



## REVIEW REPORT 150-2023

### Rural Municipality of Grayson No. 184

September 19, 2023

#### Summary:

The Applicant, representing the Hamlet of Sunset Beach, submitted an access to information request to the Rural Municipality of Grayson No. 184 (RM) for copies of invoices issued by MLT Aikins LLP to the RM. The RM refused the Applicant access. The RM cited subsections 21(a) and (b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as its reasons for the refusal. The Applicant requested a review by the Commissioner. The Commissioner found that subsection 21(a) of LA FOIP applied to the records. However, the Commissioner noted that subsection 21(a) of LA FOIP is a discretionary exemption. LA FOIP does not require that the RM withhold the records. The Commissioner recommended that the RM reconsider the exercise of its discretion to determine if it can release the records at issue, in full or in part, to the Applicant within 30 days of issuance of this Report.

#### I BACKGROUND

[1] The Hamlet of Sunset Beach (Hamlet) is located within the Rural Municipality of Grayson No. 184 (RM).

[2] The RM's legal counsel wrote a letter dated March 9, 2023 to the Hamlet indicating that in 2022, the RM paid \$42,977.20 in legal fees "to address violations of s. 7 of the RM's Zoning Bylaw No. 2004-02". The letter also said:

The legal services in relation to s. 7 of the Zoning Bylaw were provided between January and December of 2022. The legal fees were invoiced to the RM on January 31, February 28, March 31, May 31, June 30 and July 31 of 2022.

...

Organized hamlets are governed by the RM and have no independent source of funding. Expenses for services provided to an organized hamlet are allocated to the organized hamlet's ledger accounts. Shared expenses may be divided; however, services or items that benefit the organized hamlet only are generally not prorated. In this case, the RM elected to pay over 60% of the legal fees in question, even though all of the legal fees were incurred for the benefit of the Hamlet.

[3] On May 12, 2023, the RM received the following access to information request from the Applicant, who is a representative of the Hamlet.

Copies of Invoices for legal services provided by MTL [sic] Aikins LLP to the RM of Grayson dated January 31, February 28, March 31, May 31, June 30 and July 31, 2022. These invoices were referenced in a letter from MLT Aikins LLP to the Hamlet of Sunset Beach Board dated March 9, 2023.

[4] In a letter dated June 7, 2023, the RM responded to the Applicant. It said it was refusing the Applicant access to the records pursuant to subsections 21(a) and (b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] On June 8, 2023, the Applicant requested a review by my office.

[6] On June 23, 2023, my office notified the RM and the Applicant that my office would be undertaking a review.

[7] On June 23, 2023, the Applicant provided their submission to my office.

[8] On August 21, 2023, the RM provided a submission.

## II RECORDS AT ISSUE

[9] The records at issue are eight invoices that were withheld in full:

Record #	Description
1	Legal invoice #6265511 dated January 31, 2022
2	Legal invoice #6270374 dated February 28, 2022

3	Legal invoice #6278959 dated March 31, 2022
4	Legal invoice #6291441 dated May 31, 2022
5	Legal invoice #6291440 dated May 31, 2022
6	Legal invoice #6298446 dated June 30, 2022
7	Legal invoice #6298321 dated June 30, 2022
8	Legal invoice #6303901 dated July 31, 2022

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[10] The RM qualifies as a “local authority” pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

#### 2. Did the RM properly apply subsection 21(a) of LA FOIP?

[11] The RM applied the discretionary exemption in subsection 21(a) of LA FOIP to refuse access to all of the records at issue. Subsection 21(a) of LA FOIP provides:

**21** A head may refuse to give access to a record that:

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[12] Subsection 21(a) of LA FOIP is a discretionary exemption. It permits refusal of access in situations where a record contains information that is subject to any legal privilege, including solicitor-client privilege (*Guide to LA FOIP*, Chapter 4: “Exemptions from the Right of Access”, Updated: April 29, 2021, [*Guide to LA FOIP*, Ch. 4], p. 219).

[13] There are several types of privilege. In this case, the RM has claimed solicitor-client privilege.

[14] The purpose of solicitor-client privilege is to assure clients of confidentiality and enable them to speak honestly and candidly with their legal representatives. My office applies the following three-part test in determining if subsection 21(a) of LA FOIP applies:

1. Is the record a communication between a solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

*(Guide to LA FOIP, Ch. 4, pp. 221-225)*

[15] The following is an analysis to determine if the three-part test is met.

***1. Is the record a communication between a solicitor and client?***

[16] A “communication” is the process of bringing an idea to another’s perception; the message or ideas so expressed or exchanged; the interchange of messages or ideas by speech, writing, gestures or conduct (*Guide to LA FOIP, Ch. 4, p. 221*).

[17] A “client” means a person who consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on their behalf. It includes a client of the law firm in which the lawyer is a partner or associate, whether the lawyer handles the client’s work (*Guide to LA FOIP, Ch. 4, p. 222*).

[18] A “lawyer” means a member of the Law Society and includes a law student registered in the Society’s pre-call program (*Guide to LA FOIP, Ch. 4, p. 222*).

[19] In its submission, the RM’s legal counsel said that while legal expenses were allocated to the Hamlet, it does not mean that the legal services were rendered on behalf of the Hamlet. It said:

Although legal expenses were allocated to the Hamlet, by the RM, this does not mean that the legal services were rendered on behalf of the Hamlet or that a solicitor client relationship exists between our firm and the Hamlet. Organized hamlets are governed

by the RM and have no independent source of funding. Pursuant to s. 69 of *The Municipalities Act*, expenses incurred by the organized hamlet are allocated to the organized hamlet's ledger accounts.

In this case, the RM paid legal fees to address violations of s. 8 of the RM's Zoning Bylaw No. 2004-02 (the "Zoning Bylaw"). Section 8 of the Zoning Bylaw pertains specifically to the Resort Hamlet District. Since the Hamlet of Sunset Beach is located in the Resort Hamlet District, the legal fees are properly allocated to the Hamlet. Therefore, the legal services were not rendered on behalf of the Hamlet, **but were rendered on behalf of the RM in the enforcement of its Zoning Bylaw within the Hamlet.**

[Emphasis in original]

[20] Based on a review of the records, the records at issue are invoices where the author was MLT Aikins and the recipient was the RM. The lawyers are Shawna Sparrow, Milad Alishahi, and Teague H. Pushor. The Law Society of Saskatchewan's website provides that these individuals are listed as members. As such, they are the solicitors and the RM qualifies as a client. As such, I find that the records at issue are communications between a solicitor and client.

### ***2. Does the communication entail the seeking or giving of legal advice?***

[21] "Legal advice" means a legal opinion about a legal issue and a recommended course of action, based on legal considerations, regarding a matter with legal implications (*Guide to LA FOIP*, Ch. 4, p. 224).

[22] The Federal Court of Appeal decision [Stevens v. Canada \(Prime Minister\), 1998 CanLII 9075 \(FCA\), \[1998\] 4 FC 89](#) recognized that invoices of lawyers constitute communications for the purpose of obtaining advice (*Guide to LA FOIP*, Ch. 4, p. 227). Similarly, I find that the records at issue entail the seeking or giving of legal advice.

### ***3. Does the communication entail the seeking or giving of legal advice?***

[23] The Supreme Court of Canada (SCC) decision [Maranda v. Richer, 2003 SCC 67 \(CanLII\), \[2003\] 3 SCR 193](#) determined there was a presumption of privilege for lawyers' bills of

account as a whole. The presumption of privilege could be rebutted if an applicant could provide persuasive argument that the disclosure of information could not result in the applicant learning of information subject to solicitor-client privilege (*Guide to LA FOIP*, Ch. 4, p. 228).

[24] In their submission, the Applicant (representing the Hamlet) explained the RM charged a portion of the legal fees from the invoices dated January 31, February 28, March 31, May 31, June 30 and July 31, 2022. The RM had taken the funds from the Hamlet budget.

[25] The Applicant explained that the RM passed resolution 147/22. The resolution provides that the RM will pay the first \$10,000 on behalf of the Hamlet and then the expense would be split 50/50 thereafter. The resolution read as follows:

**Hamlet Legal Fees**

**147/22 D. Grant:** That in the event one of the Hamlets incur legal fees, the R.M. of Grayson No.184 (R.M.) will pay the first \$10,000 on behalf of the Hamlet and then the expense will be split 50/50 thereafter. Should the Hamlet's legal expenses exceed their budgeted amount, the expense will be paid out of any budget surplus before the R.M. considers financing options in the event of a shortfall. **Carried**

[26] The Applicant asserted they were not seeking legal advice. They were seeking information to verify the legal services the Hamlet was being charged for were in fact only for services related to the Hamlet. The Applicant said:

...we are not seeking information on the legal advice that may be deemed confidential. We simply seek to understand what type of legal services were provided, the dates the legal services were provided, and when they were invoiced to the RM of Grayson. Further we need some way to verify that these legal services were in fact only for services related to the enforcement of zoning bylaws for properties within the Hamlet of Sunset beach during calendar year 2022. And, that these services were incurred for the sole benefit of the Hamlet of Sunset Beach.

[27] While I note the reasonableness in the Applicant's position for wanting access to the information, the Applicant's submission does not persuade me that the disclosure of the record at issue would not result in the Applicant learning of information subject to solicitor-client privilege.

[28] I find that all three parts of the three-part test are met. Therefore, I find that subsection 21(a) of LA FOIP applies to the records at issue.

[29] I note that subsection 21(a) of LA FOIP is a discretionary exemption. Nothing in LA FOIP requires the RM to withhold the invoices, in full or in part, from the Applicant. To this point, I note that the Code of Ethics for Members of Council set out in Part III of Schedule 1 of *The Municipalities Regulations* requires members of council to maintain confidentiality. But it also requires members of council to be transparent and accountable:

**d. Transparency and Accountability**

Members of council shall endeavour to conduct and convey council business and all their duties in an open and transparent manner, other than those discussions that are authorized to be dealt with in a confidential manner in closed session, so that stakeholders can view the process and rationale used to reach decisions and the reasons for taking certain actions.

Members of council are responsible for the decisions that they make. This responsibility includes acts of commission and acts of omission.

**e. Confidentiality**

Members of council shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or authorized by council to do so. Members shall not take advantage of or obtain private benefit from information that is obtained in the course of or as a result of their official duties or position and that is not in the public domain. This includes complying with *The Local Authority Freedom of Information and Protection of Privacy Act* in their capacity as members of council of a local authority.

[30] LA FOIP does not require the RM to withhold the records from the Applicant. The RM is the client in the solicitor-client privilege. Therefore, the RM has the ability to waive the privilege and release the records at issue, in full or in part. It is bizarre that the Hamlet, which is a part of the RM, has not been given access to at least portions of the records to verify its legal expenses. As noted in the RM's legal counsel's letter dated March 9, 2023 to the Hamlet, organized hamlets are governed by the RM. It is bizarre that the invoices that details regarding legal expenses being allocated to the Hamlet are not readily available to the Hamlet. It is even more bizarre that the Hamlet has needed to submit a formal access to information request under LA FOIP in efforts to try to gain access to the records.

[31] I recommend that the RM reconsider the exercise of its discretion to determine if it can release the records at issue, in full or in part, to the Applicant within 30 days of issuance of this Report.

[32] I note that this is a financial matter between the Hamlet and the RM. I suggest that they both consider section 77 of *The Municipalities Act* as a further dispute mechanism.

#### **IV FINDINGS**

[33] I find that I have jurisdiction to conduct this review.

[34] I find that subsection 21(a) of LA FOIP applies to the records at issue.

#### **V RECOMMENDATION**

[35] I recommend that the RM reconsider the exercise of its discretion to determine if it can release the records at issue, in full or in part, to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 19<sup>th</sup> day of September, 2023.

Ronald J. Kruzeniski, K.C.  
Saskatchewan Information and Privacy  
Commissioner