

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-4778

Appeal MA24-00081

County of Haliburton

March 16, 2026

Summary: The county denied access to legal opinions about short-term rental licenses. The adjudicator finds that the legal opinions are communications between solicitor and client for the purpose of giving legal advice and are exempt under section 12 (solicitor-client privilege) of the *Municipal Freedom of Information and Protection of Privacy Act*. The adjudicator finds that privilege has not been waived. She upholds the county's decision and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, section 12.

OVERVIEW:

[1] The County of Haliburton (the county) received a request from the appellant for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to legal opinions relating to short-term rentals (STRs). The appellant sought a legal opinion from a named law firm she submits was presented on a specific date, a further legal opinion from the county solicitor considered on another date, and any additional legal opinions obtained by the county about STRs in waterfront residential zoning.

[2] The county located two responsive records, both of them legal opinions. It denied access to them under section 12 (solicitor-client privilege) of the *Act*.

[3] The appellant appealed the county's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). After an unsuccessful attempt at mediation, the

appeal was moved to the adjudication stage of the appeal process. I conducted a written inquiry during which I received representations from the appellant and the county.

[4] In this order, I find that the records are exempt under section 12 because they are subject to common law solicitor-client communication privilege. I find that privilege was not waived. I uphold the county's decision and dismiss the appeal.

RECORDS:

[5] The records at issue are two legal opinions provided to the county.

DISCUSSION:

[6] Section 12 of the *Act* permits an institution to refuse to disclose records that are subject to solicitor-client privilege.¹ This includes records protected by common law solicitor-client communication privilege, which protects confidential communications between a solicitor and client made for the purpose of seeking or giving legal advice, including the advice itself.²

[7] There is no dispute, and I find, that the records at issue are legal opinions and that they were prepared by solicitors for the county. They are, on their face, confidential communications made within the solicitor-client relationship for the purposes of giving legal advice to the county about STRs. As a result, I find they are exempt under section 12.

[8] The sole issue before me is whether privilege has been waived over the records.

[9] Under common law, a client may waive solicitor-client privilege. An express waiver of privilege happens where the client knows of the existence of the privilege and voluntarily demonstrates an intention to waive it.³ There may also be an implied waiver of solicitor-client privilege where fairness requires it, and where some form of voluntary conduct by the client supports a finding of an implied or objective intention to waive it.⁴ Generally, disclosure to outsiders of privileged information is a waiver of privilege.⁵ However, waiver may not apply where the record is disclosed to another party that has

¹ Section 12 of the *Act* states: "A head may refuse to disclose a record that is subject to solicitor-client privilege or 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."

² *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

³ *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

⁴ *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

⁵ J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).

a common interest with the disclosing party.⁶

Representations

[10] The appellant argues that the county waived solicitor-client privilege over the records through public discussion of the STR by-law and references to the legal advice it received. She says the existence of the legal opinions was made well known to council and the public, that the STR by-law and related legal advice were discussed at public council meetings, that lawyers' suggested revisions to the draft by-law were summarized in materials made available to the public, and that a report identified counsel's proposed changes to specific provisions and disclosed the cost of legal opinions. She also refers to another municipality within the county and steps it took after receiving legal advice, and submits that other municipalities have disclosed legal opinions on STRs. She submits that these public references are inconsistent with maintaining privilege.

[11] The appellant also submits that the records should be disclosed because they relate to matters of public interest, including transparency, zoning, and the legality of STRs. She says that the county made changes to the draft by-law without public knowledge or input, and that the opinions are relevant to whether STR licences are being issued for uses not permitted by the zoning by-law.

[12] The county submits that privilege was not waived. It says both legal opinions were clearly marked "Privileged and Confidential" and were considered in a closed session of council under section 239(2) of the *Municipal Act, 2001*.⁷ It submits that discussion of the opinions in that setting did not waive privilege.

[13] The county also submits that sharing the opinions with members of council did not waive privilege because council exercises the county's powers and must be able to receive and consider legal advice on the county's behalf. It further submits that privilege was not waived by sharing the opinions with representatives of lower-tier municipalities within the county, including the municipality referred to by the appellant, because those municipalities shared a common interest with the county. Finally, it says there is nothing in the records or the surrounding circumstances to suggest the county intended to waive privilege over them.

Analysis and finding

[14] I find that the evidence does not establish either express or implied waiver of solicitor-client privilege.

[15] There is no evidence before me that the county knowingly and voluntarily demonstrated an intention to waive privilege over the records. Although the meetings

⁶ *General Accident Assurance Co. v. Chrusz*, cited above; Orders MO-1678 and PO-3167.

⁷ S.O. 2001, c.25. Section 239(2) permits a meeting or part of a meeting to be closed to the public in enumerated circumstances.

identified and linked in the appellant's representations show that STRs, the by-law and possible by-law changes were discussed publicly, they do not show that the legal opinions themselves, or the substance of those opinions, were disclosed. Public discussion of the by-law, possible amendments to it, or reference to the fact that legal advice was sought or received does not amount to waiver.

[16] I also find no implied waiver. The county's conduct is not inconsistent with maintaining privilege over the records. As the county submits, the records are marked "Privileged and Confidential," were considered in closed session, and were not intended for public distribution. The public references identified by the appellant do not support a finding that the county waived privilege over the records themselves. Nor does the sharing of the records with councillors, who act on behalf of the county, or with lower-tier municipalities sharing a common interest in the subject matter of the advice. In these circumstances, I find that fairness does not require a finding that privilege was waived.

[17] I also find that the county properly exercised its discretion under section 12 to withhold the records. The county says it considered the nature of the records and the purposes of the *Act*, including the principle that information should be available to the public except in limited and specific circumstances. I am satisfied that the county took relevant considerations into account, did not consider irrelevant ones, and did not exercise its discretion in bad faith for an improper purpose.

[18] Finally, I note the appellant's submission that disclosure is warranted on public interest grounds. However, the public interest override in section 16 of the *Act* does not apply to records exempt under section 12. I therefore do not need to consider this argument.

[19] For these reasons, I find that the records are privileged solicitor-client communications over which privilege has not been waived. I find that the records are exempt under section 12, and I dismiss this appeal.

ORDER:

This appeal is dismissed.

Original Signed by: _____
Jessica Kowalski
Adjudicator

_____ March 16, 2026