

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 052/2013**

**Village of Buena Vista**

**Summary:** The Applicant requested records that detail the funds charged to the Village of Buena Vista on behalf of certain council members, the repayment plans of the council members, and records that detail the legal fees paid by the Village on the Mayor's behalf. The Village responded by stating that some of the records she requested did not exist and it was withholding other records, namely four invoices, pursuant to subsection 18(1)(b) and 18(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the Village provided sufficient evidence that records do not exist. He also found that subsection 21(a) of LA FOIP applies to the invoices. Therefore, he recommended that the Village continue to withhold the records.

**I BACKGROUND**

[1] In a letter dated May 16, 2013, the Applicant requested records detailing the “the funds charged to the Village [of Buena Vista] (“the Village”) on behalf of [names of council members] (“council members”) for payment of their legal fees including reimbursement for fees incurred prior to the date of motion 22/12.” She stated that plans for repayment should be included. Further, she requested records that detail the legal fees paid by the Village on the Mayor's behalf.

[2] The Village responded in a letter dated July 18, 2013. It stated that records do not exist and that it was withholding invoices pursuant to subsections 18(1) and 21 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). In its

submission dated September 5, 2013, the Village clarified that it was relying on subsections 18(1)(b), 18(1)(c) and 21 of LA FOIP to withhold records.

## **II RECORDS AT ISSUE**

[3] For a part of the Applicant's request, the Village has asserted that records do not exist. However, for another portion of the Applicant's request, there are four invoices issued by a law firm to the council members dated September 30, 2011, November 30, 2011, April 30, 2012, and November 30, 2012.

## **III DISCUSSION OF THE ISSUES**

### **1. Did the Village provide sufficient evidence that records do not exist?**

[4] One portion of the Applicant's request was for records detailing the council members' repayment plans. In its submission dated September 5, 2013, the Village explained that the council members obtained a law firm to represent them and that there are invoices from the law firm to the Village. However, there are no plans for the council members to pay the Village back. Therefore, no records exist.

[5] The Village's position, as detailed in its letter dated July 18, 2013 to the Applicant, is that section 355(3) of *The Municipalities Act* enables the Village to pay for the fees. If this is the Village's position, then it's certainly reasonable that no repayment plans by the council members exist.

[6] Another portion of the Applicant's request was for records that detail the legal fees paid on the Mayor's behalf. The Village provided my office with a reproduction of a portion of its February 9, 2012 council meeting minutes. On February 9, 2012, the council had passed a motion that the Village pay the legal costs incurred by the Mayor arising from the actions of the council. Council voted against the motion. As such, no records exist.

[7] Applicants rarely have detailed knowledge of the records held by a public body. However, they must be able to provide a reasonable basis for believing that records do exist. For example, their belief could be based on the fact that a public body's mandate suggests that a certain type of record would exist.

[8] The Applicant did not supply my office with a basis for believing such records exist. In a letter dated June 13, 2013, the Applicant was requesting information to prove that the Village has not paid anything towards the Mayor's legal fees. As such, I am persuaded that no records detailing payments by the Village on behalf of the Applicant exists.

## **2. Did the Village properly apply section 21 of LA FOIP?**

[9] Section 21 of LA FOIP provides:

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

(a) contains information that is subject to 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.

[10] In its submission dated September 5, 2013, the Village did not specify which subsection of section 21 it was applying. However, it argued that the invoices "obviously contain third party information and/or information that is subject to solicitor-client privilege...". Presumably, it was applying subsection 21(a) of LA FOIP to withhold the invoices in their entirety.

[11] In its letter dated December 11, 2014, the Village pointed to the Supreme Court of Canada (SCC) decision *Maranda v. Richer*, [2003] 3 S.C.R. 193, 2003 SCC67. In that decision, the SCC asserted that there is a presumption of privilege for lawyers' bills of account as a whole in order to ensure that solicitor-client privilege is honoured:

In law, when authorization is sought for a search of a lawyer's office, the fact consisting of the amount of the fees must be regarded, in itself, as information that is, as a general rule, protected by solicitor-client privilege. While that presumption does not create a new category of privileged information, it will provide necessary guidance concerning the methods by which effect is given to solicitor-client privilege, which, it will be recalled, is a class privilege. Because of the difficulties inherent in determining the extent to which the information contained in lawyers' bills of account is neutral information, and the importance of the constitutional values that disclosing it would endanger, recognizing a presumption that such information falls *prima facie* within the privileged category will better ensure that the objectives of this time-honoured privilege are achieved.

- [12] This presumption of privilege can be rebutted if the Applicant can provide persuasive argument that the disclosure of information, namely the fees detailed in the invoice, will not result in the Applicant learning of information that is subject to solicitor-client privilege. In *Ontario (Ministry of the Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, [2005] OJ No 941, the Court of Appeal for Ontario summarized an approach presented in *Legal Services Society v. Information and Privacy Commissioner of British Columbia* (2003), [2003] BCJ No 1093 (QL) as follows:

If there is a reasonable possibility that the assiduous inquirer, aware of background information available to the public, could use the information requested concerning the amount of fees paid to deduce or otherwise acquire communications protected by the privilege, then the information is protected by the client/solicitor privilege and cannot be disclosed. If the requester satisfies the IPC that no such reasonable possibility exists, information as to the amount of fees paid is properly characterized as neutral and disclosable without impinging on the client/solicitor privilege. Whether it is ultimately disclosed by the IPC will, of course, depend on the operation of the entire Act.

- [13] In the Applicant's submission, it was argued that the invoices should not be subject to "client privilege" because the council had publicized matters to Village residents. Based on the Applicant's arguments, I am not persuaded that release of information, namely the fees detailed in the invoices, is neutral information. In other words, I am not persuaded that the presumption of privilege is rebutted.

[14] I find that subsection 21(a) of LA FOIP applies to the invoices in their entirety. Since I find that subsection 21(a) of LA FOIP applies, there is no need to consider subsections 18(1)(b) or 18(1)(c) of LA FOIP.

#### **IV FINDINGS**

[15] I find that the Village provided sufficient evidence that records do not exist.

[16] I find that subsection 21(a) of LA FOIP applies to the invoices.

#### **V RECOMMENDATIONS**

[17] I recommend that the Village continue to withhold the records.

Dated at Regina, in the Province of Saskatchewan, this 18th day of December, 2014.

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