



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

Protecting privacy. Promoting transparency.

Order F15-16

## PRIVATE CAREER TRAINING INSTITUTIONS AGENCY

Ross Alexander  
Adjudicator

March 25, 2015

CanLII Cite: 2015 BCIPC 17  
Quicklaw Cite: [2015] B.C.I.P.C.D. No. 17

**Summary:** A journalist requested a list of Private Career Training Institutions Agency's suppliers and contractors that were paid more than \$10,000 in either of two fiscal years, as well as the amounts of those payments. The Agency disclosed most of the information, but withheld the identity and payment amount information for its legal counsel on the basis that the information was subject to solicitor client privilege (s. 14 of FIPPA). The adjudicator determined that solicitor client privilege did not apply and required the Agency to disclose the withheld information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 14.

**Authorities Considered:** **B.C.:** Order F14-15, 2014 BCIPC No. 18 (CanLII); Order F14-16, 2014 BCIPC No. 19 (CanLII); Order F13-03, 2013 BCIPC No. 3 (CanLII); **AB:** Order F2007-014, [2008] A.I.P.C.D. No. 72; **ON:** Order MO-2294, [2008] O.I.P.C. No. 62; Order PO-2484, [2006] O.I.P.C. No. 111; Order MO-2601, [2011] O.I.P.C. No. 25.

**Cases Considered:** *Maranda v. Richer*, 2003 SCC 67; *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427; *Donell v. GJB Enterprises Inc.* [2012] B.C.J. No. 589 (BCCA); *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] OJ No. 2769; *Waterloo (City) v. Cropley*, 2010 ONSC 6522.

## INTRODUCTION

[1] This inquiry relates to a journalist's request to the Private Career Training Institutions Agency ("Agency") for a list of its suppliers and contractors that were paid \$10,000 or more in either of two fiscal years.<sup>1</sup> He specifically requested that the list include the names of the suppliers and contractors, and the dollar amount of the payments.

[2] The Agency created a list for each of the two requested fiscal years, and disclosed most of the requested information on those lists.<sup>2</sup> It withheld four entries that contain the names and specific amounts the Agency paid its outside legal counsel. The Agency is withholding this information on the basis that it is exempt from disclosure because it is subject to solicitor client privilege under s. 14 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[3] The applicant requested that the Office of the Information and Privacy Commissioner review the Agency's decision to withhold information. Mediation did not resolve this matter, and the applicant requested that it proceed to inquiry under Part 5 of FIPPA.

## ISSUE

[4] The issue in this inquiry is whether the Agency is authorized to refuse to disclose information because it is subject to solicitor client privilege under s. 14 of FIPPA.

[5] Section 57(1) of FIPPA provides that the Agency has the burden of proof to establish that s. 14 applies.

## DISCUSSION

[6] **Background** — The Agency is a Crown corporation operating under the Ministry of Advanced Education. It was created to protect students at private post-secondary institutions that provide career training in British Columbia by setting basic education and quality standards that must be met by these institutions.

[7] The applicant seeks legal fee information from the Agency because in his view there appears to be a conflict of interest in the Agency's decision to retain

---

<sup>1</sup> The request was for the 2012 and 2013 fiscal years.

<sup>2</sup> Section 6(2) of FIPPA requires public bodies to create a record for an applicant if it can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, without unreasonably interfering with the operations of the public body. On receiving the applicant's request, the Agency determined that s. 6(2) of FIPPA required it to create the records, so it created the lists: Affidavit of M. Schwan at para. 7.

the law firm Lawson Lundell to handle litigation against two private education companies.

[8] This is not the first inquiry involving the applicant and the Agency on this subject. Order F14-15<sup>3</sup> related to the applicant's request for records about the Agency's procurement of legal services from Lawson Lundell. The issue in that inquiry was whether solicitor client privilege applied to the legal fee stated in an email from the Agency's in-house lawyer to Lawson Lundell in relation to specific legal services.<sup>4</sup> Further, Order F14-16<sup>5</sup> related to the applicant's request for copies of invoices from, and proofs of payment to, Lawson Lundell in 2012. I determined in both orders that the Agency was authorized to refuse to disclose the withheld information because it was subject to solicitor client privilege under s. 14 of FIPPA.

[9] The applicant submits that Orders F14-15 and F14-16 are materially different to this inquiry. He states that the records he sought in the two earlier requests would have put the Agency's legal services invoices under a microscope. However, in his view, the information in this current request provides a broader view of what took place.

[10] The Agency submits the applicant is seeking the same privileged information in this inquiry that he sought in the previous inquiries, and that ordering the Agency to disclose the requested information would effectively allow the applicant to circumvent the rules of solicitor client privilege. The Agency states that if the applicant wants an overview of its expenses, its annual financial statements are publicly available on the British Columbia Ministry of Finance website, and expenses such as "Professional Fees" are listed in those financial statements.

[11] **Information in Dispute** — The records before me are two lists with the names of suppliers and contractors the Agency paid \$10,000 or more in a requested fiscal year, as well as the total dollar amount paid for that year. There is one list for each requested fiscal year. Most of the information in these lists have already been disclosed to the applicant.

[12] The withheld information in dispute is a total of four entries on these lists, each of which identifies a law firm and the amount it was paid in that fiscal year.

---

<sup>3</sup> Order F14-15, 2014 BCIPC No. 18.

<sup>4</sup> The Agency disclosed that entire email to the applicant except for the legal fee prior to that inquiry.

<sup>5</sup> Order F14-16, 2014 BCIPC No. 19.

*Solicitor Client Privilege – s. 14*

[13] Section 14 of FIPPA states:

The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

[14] In 2003, the Supreme Court of Canada confirmed in *Maranda v. Richer*<sup>6</sup> [*Maranda*] that there is a presumption that lawyers' billing information in statements of accounts or other documents is subject to solicitor client privilege, but that it can be rebutted by the party seeking the release of the records.<sup>7</sup> This presumption recognizes the importance of solicitor client privilege, as well as the inherent difficulties in determining the extent to which the information contained in lawyers' bills of account discloses communications protected by privilege as opposed to "neutral information".<sup>8</sup>

[15] There is a presumption that the withheld dollar amounts paid to the law firms in this case are subject to solicitor client privilege, which the applicant does not dispute. The issue here is whether the presumption has been rebutted.

[16] The parties agree that the correct approach for determining whether the presumption of privilege has been rebutted is the one cited in *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner)* [*Central Coast*]. *Central Coast* states that "the presumption of privilege will prevail unless it is rebutted by evidence or argument that is sufficient to satisfy the adjudicator"<sup>9</sup> that the answer is "no" to the two following questions:

- (1) Is there any reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege? and
- (2) Could an assiduous inquirer, aware of background information, use the information requested to deduce or otherwise acquire privileged communications?<sup>10</sup>

---

<sup>6</sup> *Maranda v. Richer*, 2003 SCC 67.

<sup>7</sup> *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427 at para. 100, citing *Maranda v. Richer*, 2003 SCC 67 at paras. 33 and 34. Also, see *Donell v. GJB Enterprises Inc.* [2012] B.C.J. No. 589 (BCCA) at para. 30 to 66 for a discussion of circumstances in which financial records of lawyers are presumed to be subject to solicitor client privilege.

<sup>8</sup> *Maranda* at para 33. This does not necessarily mean that information cannot be severed from legal accounts in some cases. For example, see *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] OJ No. 2769 at para. 21.

<sup>9</sup> *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427 at para. 122.

<sup>10</sup> *Central Coast School District No. 49 v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427 at paras. 104 to 106.

[17] I agree this is an appropriate test and will apply it here.

[18] The parties disagree about whether the two-part test is met for the withheld information in this case. The Agency's position is that the answer is "yes" to each of the questions above, while the applicant submits that the answer to each is "no".

[19] The applicant's position is that the withheld information is not specific enough to reveal communications protected by privilege, or to be used to deduce or otherwise acquire privileged communications. In support of this position, he cites a number of examples of public bodies disclosing the total amount paid to specified law firms in specific fiscal years.<sup>11</sup>

[20] The Agency submits the presumption that solicitor client privilege applies to the withheld information has not been rebutted, so it should be exempt from disclosure. It submits that the information could easily be used to deduce privileged communications, and its disclosure would therefore directly or indirectly reveal communications protected by privilege. In support of its position, the Agency relies on Order F13-03, a case involving legal accounts in which Adjudicator Barker stated that "even if dollar amounts were disclosed in isolation, there is a reasonable possibility that this information would reveal communication protected by solicitor-client privilege."<sup>12</sup>

[21] A number of different courts and tribunals have dealt with the issue of legal invoices and payments. For example, in Order F13-03 it was determined that solicitor client privilege applied to legal invoices, including the part of those invoices stating the total cost of the legal service.<sup>13</sup> In that case, the applicant was a former employee whose responsibilities had included tracking disputes for the public body, liaising with the review board that these disputes related to, and participating in mediations. It was determined that the applicant could deduce or otherwise acquire privileged communications due to his knowledge of the public body.

[22] Similarly, in Order F14-16 I determined that legal invoices from a law firm to the Agency, and proofs of the Agency's payments, were subject to solicitor client privilege. In that order, the invoices contained dates and descriptive information of the legal services rendered. Further, the Agency had already disclosed part of an email in which the Agency communicated instructions to its lawyer to provide specified legal services for a previously agreed price.<sup>14</sup> The only part of the email that had not been disclosed to the applicant was the agreed

---

<sup>11</sup> Applicant's initial submissions at paras. 15 to 19.

<sup>12</sup> Order F13-03, 2013 BCIPC No. 3 (CanLII) at para. 16.

<sup>13</sup> Order F13-03, 2013 BCIPC No. 3.

<sup>14</sup> This severed email was the record at issue in Order F14-15.

price. In that case, the applicant could have used the legal invoices and proofs of payment, in combination with the portions of the email that had already been disclosed to the applicant, to deduce privileged communications.<sup>15</sup>

[23] However, the facts in this inquiry are different, and the records are summary documents that do not contain the specific details found in Orders F13-03 and F14-16. The information in dispute here is the aggregate totals of legal expenses paid to different law firms in specified fiscal years with no descriptions, pricing breakdowns or specific date ranges for legal services.

[24] In *Central Coast*, one of the records at issue was a two page document titled “G/L Account Summary”, which – as here – contained legal fee information. In that case, an adverse litigant was requesting the information from the public body in relation to ongoing legal proceedings. The fact that the information related to ongoing litigation was significant, as previous cases have discussed how an assiduous inquirer may be able to reasonably discern information from the total of interim fees, such as (among other things): the state of a party's preparation for trial; whether the expense of expert opinion evidence had been incurred; and whether the amount of the fees indicated only minimal expenditure, thus showing an expectation of compromise or capitulation.<sup>16</sup> The Court determined that solicitor client privilege applied to this record. However, unlike *Central Coast*, the issue in this case before me does not relate to interim legal fees for ongoing litigation.

[25] Since *Maranda*, there have also been cases where the total amounts of legal fees were determined to not be subject to solicitor client privilege.

[26] For example, *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*<sup>17</sup> was a judicial review of a decision in which an adjudicator ordered the Ontario Ministry of the Attorney General to disclose the amounts it invoiced for the legal services it provided to two public bodies regarding two specific disputes because the information was not subject to solicitor client privilege. The Court upheld the order because the presumption of privilege was rebutted, noting that the only information that was ordered disclosed consisted of amounts with no corresponding dates or descriptive information.

[27] Ontario Order MO-2294<sup>18</sup>, upheld on judicial review<sup>19</sup>, addressed a request for the total dollar figures of legal invoices in relation to named

---

<sup>15</sup> Order F14-16 was issued in conjunction with Order F14-15.

<sup>16</sup> *Central Coast* at para. 133 citing *Municipal Insurance Assn. of British Columbia* (1996), 143 D.L.R. (4th) 134 (S.C.) at para. 49.

<sup>17</sup> *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 2769.

<sup>18</sup> Ontario Order MO-2294, [2008] O.I.P.C. No. 62.

<sup>19</sup> *Waterloo (City) v. Copley*, 2010 ONSC 6522.

businesses and individuals over a specified period of time. In that case, it was determined that this information was “neutral information” (i.e. information that does not reveal anything in the nature of a privileged communication),<sup>20</sup> so the presumption of privilege was rebutted. Moreover, in Ontario Order MO-2601, which related to the same litigation as Order MO-2294, it was determined that solicitor client privilege did not apply to a one-page record created by the public body that set out a single figure representing the total amount of fees it had been charged in connection with four legal actions.<sup>21</sup> In reaching this conclusion, Adjudicator Higgins determined that disclosure of the gross billing amount, by itself, would not disclose anything confidential about solicitor client communications, noting that the information at issue was a single dollar figure for legal expenses relating to four different lawsuits covering a substantial period of time (almost 4 years).<sup>22</sup>

[28] Further, Alberta Order F2007-014<sup>23</sup> involved accounts for legal services from the law firm Bennett Jones to a public body in relation to complaints the public body made to the Law Society about the applicant. In that case, it was determined that solicitor client privilege did not apply to the total amount of these accounts, the Bennett Jones letterhead, and the name and address of the public body because this information would not enable the applicant to acquire privileged communications. In reaching this conclusion, Adjudicator Cunningham stated the following:

**54** Having reviewed the information in the bills of account, I am satisfied that disclosing the total amount due, the firm letterhead, and the name and address of the Public Body from each bill of account would not enable the Applicant to acquire privileged communications. Disclosing this information will reveal that the law firm acted on behalf of the Public Body and the amount it billed for its services. That the law firm of Bennett Jones was retained by the Public Body was already known to the Applicant, as the law firm, at the direction of its client, represented the Public Body in its complaint against the Applicant. Any privilege attaching to the fact that the Public Body retained the law firm to represent it in proceedings before the Law Society was effectively waived when the law firm openly represented the Public Body before the Law Society at the direction of its client. Further, the fact that the Public Body retained the law firm was confirmed by the Public Body when it responded to the Applicant's access request. As the Applicant will not receive information relating to the dates of the bills of account, the services provided, or the individual lawyers providing the services, the total amount billed by the law firm remains neutral information from which the Applicant will be unable

---

<sup>20</sup> See Ontario Order PO-2484, [2006] O.I.P.C. No. 111 at para. 68 for this explanation about neutral information.

<sup>21</sup> Ontario Order MO-2601, [2011] O.I.P.C. No. 25.

<sup>22</sup> Ontario Order MO-2601, [2011] O.I.P.C. No. 25 at para. 37.

<sup>23</sup> Alberta Order F2007-014, [2008] A.I.P.C.D. No. 72.

to glean information about advice received from counsel or the legal strategies employed by the Public Body.<sup>24</sup>

[29] These cases demonstrate that determining whether the presumption that legal fees are subject to solicitor client privilege has been rebutted turns on the circumstances of the case.

[30] For the information at issue in this case, the Agency submits the withheld information summarizes privileged communication between the Agency and its solicitors. It states that the withheld information:

...contains, among other things, the total professional fees for legal services rendered, the date range during which legal services were provided, the date range during which of the fees were paid, the approximate number of hours spent providing legal services, and the identity of the lawyer or law firm providing the legal services.<sup>25</sup>

[31] I do not agree with the Agency's characterization of what the withheld information discloses. The records contain the identities of law firms that the Agency paid at least \$10,000 for legal services in the requested fiscal years. They also state a lump sum total the Agency paid to each firm in a given fiscal year, which is presumably comprised of legal fees, taxes and disbursements. The information does not disclose whether one or more lawyers provided these legal services, how the rates were calculated (i.e., by specific hourly rate(s), a fixed fee or another method), or what matter(s) the legal services relate to. Even if it were publicly known that a law firm provided the Agency with legal services for one specific matter, the firm may have also provided other legal services.

[32] Moreover, in my view, the withheld information does not disclose the date range during which legal services were provided. While the fact that the Agency paid \$10,000 to a law firm for legal services in a given year strongly suggests that the law firm provided legal services in that year, the fiscal year when the services were provided could be different than the year the Agency actually paid for those services. Further, it is not possible to discern the precise date ranges for which legal services were provided because the lists are not detailed, including that the lump sum payment amount is only identified by the fiscal year rather than the specific date(s) of the payments. Moreover, given that the records only list law firms that were paid \$10,000 or more in a given fiscal year, the records do not disclose whether the legal services were provided over a period of a few days or weeks, an entire year or multiple years. For example, a law firm could have been providing ongoing legal services to the Agency during the entire requested period, and it would not be listed in either record if it was not

---

<sup>24</sup> Alberta Order F2007-014, [2008] A.I.P.C.D. No. 72 at paras. 53 and 54.

<sup>25</sup> Applicant's initial submissions at para. 15 citing the Affidavit of M. Schwan at para. 11.



paid at least \$10,000 in either year. Moreover, it would only be on one of the lists if it was only paid at least \$10,000 in one year. For these reasons, the precise date ranges for legal services would not be revealed by disclosing the information that is at issue.

[33] The applicant questions why the Agency is withholding the identities of law firms who the Agency paid, considering that the Agency's (now former) CEO and Registrar already disclosed to him the identities of law firms who represented the Agency in 2012. The applicant subsequently wrote and published an article listing the names of the firms, which he provided as evidence in this inquiry. The Agency did not dispute this evidence, or provide specific evidence that demonstrates why the identities of the law firms are subject to solicitor client privilege.

[34] I accept the applicant's evidence that the Agency has already told him a list of law firms who represented the Agency. Moreover, the identities of at least some of the lawyers and law firms who represented the Agency are publicly known because they represented the Agency in public proceedings. In my view, to the extent this identity information may have been privileged at one time, the privilege has effectively been waived.<sup>26</sup> I find that the names of the law firms are not subject to solicitor client privilege.<sup>27</sup>

[35] Turning to the amounts paid by the Agency, the information in dispute is the lump sum amounts the Agency paid each law firm in a given fiscal year. This is not a case like Orders F14-15 and F14-16, where disclosure of fee information could be used to deduce privileged communications such as an agreed legal fee. The total amount of legal fees here is neutral information that does not directly or indirectly reveal any communication protected by the privilege.

[36] In this case, even if the applicant or another assiduous inquirer knew that a specific law firm provided legal services for a specific dispute, they would not know that the aggregate amount paid solely relates to that specific dispute, since the firm may have provided legal services for more than one matter or dispute. Moreover, even if an assiduous inquirer was able to discern that all of the payments to a law firm related to one specific dispute, this would not directly or indirectly reveal privileged communications. For example, it would not reveal the Agency's instructions to its legal counsel, details about what legal work was completed, litigation strategies, whether specific expenses were incurred, or other communications protected by solicitor client privilege.

---

<sup>26</sup> See Alberta Order F2007-014, [2008] AIPCD No. 72 at para. 54. Also see, for example, Order F14-15 at paras. 13 to 15 for a discussion of waiver.

<sup>27</sup> Disclosure of the identity information would also reveal that these firms were paid \$10,000 or more in the specified fiscal year(s). However, in my view, disclosure of this information does not make the identity information subject to solicitor client privilege in this case for the reasons and conclusions made in this order below with respect to the exact amounts paid, and due to the fact that this information conveys even less information than the exact payment information.

[37] Moreover, while the applicant is an assiduous observer who is knowledgeable about the Agency's legal disputes due to the inquiries he has made and the information he has gathered, I find that disclosure of the information at issue would not enable him or another assiduous inquirer to deduce or otherwise acquire privileged communications. The information at issue in this case is neutral information that is insufficiently detailed to disclose privileged communications, even when combined with background information that is known by – or could be acquired by – an assiduous inquirer.

[38] In summary, I find the presumption that disclosure of the withheld information is subject to solicitor client privilege has been rebutted. I reach this conclusion because there is no reasonable possibility that disclosure of the law firm identity information and the lump sum amounts paid by the Agency will directly or indirectly reveal any communication protected by the privilege, or that an assiduous inquirer, aware of background information, could use the information requested to deduce or otherwise acquire privileged communications.

*Fairness / Multiple Requests by the Applicant*

[39] As previously stated, the Agency submits that requiring it to disclose summarized information of what was determined to be privileged in Orders F14-15 and F14-16 is an unfair and inappropriate attempt to circumvent those earlier decisions. It also submits that it was required to create the record at issue under FIPPA, and that ordering its disclosure would circumvent the legislated and common law rules surrounding privilege.

[40] In my view, the fact that the Agency created the records at issue for the purpose of responding to the applicant's request does not change whether the information is exempt from disclosure under s. 14 of FIPPA. In determining whether solicitor client privilege applies to a record, there is ordinarily no meaningful distinction between a record that pre-dates the request for records and one that was created in response to a FIPPA request.<sup>28</sup>

[41] With respect to the Agency's assertion that this access request was an attempt to circumvent Orders F14-15 and F14-16, as I have already noted the records and information at issue here are different. While I agree with the Agency that it is unfortunate the applicant has made multiple requests for similar types of information, concluding that solicitor client privilege does not apply to the withheld information in this case does not circumvent Orders F14-15 and F14-16, or circumvent or derogate the rules of solicitor client privilege. Each case is decided on its merits, and I find that the information at issue here is not subject to solicitor client privilege.

---

<sup>28</sup> See *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] OJ No. 2769 at para. 21.

[42] In summary, I find that the withheld information in this case is not subject to solicitor client privilege under s. 14 of FIPPA, and that the Agency is required to disclose it to the applicant.

## **CONCLUSION**

[43] For the reasons given above, under s. 58 of FIPPA, I order the Agency to give the applicant access to this information by **May 8, 2015**, pursuant to s. 59 of FIPPA. The Agency must concurrently copy the Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

March 25, 2015

## **ORIGINAL SIGNED BY**

---

Ross Alexander, Adjudicator

OIPC File No.: F13-55530