statement of account can be characterized as a confidential written communication between a lawyer and client and, as such, qualifies for solicitor-client communication privilege and is exempt from disclosure under section 19 (see Orders PO-1714, PO-1822 and MO-1465). In Order PO-1714, Adjudicator Holly Big Canoe stated:

. . . the bottom line in [*Stevens v. Canada (Privacy Council)* (1998), 161 D.L.R. (4th) 85 (Fed. C.A.), a case decided under the federal *Access to Information Act*] is clear. Unless an exception such as waiver applies, lawyers' bills of account, in their entirety, are subject to solicitor-client privilege at common law, and the common law must determine the application of privilege where an access statute incorporates it in an exemption.

The appellant makes no specific submissions on the application of section 19 to the records.

The 23 records at issue in this appeal, consisting of statements of account from various lawyers retained by the College, are clearly on their face subject to solicitor-client communication privilege based on previous orders of this office that have applied the principles in *Stevens*. In the absence of any evidence to indicate that the College has waived privilege in these records, I conclude that they are exempt in their entirety under section 19.

In the circumstances, it is not necessary for me to decide whether or not the records are exempt under section 17 of the *Act*.

The appellant indicates that he is "seeking only totals of legal expenses rather than the details of any particular case", and that this information could be found in the College's "general ledge or accounts payable office or budget summary statements to college officials." The only issue before me in this appeal, as explained in the Mediator's Report sent to the appellant and the College, is whether or not I should uphold the College's decision to withhold the identified records on the basis of the exemptions at sections 17 and/or 19 of the *Act*. I have found that section 19 applies to all of the records. In the absence of any specific request for this type of information, or any decision of the College in response, I will not make any findings as to whether other records as described by the appellant may or may not be exempt under the *Act*. However, the appellant is free to make a new request for the specific records he seeks and may, if necessary, appeal any decision of the College in that regard.

ORDER:

I uphold the College's decision to deny access to the records at issue.

Original Signed By: _____

David Goodis
Senior Adjudicator

December 30, 2002 _____