



REVIEW REPORT 165-2022

Rural Municipality of Rosthern No. 403

January 25, 2023

Summary:

The Applicant submitted an access to information request to the Rural Municipality of Rosthern No. 403 (RM). The RM required the Applicant to pay the \$20 application fee before proceeding with processing the access request. The Applicant paid the fee. The RM provided redacted records to the Applicant. The Applicant appealed to the Commissioner. The Commissioner found that the RM properly required payment of the application fee. Further, the Commissioner found that the RM made a *prima facie* case that subsection 21(a) of LA FOIP applies to the records at issue. He recommended that the RM take no further action with respect to the applicant fee. Further, he recommended that the RM continue to withhold the redacted portions of the records at issue.

I BACKGROUND

[1] On July 13, 2022, the Rural Municipality of Rosthern No. 403 (RM) received the following access to information request from the Applicant:

Invoices from Robertson Stromberg LLP.

Any and all invoices to the RM of Rosthern or association to RM of Rosthern from Candice Grant or Robertson Stromberg LLC.

[2] The Applicant requested that the application fee be waived.

- [3] In a letter dated August 9, 2022 to the Applicant, the RM informed the Applicant of the \$20.00 application fee. The RM said that portions of the responsive records would be redacted as the records are subject to solicitor-client privilege.
- [4] On August 22, 2022, the Applicant paid the \$20.00 application fee.
- [5] Then, in a letter dated August 23, 2022, the RM's lawyer responded to the Applicant's access request. The RM confirmed it received payment of the application fee from the Applicant. Enclosed with the letter was 44 pages of redacted records.
- [6] In an email dated August 23, 2022, the Applicant requested a review by my office.
- [7] On September 9, 2022, my office notified the RM and the Applicant that it would be undertaking a review.
- [8] On November 8, 2022, my office received a submission from the RM. On December 9, 2022, my office received a sworn affidavit of records and a schedule of records from the RM.

II RECORDS AT ISSUE

- [9] At issue are 44 pages of records. They consist of 18 invoices between the RM and its legal counsel.
- [10] As I describe later, the RM provided my office an affidavit and schedule of records pursuant to Part 9 of my office's [*Rules of Procedure*](#) in an effort to make a *prima facie* case that solicitor-client privilege applies to the records at issue. The RM indicated that it only redacted the "file name(s) and the detailed entries of legal work done by counsel have been severed". The RM indicated that the dates and overall amounts of the invoices were provided to the Applicant.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] The RM qualifies as a “local authority” as defined by subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I find that I have jurisdiction to undertake this review.

2. Did the RM properly require payment of the application fee?

[12] In an email dated September 7, 2022, the Applicant asserted they “should not have had to pay any fee to receive what [they] did”.

[13] Subsection 5(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides:

5(1) An application fee of \$20 is payable at the time an application for access to a record is made.

[14] The prescribed circumstances under which the \$20 application fee can be waived are set out in subsection 8(1) of the LA FOIP Regulations. Specifically, subsection 8(1)(a) of the LA FOIP Regulations provides:

8(1) For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

(a) with respect to the fees set out in subsection 5(1), if the application involves the personal information of the applicant;

[15] The Applicant had indicated to my office that invoices “should be publically [sic] available”. The Applicant did not provide any further argument to support their assertion.

[16] Section 117 of *The Municipalities Act* speaks to the public’s right to inspect and obtain copies of certain municipal records as follows:

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;

(b) the statements maintained by the administrator in accordance with section 142 and the debentures register;

(b.01) the official oaths or affirmations taken by members of council pursuant to section 94;

(b.1) the municipality's financial statements prepared in accordance with section 185 and auditor's report prepared in accordance with subsection 189(1);

(b.2) the financial statements of any controlled corporation prepared in accordance with section 187 and an auditor's report prepared in accordance with subsection 189(1);

(c) any report of any consultant engaged by or of any employee of the municipality, or of any committee or other body established by a council, after the report has been submitted to the council, except any opinion or report of a lawyer;

(d) the minutes of the council after they have been approved by the council; and

(e) any other prescribed report or document.

[17] The records at issue are not publicly available pursuant to section 117 of *The Municipalities Act*. Even if the records were to be available for public inspection, subsection 117(2) of *The Municipalities Act* provides that "the administrator shall furnish copies requested on payment of any fee that the council may fix."

[18] The Applicant's access request is not for their personal information. The Applicant sought the invoices between the RM and its legal counsel. The prescribed circumstance set out at subsection 8(1)(a) of LA FOIP for a waiver of the application fee does not exist.

[19] I find that the RM properly required payment of the application fee. I recommend that the RM take no further action with respect to the application fee.

3. Did the RM make a *prima facie* case that subsection 21(a) of LA FOIP applied?

[20] My office's [*Rules of Procedure, Part 9: Solicitor-Client or Litigation Privilege*](#) (revised September 1, 2022) at page 34 outlines the process a local authority is to follow when claiming solicitor-client or litigation privilege:

9-1 Claiming solicitor-client or litigation privilege

(1) Where solicitor-client or litigation privilege is being claimed as an exemption by the head or delegate, the commissioner's office will request the head or delegate to provide a copy of the records, or an affidavit of records, schedule and redacted record over which solicitor-client or litigation privilege is claimed setting out the elements requested in Form B.

[21] For this review, the RM elected to make a *prima facie* case that subsection 21(a) of LA FOIP applies to the records at issue. The RM provided my office with an affidavit of records, including the schedule of records, signed by its Reeve. The RM also provided a submission.

[22] 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;

[23] Subsection 21(a) of LA FOIP is a discretionary, class-based 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 30, 2021, [*Guide to LA FOIP*, Ch. 4], p. 219).

[24] The following three-part test can be applied:

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)

[25] 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?

[26] 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).

[27] 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).

[28] 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).

[29] The local authority should make it clear who the solicitor is and who the client is.

[30] In the schedule of records provided to my office, the RM described each record at issue as a “legal invoice” where the author was Robertson Stromberg LLP and the recipient was the RM.

[31] Based on materials provided to my office from the Applicant, the lawyers’ names are M. Kim Anderson and Candice Grant. The Law Society of Saskatchewan’s website provides that both individuals are listed as members. As such, M. Kim Anderson and Candice Grant qualify as the solicitors and the RM qualifies as the client. As such, I find the records at issue are communications between a solicitor and client.

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

[32] “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).

[33] As I noted in my office’s [Review Report 229-2017, 031-2017 – Part II](#), 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. Similarly, I find that the records at issue entail the seeking or giving of legal advice.

3. Did the parties intend for the communication to be treated confidentially?

[34] In my office’s [Review Report 052-2013](#), I discussed the Supreme Court of Canada (SCC) decision [Maranda v. Richer](#), 2003 SCC67 (CanLII), [2003] 3 S.C.R. 193. The SCC determined there was a presumption of privilege for lawyers’ bills of account as a whole. I found that 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.

[35] In this case, I am satisfied that the portions of the invoices that were withheld from the Applicant were intended to be treated as confidential. In this case, the Applicant had only asserted their position that invoices should be publicly available. That is not enough to rebut the presumption of privilege.

[36] I find that the RM has made a *prima facie* case that subsection 21(a) of LA FOIP applies to the records at issue. I recommend that the RM continue to withhold the redacted portions of the records at issue.

IV FINDINGS

[37] I find that I have jurisdiction to undertake this review.

[38] I find that the RM properly required payment of the application fee.

[39] I find that the RM has made a *prima facie* case that subsection 21(a) of LA FOIP applies to the records at issue.

V RECOMMENDATIONS

[40] I recommend that the RM take no further action with respect to the application fee.

[41] I recommend that the RM continue to withhold the redacted portions of the records at issue.

Dated at Regina, in the Province of Saskatchewan, this 25th day of January, 2023.

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