



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 198-2024

Rural Municipality of Reford No. 379

April 7, 2025

Summary:

The Applicant submitted an access to information request to the Rural Municipality of Reford No. 379 (RM) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The RM released a one-page document, in part. The RM's response did not reference the exemption it applied to the record. The Applicant requested a review of the RM's decision to deny access to part of the record, and of its search efforts. To find some resolution with the Applicant, the RM agreed to conduct another search for records. This search yielded seven additional pages of records, which the RM withheld in part from the Applicant pursuant to subsections 21(a), (b) and (c) of LA FOIP. The Applicant was not satisfied and requested that my office proceed with reviewing the exemptions applied and its search efforts, as the Applicant believed additional records should still exist. The RM's legal counsel provided my office with fully unredacted copies of the one-page record and seven pages of records that the RM released to the Applicant, in part. During the review, the RM's legal counsel also provided my office with 37 pages of records with redactions applied to some portions; seven of these pages were the records the RM had previously released in part to the Applicant. The RM stated that it was withholding the record, in full, pursuant to subsections 21(a), (b) and (c) of LA FOIP. The RM stated it was also making a *prima facie* claim that subsection 21(a) of LA FOIP applies to the redacted portions of the record and provided my office with an affidavit and schedule of records for those portions. The A/Commissioner found that the RM conducted a reasonable search for records and recommended it take no further action regarding the search for records. The A/Commissioner further found that the RM made a *prima facie* case that subsection 21(a) of LA FOIP applied to the portions of the record where it made this claim. He also found that the RM properly applied subsection 21(a) of LA FOIP to some portions of the records, but not to other portions. The A/Commissioner also found that the RM did not properly apply subsections 21(b) and (c) of LA FOIP. The A/Commissioner

recommended that the RM continue to withhold or release the records accordingly. Where he recommended release, the A/Commissioner recommended that the RM do so within 30 days of the issuance of this Report.

I BACKGROUND

[1] On July 15, 2024, the Applicant emailed an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Rural Municipality of Reford No. 379. The request was for the following records:

According to “The Municipalities Act [sic] Sec 117(1)(a) any contract approved by council, any bylaw or resolution and any account paid by the council relating to the municipality”, I am requesting the entire account paid to McKercher LLP from September 2023 up to and including today’s date of July 15th, 2024.

[2] The Applicant noted in their email that they would provide payment the next day (on July 16, 2024). My office was provided with a copy of the RM’s receipt to the Applicant that confirmed payment of the \$20 application fee on July 16, 2024.

[3] On July 18, 2024, the RM responded to the Applicant’s request providing access to a one-page document, titled “Invoice History”, which contained a single redaction. In its section 7 decision letter, the RM did not reference under which provision of LA FOIP it was withholding the redacted information.

[4] On August 19, 2024, the Applicant requested a review by my office. They stated that they were dissatisfied as the RM had only provided the one-page “Invoice History” record when they sought access to the “entire account paid to McKercher LLP.”

[5] On August 23, 2024, my office followed up with the Applicant to clarify the scope of their request for review. On August 26, 2024, the Applicant stated that as they sought access to the invoices, they wanted to include a review of the RM’s search efforts.

- [6] On August 30, 2024, my office contacted the RM to ask if it would conduct a new search for invoices related to the Applicant's access request. If so, then would it provide any additional records it found to the Applicant by September 6, 2024.
- [7] On September 6, 2024, the RM emailed an updated response to the Applicant, releasing seven documents, each one titled "Remittance Advice" (seven pages total). The RM withheld portions of each Remittance Advice documents pursuant to section 21 of LA FOIP.
- [8] On September 10, 2024, the Applicant responded to my office that they were not satisfied with the records they received. They believed the Remittance Advice documents were not the full invoices as they did not contain any details about the services rendered. Rather, they believed what they had received were cover pages.
- [9] As the RM's response of September 6, 2024, referenced section 21 of LA FOIP, my office inquired with the RM if it was relying on a specific subsection. The RM responded that it was relying on all of section 21 of LA FOIP.
- [10] On September 19, 2024, my office notified the RM and the Applicant that my office would be undertaking a review of the RM's application of subsections 21(a), (b) and (c) of LA FOIP and of its search efforts.
- [11] On September 25, 2024, the RM provided a letter indicating that "solicitor-client privilege applied to the information contained in the invoices and, as such, the RM is not prepared to waive privilege." The RM did not provide my office with copies of any records. It did provide an index of records, and a checklist of its search efforts. The RM requested that any follow up on this matter be directed to its legal counsel; the RM did not state if my office could share any of its materials with the Applicant.
- [12] On September 27, 2024, my office asked the RM's legal counsel to provide my office with a copy of the responsive records. On October 1, 2024, the RM's legal counsel advised they

were not prepared to provide my office with an unredacted copy of the records because of solicitor-client privilege but did provide a redacted version.

[13] On October 2, 2024, my office advised the RM's legal counsel that if making a *prima facie* case for solicitor-client privilege, my office would require a schedule of records and an affidavit. My office also stated that the RM can only make a *prima facie* case for solicitor-client privilege for the application of subsection 21(a) of LA FOIP. As such, our office would require copies of the records where the RM was relying on subsections 21(b) and (c) of LA FOIP. My office added that if the Commissioner could not find that the RM made a *prima facie* case that subsection 21(a) of LA FOIP applies to portions where the RM is also relying on subsections 21(b) and (c) of LA FOIP, then he would not likely conclude that these subsections would apply and would, therefore, recommend release of the record.

[14] On October 15, 2024, the RM's legal counsel clarified that all of the redactions in the records are subject to subsections 21(a), (b) and (c) of LA FOIP, and then provided an affidavit, schedule of records and a redacted copy of the 37-page record on October 16, 2024. The RM is only making a *prima facie* case for solicitor-client privilege to a portion of this record, the descriptions of the legal services rendered. The RM's legal counsel provided all other portions of this record to my office for this review. On November 6, 2024, the RM's legal counsel provided my office with fully unredacted copies of the Invoice History record and the Remittance Advice documents for this review. The Applicant did not provide a submission.

II RECORDS AT ISSUE

[15] The RM produced three sets of records, which produced 38 pages of records in total. The RM released eight pages in part to the Applicant, and withheld 30 pages in full, as follows:

- The RM's initial response to the Applicant yielded a one-page record titled, "Invoice History". The RM withheld the vendor number on this page pursuant to subsections 21(a), (b) and (c) of LA FOIP. The RM's legal counsel provided my office with a fully unredacted copy of this record for this review.

- The RM’s second response to the Applicant yielded seven documents titled, “Remittance Advice” (for a total of seven pages), which represent seven invoices. The RM withheld the file number and client number on each of the seven pages, and a line of contact information in the return address information on six of the pages, pursuant to subsections 21(a), (b) and (c) of LA FOIP. The RM’s legal counsel provided my office with a fully unredacted copy of this record for this review.
- The response from the RM’s legal counsel to my office yielded 37 pages; it included the seven pages of “Remittance Advice” (from the second search described above) plus 30 additional pages that included corresponding details for each “Remittance Advice” (or invoice). The details on these 30 pages include a description of each invoice including a breakdown of the fees for each service rendered (description of service, number of hours per service and associated fee). The RM is withholding the additional 30 pages, in full, from the Applicant, and is also making a *prima facie* case for solicitor client privilege to portions of 23 of the 30 pages. The portions where the RM is making a *prima facie* case for solicitor client privilege is a description of the legal services rendered. The RM’s legal counsel provided my office with a copy of this record, redacting only the portions where it was making a *prima facie* case for solicitor-client privilege.

[16] I will then review the application of subsection 21(a), (b) and (c) of LA FOIP to the three sets of records (38 pages) as follows:

Record Numbers	Page Numbers	Description	Status
Set 1	1	“Invoice History” (1 page)	Withheld in part pursuant to subsections 21(a), (b) and (c) of LA FOIP
Set 2	1, 5, 9, 14, 19, 26 and 31 (Group 1)	“Remittance Advice” (7 pages)	Withheld in part pursuant to subsections 21(a), (b) and (c) of LA FOIP
Set 3	2 to 4, 6 to 8, 10 to 13, 15 to 18, 20 to 25, 27 to 30, and 32 to 37 (Group 2)	Breakdown of legal services rendered and associated fees (30 pages)	Withheld in full pursuant to subsections 21(a), (b) and (c) of LA FOIP; the RM is making a <i>prima facie</i> case for solicitor client privilege to the description of services rendered on pages 3, 4, 7, 8, 11 to 13, 16 to 18, 21 to 25, 28 to 30, and 33 to 37 (or to this portion of these pages)

[17] I note that in [Review Report 337-2023](#) concerning the Rural Municipality of Baildon No. 131, I similarly dealt with legal remittance forms and the invoice information attached to them. At paragraphs [88] and [89] of that report, I considered that findings on remittance forms would apply equally to the invoice information as they contain the same information (or would essentially form part of the same invoice). I will treat the Remittance Advice documents (7 pages), which I will refer to as Group 1, and the corresponding details for the invoices (30 additional pages), which I will refer to as Group 2, the same way.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did the RM conduct a reasonable search for responsive records?

[19] Section 5 of LA FOIP provides an applicant with a right of access to records in the possession or control of a local authority. It states:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[20] Section 5 of LA FOIP establishes a right of access by any person to records in the possession or control of a local authority, subject to limited and specific exemptions, which are set out in LA FOIP (*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], p. 12).

[21] When the RM released the one-page Invoice History record to the Applicant, in part, its section 7 decision did not reference the specific exemption it was relying on to withhold a portion of that record. Subsection 7(2)(d) of LA FOIP states that:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

[22] Subsection 7(2)(d) of LA FOIP provides that where access to records is refused, the local authority must set out the reason for refusal and identify the specific exemption in LA FOIP that it is relying on to withhold the records or information (*Guide to LA FOIP*, Ch. 3, p. 55).

[23] Further, subsection 5.1(1) of LA FOIP states:

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[24] Subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant's access to information request openly, accurately and completely. This means that a local authority, within the legislated timeframe, should make reasonable efforts to not only identify and seek our records responsive to an applicant's access to information request, but to explain the steps in the process and seek any necessary clarification of the nature or scope of the request. (*Guide to LA FOIP*, Ch. 3, p. 12).

[25] A local authority also has a duty to respond to an access to information request "openly". The *Guide to LA FOIP*, Ch. 3 at page 32, defines "open", as follows:

- "Open" means to be honest, forthcoming, and transparent. Where a decision is made to not provide an applicant with all or part of a record, a local authority should provide reasons for the refusal in an upfront and informative manner...

[26] In the future, to ensure compliance with section 7 of LA FOIP and the duty to assist, the RM should ensure the written decision to an applicant includes the following three elements, as outlined on page 55 of the *Guide to LA FOIP*, Ch. 3:

1. It must state that access is refused in full or in part.

2. It must set out the reason for refusal.
3. It must identify the specific provision in LA FOIP on which the refusal is based.

[27] I do want to acknowledge that, when the RM issued a section 7 decision after conducting a second search for records, it did include these three elements in its response to the Applicant. Going forward, the RM should ensure that these three elements are included in all section 7 decisions.

[28] Regarding the obligation to search for records, the threshold to be met is one of “reasonableness.” In other words, it is not a standard of perfection, but rather what a fair and rational person would expect or consider acceptable.

[29] The *Guide to LA FOIP*, Ch. 3, at page 12, provides that a “reasonable search” is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. What is reasonable depends on the request and related circumstances.

[30] When a local authority receives a notice of review from my office requesting details of its search efforts, some or all of the following can be included in the local authority’s submission (not exhaustive):

- For general requests – tie the subject matter of the request to the departments/divisions/branches/committees/boards included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by alphabet, year, function, and subject.
- Consider providing a copy of your organization’s record schedule and screen shots of the electronic directory (folders & subfolders).

- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee’s search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see my office’s resource, [*Using Affidavits in a Review with the IPC*](#).

(Guide to LA FOIP, Ch. 3, pp. 14-15)

[31] As previously noted in this Report, the RM’s first search for records located the one-page Invoice History record, which it released in part to the Applicant. After the Applicant requested a review, my office asked if the RM would be willing to conduct another search for records. The RM agreed, and this search resulted in the RM releasing, in part, seven additional pages of records comprised of seven Remittance Advice documents (Group 1).

[32] When asked by my office, the Applicant stated they were not satisfied that the RM had identified all responsive records. They stated that what they had received “look more like a cover page... invoices would detail what we were charging the client for”. The Applicant felt that, based on past experience, the invoices should contain additional details, and so believed that the RM had not provided the complete invoice. In a telephone conversation with my office, the RM stated that there were records containing an hourly breakdown of legal fees contained in the invoices, but that they considered them to be separate records and filed under a different category.

[33] After my office’s review had commenced, the RM’s legal counsel provided my office with the RM’s affidavit and schedule of records regarding the RM’s claim of solicitor-client privilege. The RM’s legal counsel also provided 37 pages of records, with portions

redacted. The RM stated that it was withholding these pages from the Applicant in full. As noted in the “Records at Issue” part of this Report, seven of these pages are the seven Remittance Advice documents (Group 1), that the RM has already provided to the Applicant (in part), plus 30 additional pages (withheld, in full, from the Applicant) that provide details regarding the legal services rendered and associated fees (Group 2).

- [34] The RM provided my office with a copy of its “Responsive Records Search Checklist” (checklist). The checklist notes the names of two employees who conducted the searches for responsive records, which took place on July 18, 2024 and September 3, 2024. The searches occurred on electronic file folders, on working files, and on two RM email accounts using the keywords “legal”, “McKercher” and “invoices”. The checklist notes that search of the electronic records yielded no records, while search of the email accounts yielded seven pages of records. A search of paper files in the accounts payable file boxes also yielded seven pages of records. The checklist also outlined that there were no outside contractors, consultants or information service providers where a search should be conducted.
- [35] The RM’s additional searches for records responsive to the Applicant’s request resulted in it releasing an additional seven pages of records (the seven Remittance Advice documents), in part, to the Applicant. The RM’s legal counsel then provided my office with 30 additional pages of records that it is withholding, in full, from the Applicant. As I stated, it appears that all these documents together would represent seven separate invoices. In this matter, the Applicant does not appear to dispute the number of invoices outlined on the one-page Invoice History record, which would total seven. Rather, they are not satisfied that the RM did not identify the full copies of the seven invoices.
- [36] Based on the details provided by the RM of its multiple searches conducted to locate the records the Applicant was seeking, with additional records being produced, I find that the RM conducted a reasonable search for records. I recommend that the RM take no further action regarding the search for records.

3. Did the RM make a *prima facie* case that subsections 21(a) (solicitor-client privilege) of LA FOIP applies?

[37] As noted in the Records at Issue part of this Report, I am reviewing if the RM has made a *prima facie* case that subsection 21(a) of LA FOIP applies to portions of the Group 2 records. These portions of the record are the descriptions of the legal services rendered by legal counsel for the RM on pages 3, 4, 7, 8, 11 to 13, 16 to 18, 21 to 25, 28 to 30, and 33 to 37. The RM has not provided these portions of the record to my office in a fully unredacted form. In this section of the Report, I am not dealing with the RM's application of 21(a) of LA FOIP to any other portions of the records. The RM has provided fully unredacted copies of the remaining portions of the Group 2 record, as well as fully unredacted copies of the Remittance Advice documents (Group 1) and Invoice History record for this review; therefore, I will consider the application of subsection 21(a) of LA FOIP to those records later in this Report. Page 39, section 9-1(1) of my office's *Rules of Procedure*, states the requirement for making a *prima facie* case as follows:

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. a copy of the records, or
- b. an affidavit of records, schedule and a copy of the redacted record over which solicitor-client or litigation privilege is claimed setting out the elements requested in Form B.

[38] Subsection 21(a) of LA FOIP provides as follows:

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;

[39] This 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, litigation privilege and settlement privilege (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4], p. 223).

[40] I will first consider the RM’s claim that records are subject to solicitor-client privilege. The purpose of solicitor-client privilege is to assure clients of confidentiality and enable them to speak honestly and candidly with their legal representatives. The *Guide to LA FOIP*, Ch. 4 at pages 225 to 232, sets out the following three-part test that my office uses to determine if the privilege applies:

1. Is the record a communication between 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?

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

[41] The privilege only applies where the parties involved in the communication qualify as solicitor and client. Page 226 of the *Guide to LA FOIP*, Ch. 4, sets out the following definitions for “solicitor” and “client”:

- “Solicitor” means a lawyer who is duly admitted as a member and whose right to practice is not suspended. “Lawyer” means a member of the Law Society and includes a law student registered in the Society’s pre-call training program.
- “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 his or her behalf;

and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work.

[42] A “communication” is the process of bringing an idea to another’s perception; the message or ideas so expressed or exchanged, or the interchange of messages or ideas by speech, wiring, gestures or conduct (*Guide to LA FOIP*, Ch. 4, p. 225).

[43] To support its position, the RM’s legal counsel provided my office with an affidavit with an attached schedule. The RM’s Reeve swore the affidavit and attested that the records relate to communication and information with the RM’s solicitor as follows:

4. In respect of those records, or portions of records, claimed to be protected by solicitor-client privilege, I have knowledge of, or believe, that the records relate to communications and information shared:

- i) Between solicitor and client, and/or third party, with sufficient common interest in the same transactions.
- ii) For the purpose of the seeking or obtaining of legal advice.
- iii) Intended to be kept confidential and have been consistently treated as confidential.

[44] Regarding the redacted portions of Group 2, the RM consulted its lawyer to seek legal advice on certain topics. The lawyer involved is currently a member of the Law Society of Saskatchewan and is licensed to practice law in Saskatchewan. Therefore, in this matter, the RM qualifies as a client and its legal counsel qualifies as the solicitor.

[45] In my office’s [Review Report 165-2022](#) at paragraph [30], I considered that invoices are communications between a solicitor and client, which is what I am dealing with here. Consistent with this, I find that the first part of the test is met for the redacted portions of Group 2 where the RM is making a *prima facie* case that subsection 21(a) of LA FOIP applies.

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

- [46] “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. 228).
- [47] The RM’s legal counsel stated that the redacted portions of Group 2, where the RM is making a *prima facie* case, relate to services performed by legal counsel in relation to legal advice. That is, the redacted portions are descriptions of legal services rendered by legal counsel for the client (the RM).
- [48] In my office’s Review Report 165-2022 at paragraph [34], I stated it has been recognized that invoices of lawyers constitute communications for the purpose of obtaining legal advice. Similarly, I find that the redacted portions of Group 2 where the RM is making a *prima facie* case that subsection 21(a) of LA FOIP applies would contain communications for the purpose of obtaining legal advice. As the second part of the test has been met, I will also consider the third part of the test.

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

- [49] For the third part of the test, I must determine if there is an expectation on the part of the RM that the communication will be confidential. Page 237 of the *Guide to LA FOIP*, Ch. 4, provides that conduct which is inconsistent with an expectation of confidentiality can constitute a waiver of privilege.
- [50] As previously stated in this Report, the RM attested that communication between the RM and its solicitor was intended to be treated confidentially.
- [51] As the third part of the test is met, I find that the RM has made a *prima facie* case that subsection 21(a) of LA FOIP applies to the redacted portions of Group 2. I recommend that the RM continue to withhold the redacted portions of Group 2 pursuant to subsection 21(a) of LA FOIP.

[52] I will next consider the RM's application of subsections 21(a), (b) and (c) of LA FOIP to withhold the remaining portions of Group 2 from the Applicant (that is, to the portions where I have not considered the RM's *prima facie* case that subsection 21(a) of LA FOIP applies), to the one-page Invoice History record, and to the seven Remittance Advice documents (Group 1).

4. Did the RM properly apply subsections 21(a), (b) or (c) of LA FOIP to the records?

[53] Section 21 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;

(b) was prepared by or for legal counsel for the local authority in relation to a matter involving the provision of advice or other services by legal counsel; or

(c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel.

[54] I will begin with the application of subsection 21(a) of LA FOIP.

Subsection 21(a) of LA FOIP

[55] I previously set out the three-part test for the application of subsection 21(a) of LA FOIP in this Report.

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

[56] I previously set out the definitions for "solicitor" and "client" in this Report.

[57] Previously in this Report, I stated that the Remittance Advice (Group 1) and the pages that describe the legal services rendered and associated fees (Group 2) are part of a legal

invoice. I also considered that the redacted portions of Group 2 where I found the RM made a *prima facie* case that subsection 21(a) of LA FOIP applies represent communication between solicitor and client. Based on that, I am satisfied that the first part of the test is met for the Remittance Advice (Group 1) and for the remaining portions of Group 2. I will consider the second part of the test for these portions.

[58] For the one-page Invoice History record, portions released to the Applicant disclose data elements such as the invoice number, date of payment and amount of payment. In [Review Report 003-2017](#), I found that the details of a public body's payments for legal services found in an "accounts payable invoice history report" was not subject to solicitor-client privilege. In other words, some of the information from the lawyer's invoice was entered into a report on the public body's accounting system, and that report was the subject of the review. The Invoice History record in this matter appears to be the RM's accounts payable history report, and so not a communication between solicitor and client. As such, the first part of the test is not met for the Invoice History record. Therefore, I find that the RM has not properly applied subsection 21(a) of LA FOIP to the vendor number withheld on the one-page Invoice History record. The RM has also applied subsections 21(b) and (c) of LA FOIP to the vendor number; I will consider the application of these exemptions to the vendor number later in this Report.

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

[59] In this Report, I previously defined the term "legal advice."

[60] In my review of whether the RM made a *prima facie* case that subsection 21(a) of LA FOIP applies to the redacted portions of Group 2, I considered that the communications are related to the seeking or giving of legal advice (this would apply to the remaining portions of Group 2 as well). As the withheld portions of the Remittance Advice (Group 1) are part of the legal invoices, then they also entail the seeking or giving of legal advice. Therefore, the second part of the test is met.

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

- [61] For the third part of the test, I must determine if there is an expectation on the part of the RM that the communication will be confidential. Without confidentiality there can be no privilege and when confidentiality ends so too should the privilege. As a general rule, the client must not have disclosed the legal advice (either verbally or in writing) to parties outside of the solicitor-client relationship (*Guide to LA FOIP*, Ch. 4, pp. 225 to 226).
- [62] Based on a review of the records and the information provided by the RM, it appears that the parties intended for the communication to be treated confidentially. Therefore, the third part of the test is met.
- [63] Before I make any findings or recommendations, in my office's Review Report 337-2023 at paragraph [87], I stated that the release of the letterhead, client name and address, and the total amounts charged per invoice would not reveal, directly or indirectly, communications subject to solicitor-client privilege. In my office's [Review Report 188-2022](#), I found that subsections 21(a) and (b) of LA FOIP do not apply to the headers, footers, subject line and confidentiality statements of emails. In my office's [Review Report 118-2020](#), I found that subsection 21(c) of LA FOIP does not apply to similar parts of a letter, including sender, recipient, subject lines and signatures.
- [64] In my office's Review Report 337-2023 at paragraph [85], I stated that the presumption of privilege prevails for the detailed information about work carried out, dates when legal services were provided, time spent and amounts per specific services and therefore, found that subsection 21(a) of LA FOIP applied to those portions of the invoice.
- [65] Based on this, I find that the RM properly applied subsection 21(a) of LA FOIP to portions of Group 2, which includes the breakdown of the fees (i.e., the columns with the date when legal services were provided, time spent, and the amounts per specific service), and that it did not properly apply subsection 21(a) of LA FOIP to the letterhead details, client name and address, headers, footers, subject lines and total amounts charged on legal invoices in

Group 2. I recommend that the RM continue to withhold the columns with the date when legal services were provided, time spent, and the amounts per specific service in Group 2 pursuant to subsection 21(a) of LA FOIP. I will still need to consider the RM's reliance on subsections 21(b) and (c) of LA FOIP, however, to the letterhead details, client name and address, headers, footers, signature lines, subject lines and total amounts charged on legal invoices in Group 2.

[66] Regarding the Remittance Advice (Group 1), under review are the file and client numbers on each of the seven pages, and a line of contact information in the return address information on six of the pages. This information would not reveal, directly or indirectly, communications subject to solicitor-client privilege. I find, then, that the RM did not properly apply subsection 21(a) of LA FOIP to the Remittance Advice documents (Group 1). As the RM also applied subsections 21(b) and (c) of LA FOIP to this information, I will first review these exemptions on these portions of the record prior to making an overall recommendation on release.

Subsections 21(b) and (c) of LA FOIP

[67] I need to consider the application of subsections 21(b) and (c) of LA FOIP to the following:

- The vendor number on the one-page Invoice History record;
- The letterhead details, client name and address, headers, footers, signature lines, subject lines and total amounts charged on legal invoices in Group 2; and
- The file numbers, client numbers, and a line of contact information in the return address in the Remittance Advice (Group 1).

[68] Page 249 of the *Guide to LA FOIP*, Ch. 4, provides that subsection 21(b) of LA FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where a record was prepared by or for legal counsel for a local authority in relation to the provision of advice or services by legal counsel. This provision is broader in scope than subsection 21(a) of LA FOIP. The following two-part test that my office applies for subsection 21(b) of LA FOIP is as follows:

1. Were the records “prepared by or for” legal counsel for a local authority?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by legal counsel?

[69] Pages 250 and 251 of the *Guide to LA FOIP*, Ch. 4, provide that subsection 21(c) of LA FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where a record contains correspondence between the local authority’s legal counsel and any other person in relation to a matter that involved the provision of advice or services by legal counsel. This provision is broader in scope than subsection 21(a) of LA FOIP. Subsection 21(c) of LA FOIP is intended to allow parties to correspond freely in relation to matters about which they need to speak in order to allow the lawyer’s advice or services to be provided. The following two-part test can be applied:

1. Is the record a correspondence between the local authority’s legal counsel and any other person?
2. Does the correspondence relate to a matter that involves the provision of advice or other services by legal counsel?

The vendor number on the one-page Invoice History record

[70] As previously noted in this Report, the Invoice History record appears to be a report from the RM’s accounts payable system for its internal accounting purposes. As such, it is not a record prepared by or for legal counsel, and so the first part of the test is not met. I find that the RM has not properly applied subsection 21(b) of LA FOIP to the vendor number on the one-page Invoice History record.

[71] Regarding subsection 21(c) of LA FOIP, the Invoice History record is also not a correspondence between the RM’s legal counsel and any other person, and so the first part of the test is not met for this exemption. As such, I find that the RM has not properly applied subsection 21(c) of LA FOIP to the vendor number on the one-page “Invoice History” record.

[72] I recommend that, within 30 days of the issuance of this Report, the RM release the vendor number on the one-page Invoice History record.

The file numbers, client numbers, and a line of contact information in the return address in the Remittance Advice (Group 1)

The letterhead details, client name and address, headers, footers, signature lines, subject lines and total amounts charged on legal invoices (Group 2)

[73] As I have previously stated at paragraph [63] of this Report, in my office's Review Report 337-2023, I found that subsections 21(b) and (c) of LA FOIP do not apply to information such as letterhead details, client name and address, headers, footers, signature lines, subject lines and total amounts charged on legal invoices if disclosure would not reveal the substance of the legal service provided. In this matter, I am not of the view that releasing this type of information from the Group 1 or Group 2 records would reveal the substance of the legal services provided. As such, I find that the RM has not properly applied subsections 21(b) and (c) of LA FOIP to withhold the file and client numbers on each of the seven pages, and a line of contact information in the return address information on six of the pages in the Remittance Advice (Group 1), or the letterhead details, client name and address, headers, footers, signature lines, subject lines and total amounts charged in the Group 2 records. Therefore, I recommend that, within 30 days of the issuance of this Report, the RM release this information to the Applicant.

[74] To my findings and recommendations, I would like to note that the RM was inconsistent when applying its redactions to the records as outlined below, which are portions that I recommended above that the RM release to the Applicant:

- For the Remittance Advice (Group 1), the RM withheld the law firm's email address on pages 1, 5, 9, 14, 19, 26, but released it on page 31.
- On pages 2, 6, 10, 15, 20, 27 and 32 of the invoice information there is a summary that includes the total fees for each invoice. These total fees were released to the Applicant in the Invoice History record and on the Remittance Advice documents (Group 1).

- The RM released some details at the top of each Remittance Advice (Group 1) on pages 1, 5, 9, 14, 19, 26 and 31 (e.g., the date, invoice number, name of law firm, and contact information for the law firm) that it withheld from the Applicant on pages 3, 4, 7, 8, 11 to 13, 16 to 18, 21 to 25, 28 to 30 and 33 to 37 of the Group 2 records.

IV FINDINGS

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

[76] I find that the RM conducted a reasonable search for records.

[77] I find that the RM has made a *prima facie* case that subsection 21(a) of LA FOIP applies to the redacted portions of Group 2, specifically the description of the legal services rendered by legal counsel for the RM.

[78] I find that the RM has not properly applied subsections 21(a), (b) and (c) of LA FOIP to the vendor number on the one-page Invoice History record.

[79] I find that the RM properly applied subsection 21(a) of LA FOIP to the columns containing the date when legal services were provided, time spent, and the amounts per specific service in Group 2, and that it did not properly apply subsection 21(a) of LA FOIP to the letterhead details, client name and address, headers, footers, signature lines, subject lines and total amounts charged in Group 2.

[80] I find that the RM has not properly applied subsections 21(a), (b) and (c) of LA FOIP to the file and client numbers on each of the seven pages, and a line of contact information in the return address information on six of the pages in the Remittance Advice (Group 1).

[81] I find that the RM has not properly applied subsections 21(b) and (c) of LA FOIP to the letterhead details, client name and address, headers, footers, signature lines, subject lines and total amounts charged in Group 2.

V RECOMMENDATIONS

[82] I recommend that the RM take no further action regarding the search for records.

[83] I recommend that the RM continue to withhold the redacted portions of Group 2, the description of the legal services rendered by legal counsel for the RM, where it made a *prima facie* case that subsection 21(a) of LA FOIP applies.

[84] I recommend that the RM release the vendor number on the Invoice History record to the Applicant within 30 days of the issuance of this Report.

[85] I recommend that the RM continue to withhold the dates when legal services were provided, time spent, and the amounts per specific service in Group 2 pursuant to subsection 21(a) of LA FOIP.

[86] I recommend that, within 30 days of the issuance of this Report, the RM release the Group 2 records, with the exception of the description of the legal services rendered by legal counsel for the RM, dates when legal services were provided, time spent, and the amounts per specific service.

[87] I recommend that the RM release the Remittance Advice documents (Group 1), in full, to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 7th day of April, 2025.

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