



F09-16-MS Sidewalk Victim's Lawyer Requests City's Complaint Files

After tripping and hurting herself on a city sidewalk, a woman consulted a lawyer, who advised suing. The lawyer gave a notice of damages to the municipality under section 286 of the *Local Government Act* and six months later asked the municipality for copies of any records it had about complaints made about the sidewalk and repairs made to it. The municipality complied, but withheld four pages under section 14 of FIPPA, which provides discretionary authority for a public body to withhold information subject to solicitor-client privilege. The lawyer asked us to review the decision to withhold the four pages.

The effect of section 14 is to enable a public body to withhold a record that discloses a confidential communication between a lawyer and his or her client that is directly related to providing legal advice. However, for solicitor-client privilege to apply, four conditions must first be met:

1. There must be a communication, whether oral or written;
2. The communication must be of a confidential character;
3. The communication must be between a client (or his or her agent) and a legal advisor; and
4. The communication must be directly related to the seeking, formulating, or giving of legal advice.

Our review of the records confirmed that all four conditions applied and that the municipality was therefore authorized to withhold them. The municipality consented to our informing the applicant's lawyer that the withheld records were related to an investigation carried out by the municipality's legal advisor for the purpose of providing the municipality with legal advice.